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

**MEMORANDUM** Agenda Item No. 11(A)(1)

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

**DATE:** September 10, 2010

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

**SUBJECT:** Resolution authorizing execution of a Lease Agreement with the Off-Street Parking a/k/a Miami Parking Authority ("MPA") an agency and instrumentality of the City of Miami for premises to be improved and utilized as a parking lot facility
Resolution No. R-901-10

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

# Memorandum

MIAMI-DADE COUNTY

**Date:** September 10, 2010

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

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

**Subject:** Lease Agreement for Property Located at 474 N.W. 4 Street, Miami, with the Department of Off-Street Parking, a/k/a Miami Parking Authority ("MPA") an Agency And Instrumentality of the City of Miami within the State of Florida
Folio # 01-0109-000-1130

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## RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of a Lease Agreement at 474 N.W. 4 Street, Miami, with the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA"), an agency and instrumentality of the City of Miami, within the State of Florida.

| | |
|---|---|
| PROPERTY: | 474 N.W. 4 Street, Miami |
| COMMISSION DISTRICT: | 5 |
| COMMISSION DISTRICTS IMPACTED: | Countywide |
| OWNER: | Miami-Dade County |
| TENANT: | The Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA"), an agency and instrumentality of the City of Miami, within the State of Florida. |
| USE: | 20,000 square feet of vacant land known as Miami-Dade County Water and Sewer Department's (WASD) Pump Station site located at 474 N.W. 4 Street, Miami to be used as a parking lot. |
| TENANT'S TRACK RECORD: | The County has no record of negative performance issues with the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA"), an agency and instrumentality of the City of Miami, within the State of Florida. |
| JUSTIFICATION: | The MPA will construct, at its sole cost, and operate a parking lot facility on the County-owned property. The parking lot will be accessible 24 hours a day, 7 days a week. The property shall be used solely for the purposes of providing parking for the convenience of the public and surrounding merchants. |
| LEASE TERM: | Three years with two additional one-year renewal option periods. |

| | |
|---|---|
| EFFECTIVE DATES: | Commencing upon the passage of the resolution of the Miami-Dade County Board of County Commissioners approving this Lease Agreement and terminating three years thereafter unless the two additional one-year renewal option periods are exercised. |
| RENTAL RATE: | All parking revenues will be retained by MPA until MPA has recovered 100% of the costs to build the parking lot facility through the collection of gross revenues, after a certificate of occupancy/completion is obtained by MPA. Once they have recovered the capital improvement costs, MPA shall pay WASD 50% of the gross parking revenues collected by MPA, inclusive of any revenue generated by the use of an outside valet parking company and less any applicable sales taxes and surcharges paid by MPA. |
| LEASE CONDITIONS: | MPA is responsible for the completion of all initial capital improvements to the property, which is estimated to cost $20,000.00. Drainage is not included in this estimate of costs. In the event drainage improvements are required as a permit condition for the adjacent Miami River Greenway Project, the costs for said improvements will be paid from funds legally designated for the Miami River Greenway Project. MPA is responsible for all utilities, maintenance, cleaning, landscaping, repairs or replacements and all operating expenses of the parking lot facility. MPA shall also be responsible for taxes and special assessments. |
| CANCELLATION PROVISION: | Either party may cancel at anytime by giving the other at least 30 days written notice prior to its effective date. |
| COMMENTS: | The property was circulated to County Departments as required by Administrative Order 8-4 and no County use was identified. |
| MONITOR: | Linda Weber, Real Estate Officer |
| DELEGATED AUTHORITY: | Authorizes the County Mayor or the County Mayor's designee to execute the attached lease agreement, exercise the cancellation provision and the two additional one-year renewal option periods. |

Wendi J. Norris
Director
General Services Administration

# MEMORANDUM

(Revised)

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

**DATE:** September 10, 2010

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

**SUBJECT:** Agenda Item No. 11(A)(1)

**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. 11(A)(1)
9-10-10

RESOLUTION NO. R-901-10

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT AT 474 N.W. 4 STREET, MIAMI, WITH THE DEPARTMENT OF OFF-STREET PARKING A/K/A MIAMI PARKING AUTHORITY ("MPA") AN AGENCY AND INSTRUMENTALITY OF THE CITY OF MIAMI, FOR PREMISES TO BE IMPROVED AND UTILIZED AS A PARKING LOT FACILITY WITH 24 HOURS A DAY, 7 DAYS A WEEK ACCESS FOR THE CONVENIENCE OF THE PUBLIC AND SURROUNDING MERCHANTS; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

