# Memorandum

MIAMI-DADE COUNTY

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

**Date:** December 7, 2010

**To:** Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

**From:** George M. Burgess
County Manager

**Subject:** Supplemental Agreement No. 3 to the Lease Agreement with JMR Foods Corporation d/b/a Bottega Express for the food court at the Stephen P. Clark Center, located at 111 N.W. 1 Street, Miami

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## RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of Supplemental Agreement # 3 with JMR Foods Corporation d/b/a *Bottega Express*, in order to permanently incorporate Retail Space 119, located in the atrium lobby area of the Stephen P. Clark Center, into the leased premises of the above-referenced lease agreement. This Supplemental Agreement has been prepared by General Services Administration (GSA), Facilities and Utilities Management Division.

| | |
|---|---|
| PROPERTY: | Stephen P. Clark Center (SPCC)<br>111 N.W. 1 Street, Miami |
| COMMISSION DISTRICT: | 5 |
| COMMISSION DISTRICT(S) IMPACTED: | Countywide |
| OWNER: | Miami-Dade County |
| TENANT: | JMR Foods Corporation d/b/a *Bottega Express* (Bottega) |
| COMPANY PRINCIPALS: | Jorge Luis Prieto, President 34%<br>Miguel Arias, Vice President 33%<br>Rebeca Prieto, Treasurer 33% |
| OWNER TRACT RECORD: | The County has no record of negative performance issues with JMR Foods Corporation / D.B.A *Bottega Express.* |
| USE: | To function as a "grab-and-go" cafeteria-style area where no cooking is allowed. Retail Space 119 is approximately 660 square feet and located in the atrium lobby area of the SPCC. |
| CURRENT LEASE: | The subject Lease Agreement for the use and operation of the food court at the SPCC was approved by the Board via Resolution R-414-06 on April 25, 2006. The Lease was awarded to Nexstore Marketplace Miami, LLC for a ten year initial term, with two successive five-year renewal |

option periods. Annual rent was set equal to a minimum of $25,100 per year or a pre-defined percentage of gross sales, whichever is higher. The Lease Agreement was assigned to JMR Foods Corporation as of January 18th, 2008.

JUSTIFICATION:

The food court, located on the mezzanine level of the atrium area, has always operated more as a necessary amenity to the occupants and visitors of the SPCC and Government Center Metrorail Station, than as a revenue generator for the County. The operating hours of the facility are generally limited to 8:00am to 5:00pm, and exclude weekends and holidays. Peak business hours include breakfast and lunch service only, with transactions declining rapidly in early- to mid-afternoon. This falloff makes it financially difficult for the restaurant to remain open through the end of the County business day, as was contemplated in the lease agreement.

In evaluating alternatives to better handle peak periods and maintain longer service hours, Bottega and GSA staff considered the idea of creating a coffee bar/cafe on the ground floor of the SPCC atrium. In order to test the concept, GSA issued the operator a temporary permit via Letter of Understanding to operate Retail Space 119 as a service extension to the main food court operation, allowing Bottega to offer limited food services throughout the end of each business day.

The concept has proven highly successful. Not only does the cafe allow Bottega to economically provide added service hours, but it also has served to alleviate overcrowding during peak periods in the main food court. The cafe has substantially improved the ambience of the building lobby, while enhancing Bottega's ability to offer expedited services to visitors and employees of the SPCC and surrounding area. As a result of this success, staff recommends that Retail Space 119 be permanently added to the leased premises of the Lease Agreement.

PURPOSE OF AMENDMENT:

(a) To add Retail Space 119 as a permanent venue under the aforementioned Lease Agreement with JMR Foods Corporation, under the same terms and conditions as said Lease Agreement, except as modified in this Supplemental Agreement No. 3.

(b) To include the additional gross sales generated by the operation of Retail Space 119 to the monthly gross sales to be reported by JMR Foods Corporation to the County, and used in calculating percentage rent.

