

# MIAMI BEACH

PLANNING DEPARTMENT

1700 Convention Center Drive, Miami Beach, Florida 33139; Tel: 305.673.7550; Web: [www.miamibeachfl.gov/planning](http://www.miamibeachfl.gov/planning)

## LAND USE BOARD HEARING APPLICATION

The following application is submitted for review and consideration of the project described herein by the land use board selected below. A separate application must be completed for each board reviewing the proposed project.

Application Information			
FILE NUMBER DRB19-0480		Is the property the primary residence & homestead of the applicant/property owner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If "Yes," provide office of the property appraiser summary report)	
<b>Board of Adjustment</b> <input type="checkbox"/> Variance from a provision of the Land Development Regulations <input type="checkbox"/> Appeal of an administrative decision <input type="checkbox"/> Modification of existing Board Order		<b>Design Review Board</b> <input type="checkbox"/> Design review approval <input type="checkbox"/> Variance <input checked="" type="checkbox"/> Modification of existing Board Order	
<b>Planning Board</b> <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> Lot Split <input type="checkbox"/> Amendment to the Land Development Regulations or Zoning Map <input type="checkbox"/> Amendment to the Comprehensive Plan or Future Land Use Map <input type="checkbox"/> Modification of existing Board Order		<b>Historic Preservation Board</b> <input type="checkbox"/> Certificate of Appropriateness for design <input type="checkbox"/> Certificate of Appropriateness for demolition <input type="checkbox"/> Historic District/Site Designation <input type="checkbox"/> Variance <input type="checkbox"/> Modification of existing Board Order	
<input type="checkbox"/> Other:			
Property Information - Please attach Legal Description as "Exhibit A"			
ADDRESS OF PROPERTY Citywide Rights of Way			
FOLIO NUMBER(S)			
Property Owner Information			
PROPERTY OWNER NAME City of Miami Beach			
ADDRESS 1700 Convention Center Drive		CITY Miami Beach	STATE FL
ZIP CODE 33139			
BUSINESS PHONE (305) 673-7010	CELL PHONE	EMAIL ADDRESS JimmyMorales@miamibeachfl.gov	
Applicant Information (if different than owner)			
APPLICANT NAME Deco Bike, LLC			
ADDRESS 41 NE 17 Terrace		CITY Miami Beach	STATE FL
ZIP CODE 33132			
BUSINESS PHONE (305) 733-9650	CELL PHONE	EMAIL ADDRESS	
Summary of Request			
PROVIDE A BRIEF SCOPE OF REQUEST Modification of DRB 22494 to delete design related conditions.			

<b>Project Information</b>			
Is there an existing building(s) on the site?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If previous answer is "Yes", is the building architecturally significant per sec. 142-108?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the project include interior or exterior demolition?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Provide the total floor area of the new construction.		SQ. FT.	
Provide the gross floor area of the new construction (including required parking and all usable area).		SQ. FT.	
<b>Party responsible for project design</b>			
NAME N/A		<input type="checkbox"/> Architect <input type="checkbox"/> Contractor <input type="checkbox"/> Landscape Architect <input type="checkbox"/> Engineer <input type="checkbox"/> Tenant <input type="checkbox"/> Other _____	
ADDRESS		CITY	STATE   ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	
<b>Authorized Representative(s) Information (if applicable)</b>			
NAME Michael W. Larkin		<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
ADDRESS 200 S. Biscayne Blvd., Suite 850		CITY Miami	STATE FL   ZIPCODE 33131
BUSINESS PHONE (305) 377-6231	CELL PHONE	EMAIL ADDRESS	
NAME Michael J. Marrero		<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
ADDRESS 200 S. Biscayne Blvd., Suite 850		CITY Miami	STATE FL   ZIPCODE 33131
BUSINESS PHONE (305) 377-6238	CELL PHONE	EMAIL ADDRESS	
NAME		<input type="checkbox"/> Attorney <input type="checkbox"/> Contact <input type="checkbox"/> Agent <input type="checkbox"/> Other _____	
ADDRESS		CITY	STATE   ZIPCODE
BUSINESS PHONE	CELL PHONE	EMAIL ADDRESS	

**Please note the following information:**


- A separate disclosure of interest form must be submitted with this application if the applicant or owner is a corporation, partnership, limited partnership or trustee.
- All applicable affidavits must be completed and the property owner must complete and sign the "Power of Attorney" portion of the affidavit if they will not be present at the hearing, or if other persons are speaking on their behalf.
- To request this material in alternate format, sign language interpreter (five-day notice is required), information on access for persons with disabilities, and accommodation to review any document or participate in any City sponsored proceedings, call 305.604.2489 and select (1) for English or (2) for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