**WHEREAS,** the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA") an agency and instrumentality of the City of Miami, organized for the purpose of providing parking facilities within the City of Miami; and

**WHEREAS,** the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA") an agency and instrumentality of the City of Miami, desires to lease certain County-owned property located at 474 N.W. 4 Street, Miami, to provide a parking facility with 24 hour a day, 7 days a week access for the convenience of the public and surrounding merchants; and

**WHEREAS,** the County is satisfied that the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA"), an agency and instrumentality of the City of Miami, does require a County-owned property for such use and the property is not otherwise needed for County purposes; and

**WHEREAS,** the Board finds that, pursuant to Section 125.38 of the Florida Statutes, that the property is required for such use and that the use would promote community interest and welfare; and

**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 the Lease Agreement between Miami-Dade County and the Department of Off-Street Parking a/k/a Miami Parking Authority ("MPA"), and agency and instrumentality of the City of Miami, for premises to be utilized to provide a parking facility for the convenience of the public and surrounding merchants, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or the County Mayor's designee to exercise any and all other rights conferred therein.

The Prime Sponsor of the foregoing resolution is Commissioner Bruno A. Barreiro. It was offered by Commissioner Dorrin D. Rolle, who moved its adoption. The motion was seconded by Commissioner Sally A. Heyman and upon being put to a vote, the vote was as follows:

| | | | |
|---|---|---|---|
| Dennis C. Moss, Chairman | aye | | |
| Jose "Pepe" Diaz, Vice-Chairman | aye | | |
| Bruno A. Barreiro | aye | Audrey M. Edmonson | aye |
| Carlos A. Gimenez | aye | Sally A. Heyman | aye |
| Barbara J. Jordan | aye | Joe A. Martinez | aye |
| Dorrin D. Rolle | aye | Natacha Seijas | aye |
| Katy Sorenson | aye | Rebeca Sosa | aye |
| Sen. Javier D. Souto | aye | | |

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The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Monica Rizo

# LEASE AGREEMENT

THIS AGREEMENT made on the day of , 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein sometimes designated or referred to as the "LANDLORD," and THE DEPARTMENT OF OFF-STREET PARKING A/K/A, MIAMI PARKING AUTHORITY ("MPA") AN AGENCY AND INSTRUMENTALITY OF THE CITY OF MIAMI, within the State of Florida, hereinafter referred to as the "TENANT,"

***WITNESSETH:***

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the described as follows:

> Approximately 20,000 square feet of vacant land, a/k/a Water & Sewer Department's Pump Station Site, located at 474 N.W. 4 Street, Miami, Folio # 01-0109-000-1130, as referenced in the attached Exhibit "A" and made a part hereof. (This aforementioned property is referred to herein as "leased property" or the "Parking Lot Facility."

TO HAVE AND TO HOLD unto said TENANT for a term of three (3) years, commencing on the later of, 1) upon the effective date of the resolution of the Miami-Dade Board of County Commissioners (the "Board") approving the Lease Agreement 2) or the acceptance of leased space by TENANT and 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 of the Board of the Lease Agreement, (the "Effective Date") and shall terminate three (3) years thereafter.

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

## ARTICLE I
## USE OF LEASED PROPERTY

The area of the leased property will be improved and used by TENANT as a Parking Lot Facility with 24 hour a day, 7 days a week access. TENANT will at its sole cost, manage and staff the Parking Lot Facility during its period of use. The leased property shall be used solely for the purposes of providing parking facilities for the convenience of the public and surrounding merchants. LANDLORD shall permit TENANT to install, at TENANT's own cost and expense, the "Pay & Display" master meters for use by patrons of the Parking Lot Facility. TENANT shall at its own cost and expense make initial capital improvements to the Parking Lot Facility by installing the appropriate lighting, sealing the black top and re-striping the parking spaces. Upon expiration of this Lease Agreement any improvements will become the property of the LANDLORD. TENANT may allow certain parking spaces or parking areas located within the Parking Lot Facility to be used by a valet parking company, provided such use is appropriately licensed under the State of Florida rules and regulations, and discrimination in parking rates or use of the Parking Lot Facility shall be prohibited. Failure of the TENANT to operate the Parking Lot Facility in accordance with the approved use shall be a cause for termination of the Lease and void and any improvements will become the property of the LANDLORD.

