

Memorandum



Date: October 7, 2014
To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor
Subject: Supplement Information to Resolution Approving Retail Lease Agreement between Miami-Dade County and the Florida Department of Education, Division of Blind Services at the Richard E. Gerstein Justice Building (Legistar 141710)

Supplement to
Agenda Item No. 8(F)4

At the August 25, 2014 Finance Committee meeting, there was discussion related to the amount and use of the revenues generated by the snack bar and 16 vending machines operated by the Division of Blind Services (DBS) at the Richard E. Gerstein Building (Gerstein Building).

Based on information provided by DBS, gross revenues from the period covering January 1, 2013 to December 31, 2013 were \$210,000 for the snack bar and \$40,000 for the vending machines. Under the prior lease, the County does not receive any rent for the space or revenues generated by DBS. These revenues are entirely used by DBS to help the visually impaired become self-sufficient by training them on how to operate food service facilities. Pursuant to the terms of the proposed lease, the County will receive a payment in the amount of two percent of gross revenues generated by DBS.

Additionally, as it relates to the vending machines, there was an incorrect communication that was sent to DBS notifying them that their vending machines would have to be removed from the Gerstein Building. This was primarily a result of a misunderstanding related to the implementation of the County's new vending contract that was awarded earlier this year as well as there not being any specific language in the existing DBS lease at Gerstein related to the vending machines. We have since resolved this matter, including a proposed amendment that is detailed below.

In order to address the issue of the vending machines, staff has negotiated an amendment to the recommended lease agreement on the Board of County Commissioners' agenda that clarifies that the DBS vending machines, as well as the two percent gross receipt payments on vending machine revenues, are part of this lease. The proposed amendments are as follows and incorporated into the attached revised lease:

Page 1 - Add the following language to the Demised Premises:

"And Space identified in Exhibit "A", attached hereto and made a part hereof, for the placement of sixteen (16) vending machines ("Vending Machines")."

Page 2 Article 1 "Use of Demised Premises"
Add "Vending Machines" as an allowable use.

Page 4 Article VI "Financial Reports"
Add gross receipts from the "Vending Machines" to the monthly report of gross receipts.

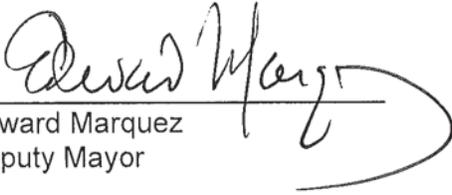
Page 6 Article XI "Maintenance"
Add "Vending Machines" to Tenants responsibility to maintain.

Page 10 Article XVIII "Removal of Property"
Add "Vending Machines" to the list of property that must be removed by the Tenant at the expiration of the Lease Agreement.

Honorable Chairman Rebeca Sosa
and Members, Board of County Commissioners
Page 2

We are pleased to have been able to work through a mutually beneficial resolution to this issue with DBS and look forward to their continued occupancy in the Gerstein Building.

Attachment


Edward Marquez
Deputy Mayor

LEASE AGREEMENT

THIS AGREEMENT made on the ___ day of _____, 2014, by and between MIAMI DADE COUNTY a political subdivision of the State of Florida, hereinafter called the "LANDLORD," and FLORIDA DEPARTMENT OF EDUCATION, DIVISION OF BLIND SERVICES, hereinafter called the "TENANT"

WITNESSETH:

WHEREAS, the LANDLORD is the owner of certain real property in Miami Dade County, Florida, known as the Richard E. Gerstein Justice Building, located at 1351 NW. 12 Street, Miami, Florida, and

WHEREAS, it is the desire of the parties hereto, to enter into a Lease Agreement for the operation of a Snack Bar in said building.

NOW, THEREFORE in consideration of the restrictions and covenants herein contained, the LANDLORD hereby agrees to lease to TENANT and TENANT hereby agrees to lease from LANDLORD the Demised Premises described as follows:

Approximately 750 rentable square feet of air-conditioned space located on the 7th floor of the Richard E. Gerstein Justice Building, 1351 NW 12 Street, Suite 7010, Miami, FL

And

Space identified in Exhibit "A", attached hereto and made a part hereof, for the placement of sixteen (16) vending machines.