FINANCIAL IMPACT:

The present average monthly gross sales of the food court (based upon the last 12 months of operation) is approximately $94,000. These figures already reflect an increase in monthly gross sales of approximately $1,200, which was originally projected as a result of the temporary addition of Retail Space 119. Consequently, the additional sales generated by the addition of this space increases the overall rental income to the County in accordance with the Master Lease Agreement Rental Schedule calculated as follows: Annual rent is the higher of $25,100 per year or percentage rent equal to 4% of all gross sales up to $1.5 million; 6% from $1.5 to $2 million; 10% from $2 to $3 million; and 12% of all gross sales over $3 million.

The costs associated with preparing the interior premises for use, including renovations, permitting and equipment were born by the operator.

EFFECTIVE DATES OF AMENDMENT:

This Supplemental Agreement No. 3 to Lease Agreement shall become effective upon approval by the Board of County Commissioners and will be coterminous with the terms in the Master Lease Agreement.

MONITOR:

GSA, Facilities and Utilities Management Division
Dennys Gonzalez, Real Estate Officer

COMMENT:

Supplement Agreement No. 1, effective January, 2008, authorized the lease assignment from the previous food court operator (Nextstore) to JMR Foods Corporation D/B/A Bottega Express.

Supplement Agreement No. 2, approved by Resolution No. 1159-08 in November, 2008, authorized the deferral of payment for delinquent rental arrearages assumed by Bottega from Nexstore, as well as the temporary deferral of the percentage rent obligation. The deferral of percentage rent provided Bottega with the financial flexibility to fund needed facility improvements at the leased facility.

A subsequent "Letter of Understanding", dated October 15, 2008, granted Bottega the authorization to temporarily conduct business at Retail Space 119 of the SPCC, which is now the subject matter under review in this additional supplement agreement No. 3.

Attached for your information are copies of these prior Board resolutions and memoranda concerning the subject Lease Agreement and modifications thereto.

DELEGATED AUTHORITY: Authorizes the County Mayor or County Mayor's designee to execute the Supplemental Agreement No. 3 to the Lease Agreement.

Wendi J. Norris, Director
General Services Administration

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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# Memorandum

MIAMI-DADE COUNTY

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

**Resolution No. R-1159-08**

**Date:** November 20, 2008

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

**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<br>111 N.W. 1 Street, Miami |
| COMMISSION DISTRICT: | 5 |
| COMMISSION DISTRICTS IMPACTED: | Countywide |
| OWNER: | Miami-Dade County |
| TENANT: | JMR Foods Corporation / DBA Bottega Express |
| COMPANY PRINCIPALS: | Jorge Luis Prieto, President 33%<br>Miguel Arias, Vice President 33%<br>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

Approved _____ Mayor
Veto _____
Override _____

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

RESOLUTION NO. R-1159-08

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 **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Katy Sorenson** and upon being put to a vote, the vote was as follows:

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

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

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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

# Miami-Dade Legislative Item
# File Number: 060989

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**File Number:** 060989
**Version:** 0
**File Name:** LEASE AGREEMENT RE: NEXSTORE MARKEPLACE 111 NW 1 ST.
**Requester:** General Services Administration Department
**Agenda Date:** 4/25/2006

**File Type:** Resolution
**Reference:** R-414-06
**Cost:**

**Status:** Adopted
**Control:** County Commission
**Introduced:** 3/29/2006
**Final Action:** 4/25/2006
**Agenda Item Number:** 8F1B

**Notes:**

**Title:** RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT AT THE STEPHEN P. CLARK CENTER, 111 N.W. 1ST STREET, MIAMI, WITH NEXSTORE MARKETPLACE MIAMI, LLC; AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAME AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

**Indexes:** LEASE AGREEMENT
**Sponsors:** NONE
**Sunset Provision:** No
**Effective Date:**
**Expiration Date:**
**Registered Lobbyist:** None Listed