## ATICLE II
## CONDITION OF LEASED PROPERTY

TENANT hereby accepts the leased property in "as is" condition as such property exists at the beginning of this Lease Agreement.

## ARTICLE III
## RENT AND CERTIFICATION OF GROSS RECEIPTS

"Gross Revenues" means all revenues from the sale of parking by TENANT, and its sub-Lessees or contract employee payments to the TENANT in the regular course of their parking lot facility business, inclusive of any revenue obtained from the use of an outside valet parking company.

TENANT shall pay LANDLORD as a monthly rent fifty percent (50%) of all Gross Revenues derived from TENANT's use of the Parking Lot Facility (the "Rent"). Beginning from the effective date of this Lease Agreement TENANT shall submit to LANDLORD on or before the 20th day following the end of each month during the term of this Lease Agreement and on or before the 20th day of the month following the expiration or earlier termination of this Lease Agreement, a written statement signed by TENANT and certified by it to be true and correct, showing the amount of Gross Revenues during the preceding month. TENANT shall also submit on or before the 20th day following the end of each month during the term of this Lease Agreement a check made payable to the Miami-Dade Board of County Commissioners, c/o Miami-Dade Water & Sewer Department in an amount representing the Rent and a copy of any documentation required by the Florida Department of Revenue. (For example, if the TENANT collected $4,880 in Gross Revenues during the month of November 2011, then on or before December 20, 2011, TENANT shall remit a check to LANDLORD in the amount of $2,440 representing the Rent for the month of November 2011). TENANT's certification of Gross Receipts shall include a detailed listing of collections by day. The Rent check is to be mailed to the following location, or at such other place and to such other person as LANDLORD may from time to time designate in writing:

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Miami-Dade Water & Sewer Department

3071 S. W. 38th Avenue

Miami, Florida 33146

Attention: Controller

On or before the 60th day following the end of each calendar year of the Lease Agreement, TENANT shall submit to LANDLORD a statement signed by owner, CEO, or Financial Officer of the TENANT and certified by it to be true and correct, setting forth the amount of Gross Revenues during the preceding calendar year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdown as LANDLORD may reasonably determine are necessary or may require.

For the purpose of computing and verifying the amount of monthly Gross Revenues due hereunder, TENANT shall prepare and keep, for period of not less than three (3) years following the end of each anniversary day of each Lease year, adequate books and records, including but not limited to those relating to all sales, services or other transactions performed by TENANT, TENANT shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. TENANT shall keep, for at least three (3) years following the end of each anniversary day of each Lease year, all pertinent original sales records, which records shall included (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants; (vi) records showing pertinent information regarding income and refunds issued; (vii) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted

auditing standard in performing an audit of TENANT's Gross Revenues. The acceptance by LANDLORD of payments of 50% of monthly Gross Revenues or reports thereon shall be without prejudice and shall in no case constitute a waiver of LANDLORD's right to examination of TENANT's books and records of its Gross Revenues or to demand payment of any past unpaid and due amounts.

The TENANT grants the LANDLORD the right to audit all records related to the revenues collected by the TENANT for the Parking Lot Facility. Upon five (5) days' written notice to TENANT, a complete audit shall be made by a designated external auditing firm, or other certified public accounting firm selected by the LANDLORD, or the Audit & Management Services Department of the County. TENANT shall make all such records available for said examination at some mutually agreeable location. In the event that such audit indicates any discrepancy between the revenues collected by the TENANT and the Rent paid to the LANDLORD, the TENANT shall reimburse the LANDLORD for the amount of the discrepancy within sixty (60) days of TENANT's receipt of such audit results.