TO HAVE AND TO HOLD unto said TENANT for a term of Five (5) years, commencing on the first day of the next calendar month following the effective date of the resolution by the Board of County Commissioners approving this Lease Agreement, (the "Commencement Date") and terminating Five (5) years thereafter, for and at a total monthly rental equal to two percent (2%) of the monthly gross sales amount as such sales are reported

monthly by the Tenant to the State of Florida Department of Revenue, payable on or before the 10th day following the end of each month, payable to: Miami-Dade County c/o Internal Services Department, Real Estate Development Division, 111 N.W. First Street, Suite 2460, Miami, Florida 33128, or at such other place and to such other person as LANDLORD may from time to time designate in writing, as set forth herein.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

Article I
USE OF DEMISED PREMISES

The TENANT is hereby granted a nonexclusive right to operate a Snack Bar and Vending Machines within the Demised Premises. The Demised Premises shall be used exclusively for the dispensing and sale of pre-cooked food or/and pre-package food, and for the sale of soft drinks and snacks items such as candy, chips, pastries, an all other items as agreed upon on these premises to employees and visitors. All prices, portions and quality shall be at least comparable to those prices charged by similar establishments in the area. It is understood and agreed that no food will be cooked on the premises. Landlord reserves the right to prohibit the sale of certain items.

Article II
CONDITION OF LEASED PROPERTY

The TENANT hereby agrees to accept the premises in the condition they are on the commencement date of this lease, and agrees to maintain the interior thereof in the same condition, order, and repair as they are in at the commencement of said term, or as improved as herein provided, except for reasonable wear and tear, Acts of God, the elements or any other casualty whatsoever.

Article III
OPTIONS TO RENEW

Provided this Lease Agreement is not otherwise in default, TENANT is hereby granted the option to extend this Lease Agreement for One (1) additional Five (5) year renewal option period upon the same terms and conditions by giving LANDLORD notice in writing at least ninety (90) days prior to the expiration of this Lease or any extension thereof.

Article IV
QUALITY OF TENANT'S SERVICES

In the operation under the Lease Agreement herein granted, TENANT and its clients, agents and employees shall:

A. Conduct its operations in an orderly manner so as not to annoy, disturb or be offensive to customers, patrons, or others in or about the Demised Premises.

B. Furnish a full-time manager for its operation who will be stationed on the premises and will be responsible for the operations of the TENANT thereon. Such manager shall be a person experienced in the management and operation of the business contemplated by this Lease Agreement.

C. Control the conduct and demeanor, of its employees, clients, agents, representative and customers.

D. At all times during the term of the Lease Agreement, keep in a clean, neat, sanitary and orderly condition and appearance the Demised Premises, including the equipment, fixtures and personal property thereon.

E. Furnish good, prompt and efficient service, adequate to meet all reasonable demands thereof.

F. Do all things reasonably necessary or required by the LANDLORD or his designee to maintain a high standard of quality and management for the operation contemplated by this Lease Agreement.

G. Remove from the Demised Premises to the appropriate area, all trash and refuse of any nature whatsoever, which may accumulate and arise from the operation of the TENANT's business. This will be placed in the bulk containers maintained by the LANDLORD for such purpose.

H. Keep the Demised Premises open for business a minimum of from 7:00 A.M. to 3:00 P.M. daily, except Saturdays, Sundays and legally declared holidays.

Article V
LAWS, ORDINANCES, RULES, REGULATIONS
AND LICENSES

The TENANT shall observe and obey all the laws, ordinances, regulations and rules of the Gerstein Justice Building, the City of Miami, Miami Dade County and the Federal and State Governments, which may be applicable to its operations in the Demised Premises, and shall at its sole cost, obtain and maintain all permits and licenses necessary for its operation.

The LANDLORD or his designee shall have the right to adopt and enforce reasonable rules and regulations with respect to the use of the Demised Premises.

