Memorandum

MIAMI-DADE COUNTY

Date: November 20, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(F)(1)(E)

From: George M. Burgess
County Manager

Subject: Supplemental Agreement No. 2 to Lease Agreement with JMR Foods Corporation D/B/A Bottega Express at the Stephen P. Clark Center Located at 111 N.W. 1 Street, Miami

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached resolution authorizing execution of Supplemental Agreement No. 2 with JMR Foods Corporation D/B/A Bottega Express (Bottega) at the Stephen P. Clark Center located at 111 N.W. 1 Street, Miami. This Supplemental Agreement has been prepared by the General Services Administration.

BACKGROUND

The County currently leases space on the second level of the Stephen P. Clark Center atrium for the operation of a full-service food court. Relatively short operating hours for a restaurant, combined with significant competition in the area, have made it difficult in the past for operators to succeed financially in this location. Although the current rental rate paid to the County for the premises is modest, the revenue generated through the lease does cover the County's operating costs. As a result, the current operator, Bottega Express, has been successful in attempting to create a venue that can be profitable to the owners while providing a valuable amenity in support of County operations in the building.

The Lease Agreement with Nexstore Marketplace, Inc. (Nexstore) for the lease and operation of the Food Court at the Stephen P. Clark Center (SPCC) was approved by the Board via Resolution R-414-06 on April 25, 2006. The restaurant opened on May 15, 2006. As you have been previously advised, Nexstore was unable to meet its internal sales targets and fell into arrears on its rental payments to the County. Following a lengthy process, Nexstore was ultimately able to negotiate an agreement to sell its leasehold to Bottega in January 2008. With staff's review and approval, the transfer became effective January 18, 2008.

Upon assuming the lease, Bottega temporarily closed the restaurant. Following minor renovations, Bottega reopened and used the "bakery" area to sell a full-service (hot and cold) menu. Bottega then proceeded with major renovations to the remainder of the restaurant, which included the creation of an enclosed food service area with cashiers only at the exits, rather than at individual food stations. Additionally, Bottega built out a private dining room, complete with a large-screen television and wired for connection to computers, which can be used for both catered meetings and parties, and as a table-service dining area.

Feedback since the reopening has been extrememly positive. Although Nexstore was generally popular, there were consistent complaints regarding speed of service, pricing, cleanliness of the operation, and variety of selection. Those complaints have disappeared. Bottega's new layout has received considerable praise for its décor and improved customer flow. Bottega allows á la carte purchases, giving customers greater control over meal prices. Cleanliness of the restaurant is improved, and Bottega has assigned full-time staff to clean the bathrooms throughout the day, something Nexstore was never willing to do. Sales are not yet at the levels generated by Nexstore;

however, this is mostly due to the reduced average ticket value, the recent slowdown in the restaurant industry as a whole, and the limited marketing conducted to date.

As far as future plans, Bottega expects to have its website and online ordering system active by late 2008. This will provide an additional ordering outlet for customers. The private dining room will be used primarily for special events and meetings through the holiday season. Table service in the private dining room will likely commence early next year; not only will this allow customers a change from the service-window or cafeteria dining, but menu items will be offered that are not available in the main service lines.

From the opening until early September, Bottega purposely avoided advertising, instead focusing upon training staff and fine-tuning processes. In September, they initiated their first marketing effort outside of the Clark Center – a discount coupon program – and expect to do more toward the end of the year. They will concentrate in nearby County offices, courthouses, and buildings occupied by the city, state, and federal employees. Also, by December, the restaurant will also be opening up a kiosk downstairs in the SPCC in the former flower shop, serving quick-serve items such as coffee, drinks, pastries, and smoothies.

PROPOSED AMENDMENTS

The cost to build out the main serving area and the private dining room with floor-to-ceiling walls and windows came in significantly higher than initially anticipated. While this approach improved functionality and created a much more sophisticated look, it substantially increased the overall cost of the transition. In an effort to assist Bottega with the financial challenges created by these improvements, staff has negotiated and recommends approval of the following modifications:

(1) Defer $80,000.00 in delinquent rent that Bottega agreed to assume from Nexstore at the time that Nexstore vacated the food court. Bottega still intends to repay the Nexstore obligation, but not until the restaurant becomes more stable financially. The proposed plan requires that this deferred rent be repaid in five annual increments during each year that gross sales for the food court hit or exceed $1.9 million. No payment is required for any year that gross sales do not reach the $1.9 million threshold.

(2) Defer that portion of percentage rent that exceeds the minimum base rent of $2,100.00 per month, which Bottega shall continue to pay. (Bottega is obligated to pay $2,100.00 or 4% of gross monthly sales, whichever is greater. This arrangement would allow Bottega to pay only the $2,100.00 each month, and retain the percentage rent due over the $2,100.00 each month as a means of offsetting the large, unplanned outlay made for the improvements.) The percentage rent deferred in this manner can only be used to offset the cost of installing the floor-to-ceiling walls and the plasma TV, and may not exceed $50,000.00. All of these improvements will remain a part of the premises and become County property at the end of the lease term.