## ARTICLE IV
## UTILITIES AND MAINTENANCE

All utilities shall be provided and installed by the TENANT and shall be placed in the name of TENANT and the cost of all utilities and waste removal shall be paid by TENANT, including any and all infrastructure required to provide service to the leased property. TENANT shall have the obligation to pay all utilities, taxes and special assessments levied upon or relative to the leased property. The TENANT agrees to provide, at its sole cost and expense, all maintenance, cleaning, landscaping, repairs or replacements, all operational costs for the Parking Lot Facility, as necessary to keep the leased property and any improvements thereto in a state of good repair, and in a safe and clean condition at all times, during the term of this Lease

Agreement. TENANT, as its sole cost and expense, shall be responsible to provide ground maintenance, maintaining the landscaping and mowing, exterminating, maintaining the leased property. Landscaping shall be maintained in as good a condition as said landscaping was at the beginning of the term of this Lease Agreement. LANDLORD shall notify TENANT after discovering any maintenance deficiencies, which TENANT is responsible for maintaining and TENANT shall make the necessary maintenance promptly after said notice. TENANT shall be responsible for and shall repair any damage caused to the leased premises as a result of TENANT's use of the leased premises or any vandalism, malicious mischief or criminal acts thereto. LANDLORD shall notify TENANT after discovering any damage which TENANT is responsible for maintaining, repairing or replacing and TENANT shall take the necessary actions to remedy such damage promptly after said notice.

## ARTICLE V
## IMPROVEMENTS AND ALTERATIONS BY TENANT

TENANT is responsible to design, permit and construct the Parking Lot Facility's initial capital improvements. The initial capital improvements to the Parking Lot Facility are estimated to cost $20,000.00. Drainage is not included in this estimate of costs. TENANT shall be reimbursed one-hundred percent (100%) of the costs of the initial capital improvements to the Parking Lot Facility through the collection of Gross Revenues after a certificate of occupancy/certificate of use ("CO/CU") is obtained by TENANT. Once the TENANT has been fully reimbursed for the costs of the initial capital improvements to the Parking Lot Facility, TENANT will then commence payment of Rent to LANDLORD pursuant to ARTICLE III herein. (For example, if the initial capital improvements cost $20,000.00 and the gross receipts for the first, second and third months total $8,000.00, $10,000.00 and $12,000.00, respectively, then the TENANT shall apply $8,000.00 the first month, $10,000.00 the second month, and

$2,000.00 the third month towards paying down the costs of its initial capital improvements so that by the end of the third month, the initial capital improvements are fully repaid and fifty (50%) percent of the remaining $10,000.00 ($5,000.00) is remitted as Rent to the County).

In the event the COUNTY's Department of Environmental Resources Management requires drainage improvements on the leased property as a permit condition for the adjacent Miami River Greenway Project, the cost for said improvements will be paid with legally available funds designated for such Miami River Greenway Project.

TENANT shall submit to the LANDLORD, as verification of the total costs incurred by TENANT in the construction of the initial capital improvements to the Parking Lot Facility, the following:

(1) Prior to the commencement of any construction work on the leased property, a statement signed by owner, CEO, or Financial Officer of the TENANT, and certified by it to be true and correct, setting forth and itemizing the proposed initial capital improvements and the estimated cost of such improvements. Such certified statement shall be subject to review and approval by the Director of the Water and Sewer Department.

(2) Upon completion of all LANDLORD-approved initial capital improvements, a statement signed by owner, CEO or Financial Officer of the TENANT, and certified by it to be true and correct, setting forth the total construction costs incurred by TENANT for such improvements, along with any proof that the LANDLORD may reasonably request.

The TENANT, at its sole cost and expense, may make such additional capital improvements and construct the Parking Lot Facility upon the leased premises as shall be reasonably necessary to place the leased premises in such state or condition that they may be used for the purposes for which this Lease is made and entered into. All plans and scheduling

for all capital improvements, shall be submitted to the LANDLORD (specifically, to the Director of Miami-Dade Water and Sewer) for approval before any work is started and said approval shall be in the sole discretion of LANDLORD. It shall be the TENANT's responsibility to include the following statement in any and all contracts in regard to improvements to the leased premises: "All persons, firms or corporations dealing with the TENANT in respect to the furnishing of any labor, services, or materials for the improvement of said leased premises are hereby placed on notice that no liens of any nature or character shall be imposed upon or enforced against the leased premises, but that credit and liability of the TENANT only shall be relied upon for payment of the cost of such improvements." If liens are placed upon said leased premises, TEANT shall be responsible for these liens as specified in Article XXI, "Additional Provisions," Item 1 Mechanic's Materialmen's and other Liens. LANDORD shall have no obligation, financial, regulatory or otherwise, for any and all activities necessary to construct, maintain, or repair improvements, or to operate within the leased premises during the term of this Lease.