Article VI
FINANCIAL REPORTS

The TENANT will provide the LANDLORD, or his designee, monthly reports of gross receipts from the Snack Bar, as well as from the Vending Machines by providing copies of the required report on monthly sales by the State of Florida Department of Revenue.

Article VII
UTILITIES

The LANDLORD shall furnish and maintain the electricity, water, gas and sanitary sewage disposal, at no cost to the TENANT. The LANDLORD shall have no obligation to provide utilities to the premises in addition to those existing at the time of the execution of this Lease Agreement. TENANT shall pay for janitorial and custodial services used by TENANT.

Article VIII
SIGNS

The TENANT shall not erect, maintain or display any signs or any advertising matter without the prior written approval of the LANDLORD or his representative, which approval shall not be unreasonably withheld.

Article IX
INDEPENDENCE OF AGREEMENT

It is understood and agreed that nothing herein contained is intended or should be construed as in any wise creating or establishing the relationship of co-partners, employees, agents or representatives between the parties hereto.

Article X
INSPECTION BY THE LANDLORD

The LANDLORD, through its representative, may make periodic inspections of the Demised Premises and equipment to determine if such are in conformity herewith with all requirements and stipulations of this Lease Agreement. The TENANT shall make all improvements in cleaning or maintenance methods, including the painting of the premises, as may be reasonably required by the LANDLORD from time to time. LANDLORD, or any of its agents, shall have the right to enter said premises to make such repairs, additions, or alterations

as may be deemed necessary for the safety, comfort, or preservation thereof of said building or for the purpose of resolving placards, signs fixtures, alterations or additions which do not conform to this Agreement.

Article XI
MAINTENANCE

TENANT agrees to maintain and keep in good repair, condition and appearance, during the term of this Lease Agreement, the interior of the Demised Premises. TENANT shall be responsible for and shall repair any damage caused to the Demised Premises as a result of TENANT or TENANT's agents, employees, invitees, or visitors use of the Demised Premises, ordinary wear and tear excepted. LANDLORD shall notify TENANT after discovering any damage which TENANT is responsible for repairing and TENANT shall make the necessary repairs promptly after said notice.

TENANT shall be responsible for repair and maintenance of the Vending Machines and of all equipment owned, leased or use by the TENANT within the Demise Premises.

LANDLORD agrees to provide, repair or replace, as necessary, and maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the exterior of the building and the following: Plumbing and electrical lines, light fixtures, and equipment (but not light bulbs or starters used within the Demise Premises); halls, stairways, elevators, restrooms, walls, paint, and flooring; back-up generator, air-conditioning and heating equipment; roof and roof leaks; windows, doors, and frames; fire equipment, including inspection as required by applicable fire codes.

The LANDLORD agrees to maintain and keep in good repair, condition, and appearance, during the term of this Permit Agreement, the exterior of the building.

Article XII
ALTERATION BY TENANT

No alterations, changes or additions to the Demised Premises shall be made by the TENANT without the written consent of the LANDLORD or his designee first being obtained, and further, that all plans and specifications of such modifications or changes shall be submitted for approval to the LANDLORD prior to the commencement of the work.

Article XIII
LANDLORD'S RIGHT TO CONSTRUCT FACILITIES

Notwithstanding any provision in this agreement to the contrary the LANDLORD, through its representatives, shall have the absolute right to make any repairs, alteration or additions to the said Gerstein Justice Building, free from any and all liability to the TENANT herein for loss of business or damages of any nature whatsoever occasioned during the making of such repairs, alteration or additions.

Article XIV
DAMAGE OR DESTRUCTION OF DEMISED PREMISES

In the event the Demised Premises or any portion thereof should be destroyed or so damaged by fire, windstorm, or other casualty, as to deem the Demised Premises unsafe and untenable, either party may cancel this Lease Agreement for its convenience by the giving of written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation, and TENANT shall only be liable to

LANDLORD for such rents as may be due as of the date of such fire, windstorm, or other casualty.