## LEGISLATIVE HISTORY

| Acting Body | Date | Agenda Item | Action | Sent To | Due Date | Returned | Pass/Fail |
|---|---|---|---|---|---|---|---|
| Board of County Commissioners | 4/25/2006 | 8F1B | Adopted | | | | P |
| Internal Mgmt. & Fiscal Responsibility Committee | 4/12/2006 | 3K | Forwarded to BCC with a favorable recommendation | | | | P |
| **REPORT:** Commissioner Moss noted Next Store would operate a space in addition to managing the food court. Ms. Wendy Norris, General Services Department (GSA) Director,concurred, noting the lease encompassed the entire food court and Next Store would be the provider. Chairman Barriero noted he was hopeful that this agreement would provide successful. | | | | | | | |
| County Manager | 3/29/2006 | | Assigned | Roger Carlton | 3/30/2006 | | |
| County Manager | 3/29/2006 | | Assigned | County Attorney | 5/9/2006 | | |
| **REPORT:** GSA [IMFR 4/12] | | | | | | | |
| County Manager | 3/29/2006 | | Referred | Internal Mgmt. & Fiscal Responsibility Committee | 4/12/2006 | | |
| County Attorney | 3/29/2006 | | Assigned | Diamela Del Castillo | 3/30/2006 | | |
| **REPORT:** "NED" | | | | | | | |

## LEGISLATIVE TEXT

### TITLE
RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT AT THE STEPHEN P. CLARK CENTER, 111 N.W. 1ST STREET, MIAMI, WITH NEXSTORE MARKETPLACE MIAMI, LLC; AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAME AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

### BODY
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 a Lease Agreement between Miami-Dade County and Nexstore Marketplace Miami, LLC., in substantially the form attached hereto and made a part hereof; authorizes the County Manager to execute same for and on behalf of Miami-Dade County; and authorizes the County Manager to exercise any and all other rights conferred therein.

### HEADER
Date:

To:
Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From:
George M. Burgess
County Manager

Subject:
Lease Agreement with Nexstore Marketplace, Miami, LLC

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At Stephen P. Clark Center, 111 NW 1 Street, Miami

## STAFF RECOMMENDATION

It is recommended that the Board of County Commissioners approve the accompanying resolution authorizing a Lease Agreement with Nexstore Marketplace Miami, LLC for the operation of the food court at the Stephen P. Clark Center.

## MANAGER'S BACKGROUND

PROPERTY:
Stephen P. Clark Center Food Court
111 N.W. 1 Street, Miami

OWNER:
Miami-Dade County

PROPOSED LESSEE:
Nexstore Marketplace Miami, LLC

COMPANY PRINCIPALS:
William L. Knight, President – 100%

USE:
Miami-Dade County is seeking to enter into a lease agreement with Nexstore Marketplace Miami, LLC to lease, operate, maintain and manage the Food Court at the Stephen P. Clark Center, which will offer food service to the employees and visitors of the Stephen P. Clark Center.

LEASE TERM:
The lease agreement is for ten (10) years, with two additional five (5) year renewal option periods.

EFFECTIVE DATES:
Commencing upon approval by the Board of County Commissioners.

RENTAL RATE:
The rent to be paid by the Lessee for the space is $25,200.00 per annum (Guaranteed Minimum Rent) or a percentage of annual gross sales, as described below, whichever is greater.

The percentage rent schedule for the first three years of the lease term calls for a payment equal to 4% of annual gross sales up to $1,500,000.00; 6% of annual gross sales from $1,555,000.01 to 2,000,000.00; and 8% of annual gross sales over $2,000,000.01.

Beginning with the fourth year and continuing through the end of the lease term, including any extension periods, the percentage rent payment shall be equal to 4% of annual gross sales up to $1,500,000.00; 6% of annual gross sales from $1,500,000.01 to $2,000,000.00; 10% of annual gross sales from $2,000,000.01 to $3,000,000.00; and 12% of annual gross sales over $3,000,000.01.

CANCELLATION:
The County has the right to cancel by giving five (5) days written notice if the Lessee defaults in any of the provisions specified in the lease agreement.