## ARTICLE VI
## ASSIGNMENT

Without the written consent of LANDLORD first obtained in each case, TENANT shall not assign, sublet, transfer, mortgage, pledge, or dispose of this Lease Agreement for the term hereof.

## ARTICLE VII
## NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the leased property above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT or any third party for any damage to said personal property unless caused by or due to negligence of LANDLORD, LANDLORD's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

## ARTICLE VIII
## LANDLORD'S RIGHT OF ENTRY

LANDLORD or any of its agents shall have the right to enter said leased property during all reasonable working hours to examine same. LANDLORD shall have access to entire parcel of land in the event of an emergency or when making improvements to the pump station or nearby infrastructure. If repairs, additions, or alterations are deemed necessary for the safety, comfort, or preservation thereof, LANDLORD shall notify TENANT of said repair and TENANT shall have thirty (30) days to complete the work unless an extension is given by the LANDLORD.

## ARTICLE IX
## 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 leased property above described, without hindrance or molestation by LANDLORD.

## ARTICLE X
## LIABILITY FOR DAMAGE OR INJURY

LANDLORD shall not be liable for any damage or injury which may be sustained by any party or person on the leased premises other than the damage or injury caused solely by the negligence of LANDLORD, its officers, employees, agents, invitees, or instrumentalities, subject to all limitations of Florida Statutes, Section 768.28.

## ARTICLE XI
## DESTRUCTION OF PREMISES

In the event the leased premises should be destroyed or so damaged by fire, windstorm, or other casualty to the extent that the leased premises are rendered untenantable or unfit for the purpose of TENANT, TENANT shall have six (6) months to decide whether or not to rebuild or cancel this lease agreement. If the Leased Premises are partially damaged due to TENANT's

negligence, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by TENANT from proceeds of the Insurance coverage and/or at its own cost and expense. If the damage shall be so extensive as to render such leased premises unusable for the purposes intended, but capable of being repaired within one hundred eighty (180) days, the damage shall be repaired with due diligence by TENANT from the proceeds of the insurance coverage policy and/or its own cost and expense. In the event that said leased premises are completely destroyed due to TENANT's negligence, this Lease Agreement shall be cancelled and TENANT shall return the leased premises to the LANDLORD in the condition the leased premises were in at the beginning of this Lease Agreement. If TENANT chooses to cancel the lease, TENANT shall bear the cost of demolishing any remaining structure on the leased premises. If TENANT chooses to rebuild but fails to complete the rebuilding within six (6) months of date of the event which destroyed or damaged the original structure, the LANDLORD may cancel this Lease Agreement. In no event shall TENANT retain any insurance proceeds disbursed pursuant to the insurance pay for damage or destruction to the premises.

## ARTICLE XII
## SURRENDER OF LEASED PROPERTY

TENANT agrees to surrender to LANDLORD, at the end of the term of this Lease Agreement or any extension thereof, said leased property in as good a condition, subject to ordinary wear and tear, as said leased property was at the beginning of the term of this Lease Agreement. TENANT agrees to remove the master meters and other such Parking Lot equipment that might be temporarily affixed to the land, (i.e. parking instruction signage).

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## ARTICLE XIII
## INDEMNIFICATION AND HOLD HARMLESS

TENANT shall indemnify and hold harmless the LANDLORD and its officers, employees, agents and instrumentalities from any all liability, losses, or damages, including attorney fees and costs of defense, which the LANDLORD or its officers, employees, agents or instrumentalities 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 lease Agreement by the TENANT or its employees, agents, servants, partners, principals or subcontractors. TENANT shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the LANDLORD, where applicable, including appellate proceedings and shall pay all costs, judgments, and attorney's fees which may issue thereon. TENANT expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by TENANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the LANDLORD or its officers, employees, agents and instrumentalities as herein provided. The obligation of TENANT under this article shall survive the expiration or earlier termination of, this Lease Agreement.

## ARTICLE XIV
## SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

## ARTICLE XV
## CANCELLATION

LANDLORD, through its County Mayor or County Mayor's designee, shall have the right to cancel this Lease Agreement or any portion thereof, at any time by giving the TENANT at least thirty (30) days prior written notice to its effective date. TENANT shall have the right to cancel this Lease Agreement or any portion thereof, at any time by giving the LANDLORD at least thirty (30) days prior written notice to its effective date.