If neither party shall exercise the foregoing right of cancellation, LANDLORD shall cause the building and Demised Premises to be repaired and placed in good condition within one hundred eighty (180) days following the date of casualty, time being of the essence. If the Demised Premises sustained damages such that repairs cannot be completed within one hundred eighty (180) days, TENANT shall be entitled to cancel the Lease Agreement by the giving of written notice to LANDLORD at any time, notwithstanding the commencement of any repairs by LANDLORD. TENANT shall not be liable for rent during such period of time as the Demised Premises be untenable by reason of fire, windstorm or other casualty.

In the event of partial destruction or damages to the Demised Premises which do not render the entire Demised Premises untenable, the rents shall be proportionately abated in accordance with the extent to which TENANT is deprived of use, occupancy or full enjoyment of the premises, unless TENANT exercises its right of cancellation as set forth above.

In the event the said Demised Premises are completely destroyed by fire, explosion, the elements, Acts of God or any other cause whatsoever to the extent that the Demised Premises are rendered untenable or unfit for the purpose of the TENANT, either party may cancel this Lease Agreement by the giving of written notice to the other. However, if neither party shall exercise the foregoing right of cancellation within thirty (30) days after the date of such destruction or damage, the LANDLORD shall cause the Demised Premises to be repaired and place in good condition as soon as practical thereafter. In the event of partial destruction, which shall not render the Demised Premises wholly untenable, the damage shall be repaired with due diligence by the LANDLORD. The entire cost for repairs in the event of total or partial

destruction shall be borne by the LANDLORD unless such destruction or damage is caused by the TENANT, its agents, employees or invitees; then in such event the entire cost of repairs shall be borne by the TENANT.

Article XV
INGRESS AND EGRESS

Subject to rules and regulations governing the use of the Gerstein Justice Building, TENANT, its agents, employees, and invitees and its suppliers, service, and furnishers of material, shall have the right of ingress and egress to and from the premises. Nothing herein shall be construed to allow any "free parking" privileges to the TENANT, its employees, agents and contractors in the parking garage of the said Gerstein Justice Building.

Article XVI
INDEMNIFICATION AND HOLD HARMLESS

The TENANT shall indemnify and hold harmless the LANDLORD and its officers, employees, agents and instrumentalities from any and all liability, losses, damages, including attorney's fees and costs of defense, which LANDLORD may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the TENANT and TENANT shall defend the LANDLORD, including any and all appellate actions, in any such actions or proceedings whether in the name of the LANDLORD or otherwise. Provided, however, the indemnification contained herein shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of the Statute whereby the TENANT shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the TENANT arising out of the same incident or occurrence,

exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the TENANT.

Article XVII
ASSIGNMENT

The TENANT shall not assign, transfer, pledge, surrender or otherwise encumber or dispose of this Lease Agreement, or any interest in any portion of same, without the formal written consent of the LANDLORD.

Article XVIII
REMOVAL OF PROPERTY

All additions or improvements, except store furniture, fixtures, equipment, and Vending Machines owned by the TENANT which shall be readily removable without injury to the premises, shall be in and remain a part of the premises at the expiration of this Lease Agreement.

Article XIX
NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the Demised Premises shall be at the risk of the TENANT or the owner of such property thereof. The LANDLORD shall not be liable to the TENANT for any damage to said personal property unless caused by or due to the negligence of LANDLORD, its agents or employees.

Article XX
NOTICE AND PAYMENTS

It is understood and agreed between the parties hereto that written notice addressed to LANDLORD and mailed or delivered to Miami Dade County, Internal Services Department, 111 NW 1 ST Suite 2460, Miami Florida, 33128 shall constitute sufficient notice to the LANDLORD, and written notice addressed to TENANT and mailed or delivered to the

address of TENANT or its agents at Division of Blind Services 401 N.W. 2nd Avenue Room S-712 Miami, Fl. 33128 shall constitute sufficient notice to the TENANT to comply with the terms of this Lease Agreement. Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

Article XXI
HOLDOVER

If TENANT, with LANDLORD's consent, remains in possession of the Demised Premises after expiration of the term and if LANDLORD and TENANT have not executed an expressed written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental for the first month, after expiration of the term, equivalent to one hundred percent (100%) of the monthly rental in effect immediately prior to expiration, such payments to be made as herein provided. In the event of such holding over, all of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

Article XXII
PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold and enjoy the premises without hindrance or molestation by LANDLORD.