SALES PERFORMANCE:
The Lease Agreement provides the County with the right to terminate the lease in the event that the Lessee fails to maintain, throughout the term of the lease, annual gross sales at or above 90% of the annual gross sales for the first year of the lease.

JUSTIFICATION:
On July 25, 2000, the Board of County Commissioners passed Resolution No. R-803-00 approving a Lease Agreement with MSE Branded Food Systems, Inc. for the operation of the food court at the Stephen P. Clark Center. This was the culmination of a number of competitive selection processes conducted over several years to secure individual restaurants or master operators for the food court. MSE was one of only two restaurateurs to submit proposals.

MSE opened the completely redesigned and refurbished food court in December 2001. For a variety of reasons, not all of which were within its control, MSE never generated the level of sales necessary to make the operation successful. MSE ceased rent payments in late 2003, and requested that staff either renegotiate the rent structure or permit MSE to assign the leasehold. Due to misgivings about MSE's ability to effectively turn around the operation, staff assisted MSE in seeking out operators to assume the leasehold, which still had the majority of the lease term remaining. When that effort proved unsuccessful, staff initiated a new open-competitive selection process. MSE has continued operations at a reduced level in order to maintain much-needed food service in the building.

A Request for Proposals (RFP) was issued in September 2005 seeking vendors to provide food and beverage services at the SPCC. The solicitation divided the food court into two parts. Section A, which includes the main kitchen area, could be used for any type of food service. Section B (the current bakery area) has no exhaust system or grease lines, and was therefore limited to baking, heating or non-cooking food service uses. One proposal was received for each section. The proposal for Section A (the full-service area) was determined to be non-responsive, leaving the County with no options for serving hot meals. A viable proposal was received on Section B for a Starbucks Cafe; unfortunately, the lack of a vendor for Section A makes it difficult for staff to ensure that uses for the two sections will be compatible with one another. For this reason, staff elected not to proceed with the process, but rather to reject all proposals.

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Subsequent to the RFP process, Nexstore Marketplace, a Boca Raton fresh food marketplace and restaurant, was brought to the attention of County staff who, in turn, contacted the firm's owner, William L. Knight. Subsequent visits by Mr. Knight to the SPCC food court, and by staff to Nexstore's location in Boca Raton, has led to the negotiation of a contract and this recommendation for award of Lease Agreement to Nexstore Marketplace Miami, LLC.

Nexstore Marketplace meets many, if not all, of the preferences for the Stephen P. Clark Center food court operation.
o Offerings are made and/or cooked fresh from scratch daily.
o Offerings include a broad variety of food types, and can be adjusted to meet local interests. The Boca Raton store includes baked goods, sandwiches, salads, soups, meats, Sushi, hot entrees, items from the grill, smoothies, and specialty drinks.
o Pricing will be competitive with current downtown dining, and will include lower-cost meal options.
o Offerings include a wide variety of health-conscious items, like chopped or tossed salads (with a wide variety of fresh produce), healthy soups, and fresh-fruit smoothies. No preservatives are used, including MSG.
o Speed of service. Nexstore operates as a fresh food market so, in addition to items prepared to order, many items are also prepared ahead of time, and pre-packaged for rapid pick-up and sale. In addition, Nexstore is well-staffed and operates two cash registers at each food station in order to process customers as quickly as possible.

Attached is a description of Nexstore Marketplace Concept and biographies of the owner, Mr. William Knight, and the General Manager/Executive Chef, Mr. Roger Bowles.

DEVELOPMENT TIMETABLE:
The lease requires that the payment of rent commences ninety (90) days following approval of the Lease Agreement, or the start of operations, whichever comes first.

Nexstore is committed to minimizing the amount of time that food service is unavailable in the SPCC. Toward that end, Nexstore has requested, and received, written administrative authorization to enter the vacated premises prior to Board approval of the Lease Agreement, for the express purpose of making those repairs and aesthetic improvements necessary for Nexstore to commence operations. Service will not begin without Board approval of the Lease Agreement; moreover, Nexstore understands that the Lease Agreement is conditioned solely upon Board approval, and that, should the Board elect NOT to award the Lease Agreement, Nexstore is not entitled to remuneration for any expenses incurred during that period.