## ARTICLE XVI
## OPTION TO RENEW

Provided this Lease Agreement is not otherwise in default and both parties agree, TENANT is hereby granted the option to extend this Lease Agreement for two (2) additional one-year renewal option periods and such renewal shall be subject to all of the same terms and conditions contained herein.

## ARTICLE XVII
## NOTICES

It is understood and agreed between the parties hereto that written notice addressed and sent by certified or registered mail, return receipt requested, first class, postage prepaid and addressed as follows:

**TENANT:**

Miami Parking Authority
Executive Director
Department of Off-Street Parking d/b/a MPA
190 N.E. 3 Street
Miami, Florida 33132

**WITH COPY TO:**
City Attorney
444 S.W. 2 Avenue, Suite 945
Miami, Florida 33130
Attention: Ms. Julie Bru

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**LANDLORD:**

Miami-Dade County
Director
Water & Sewer Department
3071 S.W. 38 Avenue
Miami, Florida 33146

**WITH COPY TO:**
Miami-Dade County
Director
General Services Administration
111 N.W. 1 Street, Suite 2460
Miami, Florida 33128-1907

Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

## ARTICLE XVIII
## INSURANCE

Prior to the start of this Lease Agreement, TENANT shall furnish to the Real Estate Development Division of Miami-Dade County, c/o General Services Administration, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, certificate(s) of insurance which indicate(s) that insurance coverage has been obtained which meets the requirements as outlined below:

A. Public Liability Insurance, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. MIAMI-DADE COUNTY must be shown as an additional insured with respect to this coverage.

B. Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles used in connection with the Lease Agreement in an amount not less than $300,000 combined single limit for bodily injury and property damage.

C. TENANT shall maintain commercial general liability insurance for not less than a combined single limit of one million dollars ($1,000,000.00). Licensee shall maintain casualty insurance for the parking lot with limits of two hundred fifty thousand dollars ($250,000.00) for each occurrence and five hundred thousand dollars ($500,000.00) aggregate. A certificate of insurance evidencing such coverage shall be furnished to LANDLORD not later than the commencement date of this Lease Agreement. TENANT shall indemnify and hold LANDLORD harmless from all damages, claims, losses, costs and expenses of any kind arising from TENANT's use of the Property.

Certificates will indicate that no modification or change in insurance shall be made

without thirty (30) days written advance notice to the certificate holder. Compliance with the foregoing requirements shall not relieve TENANT of its liability and obligations under this Section or under the Indemnification and Hold Harmless Article, or any other portion of this Lease Agreement.

TENANT shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in full force for the duration of this Lease Agreement. If insurance certificates are scheduled to expire during the term of the Lease Agreement, TENANT shall be responsible for submitting new or renewed insurance certificates to the LANDLORD at a minimum of thirty (30) days in advance of such expiration.

The above-stated amounts of liability insurance coverage shall be reviewed by the LANDLORD every five (5) years and LANDLORD shall have the right to increase said amounts of liability insurance in accordance and in conformity with like coverage required by Miami-Dade County of other tenants in similar circumstances.

## ARTICLE XIX
## PERMITS , REGULATIONS

TENANT covenants and agrees that during the term of this Lease Agreement, TENANT will obtain, and maintain throughout the term of this Lease Agreement, any and all necessary permits and approvals and that all uses of the leased property will be in conformance with all applicable laws.

## ARTICLE XX
## DEFAULT OF TENANT

If TENANT fails to comply with any material term or condition of this Lease Agreement or fails to perform any of its obligations hereunder, then TENANT shall be in default. A material default shall be determined at LANDLORD's sole discretion. Upon written notification of a material default TENANT will have thirty (30) days to cure such default. If

TENANT fails to cure such default within thirty (30) days, LANDORD, in addition to all remedies available to it by law, may immediately, upon written notice to TENANT, terminate this Lease Agreement. TENANT understands and agrees that termination of this Lease Agreement under this section shall not release TENANT from any obligation accruing prior to the effective date of termination.

## ARTICLE XXI
## 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 leased property 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. TENANT agrees to comply with all State and Federal laws related to non-discrimination on the basis of race, color, creed, national origin or disability.

3. This Lease Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any judicial proceedings shall be in Miami-Dade County, Florida.