It should be noted that the County did not provide an improvement allowance, as is typical in retail leasing. Bottega still proposes to meet the rent obligation but, as with the Nexstore arrearage, not until the restaurant becomes more stable financially. The proposed plan requires that this deferred rent be repaid in five annual increments during each year that gross sales for the food court hit or exceed $1.9 million. No payment is required for any year that gross sales do not reach the $1.9 million threshold.

Staff also recommends two other modifications for approval for the benefit of the County:

(1) To authorize an arrangement whereby Bottega continues the prior arrangement that existed with Nexstore to permit the food court bathrooms to be used by Metrorail/ Metromover patrons, in exchange for the County's agreeing to reimburse Bottega for the cost of the added janitorial and security services necessary to handle the additional traffic. This arrangement is supported by Miami-Dade Transit and the Citizen's Independent Transportation Trust.

(2) To authorize reimbursement by the County to Bottega for those costs incurred by the Bottega for the repair and replacement of equipment and finishes for which the County, as Landlord, is responsible in the Leased Premises.

LEASE INFORMATION

PROPERTY:	Stephen P. Clark Center 111 N.W. 1 Street, Miami
COMMISSION DISTRICT: COMMISSION DISTRICTS	5
IMPACTED:	Countywide
OWNER:	Miami-Dade County
TENANT:	JMR Foods Corporation / DBA Bottega Express
COMPANY PRINCIPALS:	Jorge Luis Prieto, President 33% Miguel Arias, Vice President 33% Rebeca Prieto, Treasurer 33%
TENANT'S TRACK RECORD:	The County has no record of negative performance issues with JMR Foods Corporation / DBA Bottega Express.
USE:	5,070 square feet of air-conditioned restaurant space, together with serving and seating areas, bathrooms, and common areas.
EFFECTIVE DATES OF AMENDMENT:	This Supplemental Agreement No. 2 shall become effective upon approval by the Board of County Commissioners.
CURRENT LEASE:	The current Lease Agreement for the lease and operation of the Food Court at the Stephen P. Clark Center was approved by the Board of County Commissioners via Resolution R-414-06 on April 25, 2006. The Lease is for a ten-year initial term, with two successive five-year renewal option periods. Annual rent is the higher of $25,100.00 per year or percentage rent according to

the following schedule: 4% of all gross sales up to $1.5M; 6% from $1.5M to $2M; and 8% of all gross sales in excess of $2M.The Lease Agreement was assigned to JMR Foods Corporation / DBA Bottega Express effective January 18, 2008.

COMMENT: Attached for your information is a copy of the previously approved resolution and other memoranda with information concerning the current Lease Agreement.

MONITOR: Dennys Gonzalez, Real Estate Officer

DELEGATED AUTHORITY: The County Mayor or the Mayor's designee is authorized to execute the Supplemental Agreement, exercise the cancellation and renewal provisions, and negotiate and approve payments to Bottega for costs incurred by Bottega for cleaning and security at the food court bathrooms and for repairs made in the premises on behalf of the County.

Wendi J. Norris, Director
General Services Administration

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: November 20, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(E)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(E)
11-20-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 2 TO THE LEASE AGREEMENT AT THE STEPHEN P. CLARK CENTER, 111 N.W. 1 STREET, MIAMI, WITH JMR FOODS CORPORATION / DBA BOTTEGA EXPRESS, AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves Supplemental Agreement No. 2 to the Lease Agreement between Miami-Dade County and JMR Foods Corporation / DBA Bottega Express, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or his designee to exercise any and all other rights conferred therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Jose A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of November, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

SUPPLEMENTAL AGREEMENT No.2

BETWEEN

MIAMI-DADE COUNTY and JMR FOODS CORPORATION

Contract: Lease Agreement No. 222, approved by Resolution R-414-06, adopted April 25, 2006.

Contract Title: Lease and Operation of Food Court Premises at the Stephen P. Clark Center.

Landlord: Miami-Dade County

Assignor: Nexstore Marketplace Miami, LLC

Assignee: JMR Foods Corporation / DBA Bottega Express

In accordance with the above referenced Contract, this supplement constitutes the following:

WHEREAS, Miami-Dade County (hereinafter "County") has agreed to permit Nexstore Marketplace, Inc. (hereinafter "Nexstore") to assign its Lease Contract referenced above, to JMR Foods Corporation (hereinafter referred to as "JMR")

WHEREAS, County and JMR wish to identify and delineate additional agreements between County and JMR that are not referenced in the Original Lease Agreement # 222.