Nexstore plans additional improvements and exterior signage for the facility, but these will be made on a more incremental basis after the facility has opened.

COMMENTS:
Pursuant to Florida Statutes 125.35 the Board of County Commissioners is expressly authorized to lease real property belonging to the County, whenever the Board determines that it is in the best interest of the County to do so, to the highest and best bidder for the particular use. In light of the fact that a competitive process was recently held and did not result in sufficient proposals to make a viable recommendation, the County Attorney has opined that a waiver of competitive bidding is not required for this action. On that basis, staff is therefore recommending that the attached Lease Agreement with Nexstore Market Place, Miami, LLC be approved.

Staff is reviewing options with the County Attorney's Office to seek restitution of the unpaid rents.

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**General Services Administration**
Facilities & Utilities Management Division
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Miami, Florida 33128
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**miamidade.gov**

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Park and Recreation
Planning and Zoning
Police
Procurement Management
Property Appraiser
Public Library System
Public Works
Safe Neighborhood Parks
Seaport
Solid Waste Management
Strategic Business Management
Team Metro
Transit
Task Force on Urban Economic Revitalization
Vizcaya Museum And Gardens
Water & Sewer

October 15, 2008

Jorge L. Prieto, President
JMR Foods Corporation / DBA Bottega Express
14000 S.W. 8TH Terrace
MIAMI FL 33184

RE: Letter of Understanding authorizing JMR Foods Corp., DBA Bottega Express to conduct business in Retail Space 119 of the Stephen P. Clark Center (SPCC).

Dear Mr. Prieto:

Pursuant to Article 6, Section b ("Other Services") of that Lease Agreement between Miami-Dade County ("County") and JMR Foods Corporation, DBA Bottega Express ("Master Lessee"), approved by the Board of County Commissioners via Resolution R-414-06 on April 25, 2006, the Master Lessee is authorized to operate and maintain kiosks and/or carts throughout the Downtown Government Center Complex, as long as such use is approved in writing in advance by the County, through its County Manager or designee.

Accordingly, the General Services Administration, Facilities and Utilities Management Division, acting in its capacity as Leasing Manager for the above-mentioned Lease Agreement, hereby authorizes JMR Foods Corporation / DBA Bottega Express to operate and maintain Retail Space 119 located in the atrium lobby of the SPCC, commonly referred to as the "flower shop", for the purposes of serving a variety of to-go meals and drinks.

This Letter of Understanding is valid for a period of one year, commencing December 1, 2008. This Letter may be renewed on an annual basis thereafter at the sole discretion of the County. The Letter may be cancelled by either party on written notice at least 30 days prior to any cessation of services.

The Master Lessee hereby understands and agrees to the following additional terms and conditions for use of Space 119:

1- No cooking shall take place in the premises.

2- The Operator is solely responsible for the security and sanitary conditions of the venue.

3- All sales generated by this temporary venue (kiosk) shall be considered a part of gross sales, as defined in Article 9 of the Lease Agreement, and shall be treated the same in all respects.

4- The County shall not be responsible for any loss of business due to unforeseen situations.

5- Except as herein modified, all other terms and conditions of the Lease Agreement shall apply to the operation of this temporary venue.

It is understood by the parties that the County has plans to demolish and put to alternate uses Retail Space 119, and that such reuse may take place at any time. Upon mutual agreement at the time, however, the County agrees to consider integration of the subject temporary food service operation in Retail Space 119 into the permanent space plan for the atrium lobby area.

Sincerely,

Jerry S. Hall
Director

**Accepted and Agreed:**

JMR Foods Corporation / DBA Bottega Express

cc: Dennys Gonzalez

# MEMORANDUM
(Revised)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

**DATE:** December 7, 2010

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

**SUBJECT:** Agenda Item No. 8(F)(1)(D)

**Please note any items checked.**

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(D)
12-7-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 3 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 COUNTY MAYOR'S 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. 3 to the Lease Agreement between Miami-Dade County and JMR Foods Corporation d/b/a Bottega Express, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's 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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Sen. Javier D. Souto
Lynda Bell
Carlos A. Gimenez
Barbara J. Jordan
Jean Monestime
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of December, 2010. 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.