4. No waiver or breach of any provision of this Lease Agreement shall constitute waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

5. For purposes of this Lease Agreement, the Chief of Water & Sewer Procurement or his designee shall be the party designated by the Miami-Dade Water and Sewer Department to

coordinate all aspects of the Lease Agreement dealing with hours of operation, location and quantity of available parking spaces, or any other operational issues involving the Lease Agreement.

6. In the event an incident takes place within the Parking Facilities during TENANT's period of use requiring the completion of a Police Report, TENANT shall contact LANDLORD to complete same, unless directed otherwise.

## ARTICLE XXII
## WRITTEN AGREEMENT

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

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.

THE DEPARTMENT OF OFF-STREET PARKING A/K/A MIAMI PARKING AUTHORITY ("MPA") AN AGENCY AND INSTRUMENTALITY OF THE CITY OF MAIMI

(CORPORATE SEAL)

By: _____
Arthur Noriega, V, CEO
(TENANT)

WITNESS

_____
WITNESS

(OFFICIAL SEAL)

ATTEST:
HARVEY RUVIN, CLERK

By:_____
DEPUTY CLERK

MIAMI-DADECOUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Carlos Alvarez
County Mayor (LANDLORD)

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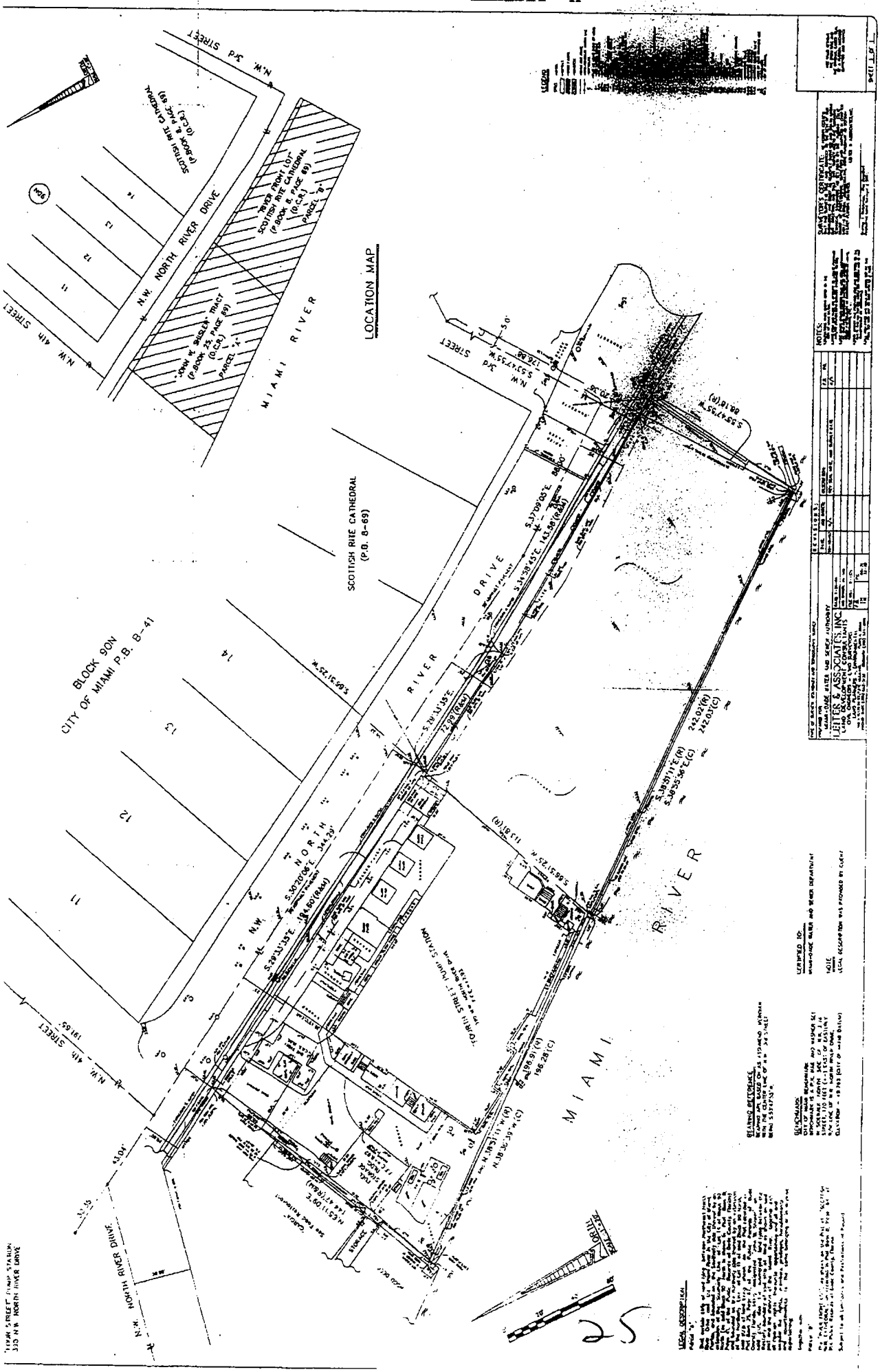
# EXHIBIT "A"