Article XXIII
SURRENDER OF PREMISES

At the expiration of this Lease Agreement or any renewal thereof TENANT shall, without demand, quietly and peaceably deliver up and surrender possession of the Demised

Premises to the LANDLORD in as good condition as they are now, except for normal wear and decay, damage by the elements, act of God or any other casualty.

Article XXIV
WAIVER

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD's or TENANT'S rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

Article XXV
DEFAULT BY TENANT

If TENANT shall fail to pay any monthly installment or item of rent on the date when the same becomes due or shall violate or fail to perform any of the other conditions,

covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD {except for failure to pay rent, which shall have a ten (10) day period for cure after written notice thereof to TENANT by LANDLORD, and further, if TENANT shall be diligently attempting to cure such failure to perform any other conditions, covenants, or agreements, the time to cure such failure shall be extended for so long as TENANT shall diligently prosecute such cure}, then LANDLORD may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, as may be applicable. All rights and remedies of LANDLORD under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law..

Article XXVI
FORCE MAJEURE

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

Article XXVII
CANCELLATION

This Lease Agreement may be cancelled by either party by giving written notice of cancelation at least sixty (60) days' prior notice.

Article XXVIII
ADDITIONAL PROVISIONS

1. Mechanic's, Materialmen's and Other Liens

TENANT agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the demised premises for work or materials furnished to TENANT; it being provided, however, that TENANT shall have the right to contest the validity thereof. TENANT shall immediately pay any judgment or decree rendered against TENANT, with all proper costs and charges, and shall cause any such lien to be released off record without cost to LANDLORD.

2. Non-Discrimination

The Board of County Commissioners declared and established as a matter of policy, by Resolution No. 9601 dated March 24, 1964, that there shall be no discrimination based on race, color, creed, or national origin and Resolution No. 85-92 dated January 21, 1992, that there shall be no discrimination on the basis of disability in connection with any County property or facilities operated or maintained under lease agreement, license, or other agreement from MIAMI-DADE COUNTY or its agencies.

TENANT agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution No. 85-92 dated January 21, 1992, involving the use, operation, and maintenance of the property and facilities included in this Lease Agreement.

Article XXIX
FINANCIAL REPORTS

On or before the 10th day following the end of each calendar months throughout the term of this Lease Agreement, the Tenant shall furnish to the Landlord a statement of monthly gross revenues for the preceding calendar month and certify to the accuracy of such gross revenues in

such form as shall be prescribed by the Landlord, along with a copy of the corresponding monthly gross sales reports submitted to the State of Florida Department of Revenue.

Article XXX
RADON GAS

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Article XXXI
GOVERNING LAW

This Lease Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

Article XXXII
WRITTEN AGREEMENT

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading hereto and it may be modified only by an agreement in writing signed and sealed by LANDLORD and TENANT. IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

WITNESS

Florida Department of Education

By: _____
Pam Stewart, Commissioner
Date: _____

WITNESS

By: _____
Robert Doyle III, Director

Date: _____

Approved as to Form and Legal Sufficiency
for DBS

By: _____

Date: _____

(TENANT)

ATTEST:
HARVEY RUVIN, CLERK

MIAMI-DADECOUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
DEPUTY CLERK

By: _____
Carlos A. Gimenez
Mayor (LANDLORD)

Approved by the County Attorney as
to form and legal sufficiency _____

Exhibit "A"

Facility	Location	Machine Type	Operator
Gerstein Courthouse	2 nd Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	2 nd Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	3 rd Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	3 rd Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	4 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	4 th Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	5 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	5 th Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	6 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	6 th Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	7 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	7 th Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	8 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	8 th Floor- lobby	Snack	Blind Svcs
Gerstein Courthouse	9 th Floor- lobby	Beverage	Blind Svcs
Gerstein Courthouse	9 th Floor- lobby	Snack	Blind Svcs