Monica Rizo

# Contract No. 222

## SUPPLEMENT AGREEMENT NO. 3

## MIAMI-DADE COUNTY
## AND
## JMR FOODS CORPORATION / D.B.A Bottega Express

**Effective Date:**

| | |
|---|---|
| **Contract Number:** | Lease Agreement No. 222, approved by Resolution R-414-06, adopted April 25, 2006 |
| **Contract Title:** | Lease and operation of Food Court at the Stephen P. Clark Center (SPCC) |
| **Contractor:** | JMR Foods Corporation d/b/a Bottega Express<br>14000 S.W. 8th Terrace, Miami FL 33184 |

In accordance with the above-referenced contract, this supplement, when properly executed, constitutes the following:

**WHEREAS**, Miami-Dade County (hereinafter "County") has agreed to permanently incorporate Retail and Commercial Food and Beverage ***Space 119*** (hereinafter "Space No. 119," but known also as the *Bottega Café*) located in the Stephen P. Clark Center, 111 NW 1st Street, Miami, Florida, into the Master Lease Agreement, Contract No. 222 (hereinafter "Contract"); and

**WHEREAS**, JMR Foods Corporation d/b/a Bottega Express (hereinafter "JMR Foods"), as the 100% interest holder in the Contract, agrees to all the terms, conditions and prices established in the Contract, and desires to confirm the consent of the County to assume full responsibility for the permanent operation of Space No. 119.

**THEREFORE**, the parties agree as follows:

1. Pursuant to Article 6, Section b ("Other Services") of that Lease Agreement between the County and JMR Foods ("Master Lessee"), approved by the Board of County Commissioners via Resolution R-414-06 on April 25, 2006, the Master Lessee is authorized to operate and maintain kiosks and/or carts throughout the Downtown Government Center Complex, as long as such use is approved in writing by the County.

    a. Accordingly, under the General Services Administration, Facilities and Utilities Management Division, acting in its capacity as Leasing Manager for the above-mentioned Contract, JMR Foods is authorized to permanently operate and maintain Space No. 119 for the purposes of serving a variety of to-go meals and drinks.

    b. This Supplemental Agreement shall remain valid for the duration, and comply with all covenants, of Contract No. 222.

The Master Lessee hereby understands and agrees to the following additional terms and conditions for the permanent operation of Facility No. 119:

1. No cooking shall take place in the premises.
2. JMR Foods is solely responsible for the security and sanitary conditions of the venue.
3. Sales generated by this venue shall be added to the gross sales report, as defined in Article 9 of the original Contract, and shall be treated the same in all respects.
4. The County shall not be responsible for any loss of business due to unforeseen situations.
5. Except as herein modified, all other terms and conditions of the Contract shall apply to the permanent operation of this venue.

**NOW THEREFORE** JMR Foods covenants to the County and guarantees the County any and all financial obligations of JMR Foods under the lease to the full extent of JMR Foods obligations, and agrees to indemnify and hold harmless the County for any and all monetary claims and money damages that the County may incur as a result of JMR Foods default or failure to perform its obligations under the original Contract and under the additional terms and conditions set forth in this Supplemental Agreement.

All terms, covenants and conditions of the original contract shall remain in full force and effect, except to the extent herein amended.

**IN WITNESS WHEREOF**, the County and JMR Foods, have caused this Supplemental Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(OFFICAL SEAL)

ATTEST:

**HARVEY RUVIN, CLERK**

By:_____
Deputy Clerk

**MIAMI-DADE COUNTY, FLORIDA**

By:_____
County Manager or Designee

**JMR. FOODS CORPORATION**
**D/B/A BOTTEGA EXPRESS**

By:_____
President

_____
WITNESS

_____
WITNESS