LOCATION MAP
N.W. 3rd STREET
N.W. 4th STREET
N.W. NORTH RIVER DRIVE
MIAMI RIVER
SCOTTISH RITE CATHEDRAL (P.B. 8-69)
BLOCK 90N
CITY OF MIAMI P.B. B-41
NORTH RIVER DRIVE
MIAMI RIVER
LEITES & ASSOCIATES, INC.

**MIAMI-DADE COUNTY**
**BOARD OF COUNTY COMMISSIONERS**
**OFFICE OF THE COMMISSION AUDITOR**

Legislative Notes

| | |
|---|---|
| **Agenda Item:** | **11(A)1** |
| **File Number:** | **101648** |
| **Committee(s) of Reference:** | **Board of County Commissioners** |
| **Date of Analysis:** | **July 8, 2010** |
| **Type of Item:** | **Resolution** |
| **Sponsor:** | **Commissioner Bruno A. Barreiro** |

**Summary**
This resolution authorizes the execution of a lease agreement between Miami-Dade County (**Landlord**) and the Department of Off-Street Parking A/K/A Miami Parking Authority (MPA-**Tenant**) to improve and utilize as a parking lot with 24 hours a day, seven (7) days a week access for the convenience of the public and surrounding merchants located at 474 N.W. 4 Street, Miami, Florida.

**Surrounding Merchants/Facilities/Parks**
1. Lummus Park (City of Miami)
2. Garcia's Seafood Grille and Fish
3. CasaBlanca Seafood Bar and Grill
4. Miami Scottish Rite Temple

**Lease Term:** Three (3) years with two (2) additional one-year renewal option periods.

**Lease Agreement Highlights**
- Tenant is responsible to design, permit and construct the Parking Lot Facility/s initial capital improvements. Costs are estimated to be $20,000.
- Tenant will be reimbursed 100% of the costs of the initial capital improvements to the parking lot through the collection of Gross Revenues after a certificate of occupants/certificate of use is obtained.
- **Once tenant is reimbursed for the capital cost, then the County will begin receiving rent payments.**
- Tenant will at its sole cost, manage and staff the Parking Lot Facility during its period of use.
- Tenant will install, at Tenant's own cost and expense, the Pay and Display master meters for use by patrons of the Parking Lot Facility.
- Tenant will be allowed to use certain parking spaces by a valet parking company.

**The drainage is not included in the cost estimates. In the event drainage improvements are required as a permit condition for the adjacent Miami River Greenway Project, the cost would be paid from funds legally designated for the Miami River Greenway Project.**

**Miami River Greenway**
In early 1998, the Florida Legislature created the Miami River Commission to improve the 5.5-mile Miami River and its surroundings, including the 69-square-mile water basin that includes much of the City of Miami and a portion of Miami-Dade County.

In 2008, the Miami River Commission celebrated its 10th anniversary with the completion of its signature Miami River Maintenance and Environmental Clean-Up Project. This long-awaited community-wide initiative, which was completed in October 2008, improved trade, jobs, businesses and the natural environment. The effort took many years, more than 10 years of hard work, $89 million in local, state and federal funding, and the commitment of hundreds of citizens, elected officials and stakeholders along the Miami River.

**Comments**
The County is indirectly reimbursing the City of Miami's (City) rent payment until such time the City is reimbursed through the collection of Gross Revenues for the costs of the improvements to the parking facility.

**Prepared by:** Michael Amador-Gil