THEREFORE, the parties agree as follows:

1. **"Nexstore Arrearage" - Repayment Schedule, Terms and Conditions:**

   A. The parties acknowledge that, at the time of the assignment of the Lease Agreement, Nexstore was in arrears to the County in the amount of $80,000, which consisted of delinquent "guaranteed minimum rent" and "percentage-rent" owed to the County. JMR hereby agrees to assume the payment of said arrearage and to initiate its repayment of the subject obligation, conditioned on the following provisions:

      i. JMR shall repay this debt to the County over five one-year periods, each of which shall be made up of 12 equal and consecutive monthly installments.

ii. The first installment of each of the five periods shall commence upon the first month following each and every calendar year in which JMR gross sales exceed $1.9 million until the full debt is liquidated.

iii. Upon liquidation of said debt, JMR shall be relieved of any further liability with the County for the above-referenced debt ("Nexstore Arrearage").

iv. No payment shall be required for any year in which gross sales do not reach or exceed $1.9 million.

2. "Deferred Build-out Expense" - Repayment Schedule, Terms and Conditions:

A. Allowable Improvements

The parties acknowledge that JMR made certain improvements that will provide significant benefit to the County, including a floor-to-ceiling wall separating the customer service area from the seating area, and the provision of audio-video capability in the private dining room. (The private dining room itself was constructed and furnished at the sole expense of JMR.)

B. Rent Deferral for Allowable Improvements

In recognition that the improvements described in 3(A) were more extensive and of a higher quality and cost than originally planned, thereby creating a financial hardship for JMR, the County agrees to the institution of a payment plan that will assist JMR in the funding of said improvements, as follows:

i. JMR shall bear the sole financial responsibility for $20,000 of the cost of these improvements (which represents the initial estimated cost of the planned improvements); said $20,000 shall NOT be a part of the payment plan described herein.

ii. JMR agrees to continue to pay the "Guaranteed Minimum Rent" prescribed by the Lease Agreement, which is $2,100 per month ($25,200 annually).

iii. The County consents to a deferral of JMR' s obligation to pay monthly percentage rent in excess of $2,100, until such time as the total amount of percentage rent deferred is equal to the cost of the "Allowable Improvements," less $20,000 (from #1 above). The parties agree that the amount of percentage rent deferred cannot exceed $50,000.

iv. Once the amount of percentage rent deferred reaches cost of the Allowable Improvements (less $20,000) or the $50,000 cap, whichever is lower, then JMR will be responsible to resume the payment of percentage rent in accordance with the Lease Agreement.

C. Repayment of Deferred Percentage Rent

JMR Foods agrees to initiate its repayment of the subject obligation, conditioned on the following provisions:

i. JMR shall repay this debt to the County in five one-year periods, each of which shall be made up of 12 equal and consecutive monthly installments.

ii. The first installment of each of the five periods shall commence upon the first month following each and every calendar year in which JMR gross sales exceed $1.9 million until the full debt is liquidated.

iii. Upon liquidation of said debt, JMR shall be relieved of any further liability with the County for the above-referenced debt ("Deferred Build-out Expense").

iv. No payment shall be required for any year in which gross sales do not reach or exceed $1.9 million.

3. <u>Availability of Food Court Restrooms to the General Public:</u>

Bottega agrees to keep open the restrooms at the food court for the use of the general public, in exchange for which the Miami-Dade Transit Department (MDT) will reimburse Bottega for the cost of security and janitorial services required to maintain the restrooms in a clean and sanitary condition. The following conditions must be met for reimbursement:

A. Reimbursement for services:

i. Reimbursements will be processed upon Bottega presenting a copy of the monthly invoice from its provider for said security and janitorial services.

ii. Said reimbursement to Bottega Express will be paid within thirty (30) days following receipt of paid invoice from service provider(s).

iii. The maximum allowed reimbursement during each annual period shall not exceed $70,000 unless approved in advance by MDT.

B. Additional Income:

i. Reimbursement from MDT for security and janitorial services shall not be considered as additional income to Bottega and

ii. Will not be considered part of its gross income or used in the calculations of applicable percentage rental.

C. Termination of Public Access:

i. Bottega reserves the right to restrict restroom facilities access to food court patrons should MDT cease reimbursement of services.

D. Annual Review:

i. This provision shall be reviewed annually by MDT and Bottega to determine the continuing need, and to review and negotiate any increase in costs or services that are incurred by Bottega.

4. <u>Routine Maintenance and Repair on behalf of County:</u>

The County, through the County Mayor or the Mayor's designee, is hereby authorized to reimburse Bottega for those costs incurred by Bottega for the repair and replacement of equipment and finishes for which the County, as Landlord, is responsible in the Leased Premises.

The points described above shall continue in effect as long as JMR remains in good standing with the County regarding contractual obligations pursuant to lease Agreement No. 222.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

JMR Foods Corporation /
DBA Bottega Express

By: _____

Name: Rebeca Prieto

Title: Treasurer

Date: 5/28/08

MIAMI-DADE COUNTY

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____

Witness: _____

Attest: _____
Clerk of the Board

This document has been reviewed
by the County Attorney's Office for
legal Sufficiency:

_____
(CAO Signature)

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