**Please read the following and acknowledge below:**

- Applications for any board hearing(s) will not be accepted without payment of the required fees. All checks are to be made payable to the "City of Miami Beach".
- All disclosures must be submitted in CMB Application format and be consistent with CMB Code Sub-part A Section 2-482(c):
  - (c) If the lobbyist represents a corporation, partnership or trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.
- Public records notice – All documentation submitted for this application is considered a public record subject to Chapter 119 of the Florida Statutes and shall be disclosed upon request.
- In accordance with the requirements of Section 2-482 of the code of the City of Miami Beach, any individual or group that will be compensated to speak or refrain from speaking in favor or against an application being presented before any of the City's land use boards, shall fully disclose, prior to the public hearing, that they have been, or will be compensated. Such parties include: architects, engineers, landscape architects, contractors, or other persons responsible for project design, as well as authorized representatives attorneys or agents and contact persons who are representing or appearing on behalf of a third party; such individuals must register with the City Clerk prior to the hearing.
- In accordance with Section 118-31. – Disclosure Requirement. Each person or entity requesting approval, relief or other action from the Planning Board, Design Review Board, Historic Preservation Board or the Board of Adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided or committed, directly or on its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional service rendered or to be rendered. The disclosure shall: (I) be in writing, (II) indicate to whom the consideration has been provided or committed, (III) generally describe the nature of the consideration, and (IV) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board. Upon determination by the applicable board that the foregoing disclosure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then (I) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and (II) no application form said person or entity for the subject property shall be reviewed or considered by the applicable board(s) until expiration of a period of one year after the nullification of the application or order. It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements of this section.
- When the applicable board reaches a decision a final order will be issued stating the board's decision and any conditions imposed therein. The final order will be recorded with the Miami-Dade Clerk of Courts. The original board order shall remain on file with the City of Miami Beach Planning Department. Under no circumstances will a building permit be issued by the City of Miami Beach without a copy of the recorded final order being included and made a part of the plans submitted for a building permit.

The aforementioned is acknowledged by:

☒ Owner of the subject property    ☐ Authorized representative

  
 \_\_\_\_\_  
**SIGNATURE**  
 Jimmy Morales, City Manager  
 \_\_\_\_\_  
**PRINT NAME**  
 10/31/19  
 \_\_\_\_\_  
**DATE SIGNED**

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The aforementioned is acknowledged by:

☐ Owner of the subject property    ☒ Authorized representative


**SIGNATURE**

Bonifacio Diaz, Principal

**PRINT NAME**

10/25/2019

**DATE SIGNED**



**OWNER AFFIDAVIT FOR INDIVIDUAL OWNER**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for remove this notice after the date of the hearing.

**SIGNATURE**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The foregoing instrument was acknowledged before me by \_\_\_\_\_, who has produced \_\_\_\_\_ as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

**NOTARY PUBLIC**

My Commission Expires: \_\_\_\_\_

**PRINT NAME****ALTERNATE OWNER AFFIDAVIT FOR CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY**STATE OF FLORIDACOUNTY OF MIAMI-DADE

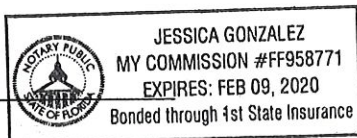
I, Jimmy Morales, being first duly sworn, depose and certify as follows: (1) I am the City Manager (print title) of the City of Miami Beach (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (7) I am responsible for remove this notice after the date of the hearing.

**SIGNATURE**

Sworn to and subscribed before me this 31 day of October, 2019. The foregoing instrument was acknowledged before me by Jimmy Morales, who has produced Drivers License as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

My Commission Expires: \_\_\_\_\_

**NOTARY PUBLIC****PRINT NAME**

**OWNER AFFIDAVIT FOR INDIVIDUAL OWNER**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn, depose and certify as follows: (1) I am the owner of the property that is the subject of this application. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (3) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (4) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (5) I am responsible for remove this notice after the date of the hearing.

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NOTARY SEAL OR STAMP

**NOTARY PUBLIC**

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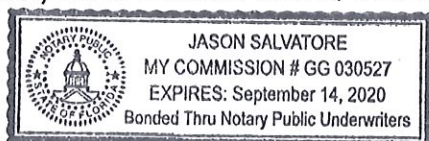
**PRINT NAME****ALTERNATE OWNER AFFIDAVIT FOR CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY**STATE OF FLORIDACOUNTY OF MIAMI-DADE

I, Bonifacio Diaz, being first duly sworn, depose and certify as follows: (1) I am the Principal (print title) of Deco Bike, LLC (print name of corporate entity). (2) I am authorized to file this application on behalf of such entity. (3) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief. (4) The corporate entity named herein is the owner of the property that is the subject of this application. (5) I acknowledge and agree that, before this application may be publicly noticed and heard by a land development board, the application must be complete and all information submitted in support thereof must be accurate. (6) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (7) I am responsible for remove this notice after the date of the hearing.

**SIGNATURE**

Sworn to and subscribed before me this 25 day of October, 2019. The foregoing instrument was acknowledged before me by Bonifacio Diaz, who has produced FL Driver Licence as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP

**NOTARY PUBLIC**

My Commission Expires: \_\_\_\_\_

**PRINT NAME**



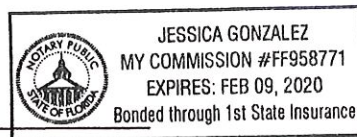
**POWER OF ATTORNEY AFFIDAVIT**STATE OF FLORIDACOUNTY OF MIAMI-DADE

I, Jimmy Morales, City Manager, being first duly sworn, depose and certify as follows: (1) I am the owner or representative of the owner of the real property that is the subject of this application. (2) I hereby authorize Michael W. Larkin and Michael J. Marrero to be my representative before the Design Review Board. (3) I also hereby authorize the City of Miami Beach to enter my property for the sole purpose of posting a Notice of Public Hearing on my property, as required by law. (4) I am responsible for remove this notice after the date of the hearing.

Jimmy Morales, City Manager**PRINT NAME (and Title, if applicable)****SIGNATURE**

Sworn to and subscribed before me this 31 day of October, 2019. The foregoing instrument was acknowledged before me by Jimmy Morales, who has produced Drivers License as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires: \_\_\_\_\_

**NOTARY PUBLIC****PRINT NAME****CONTRACT FOR PURCHASE**

If the applicant is not the owner of the property, but the applicant is a party to a contract to purchase the property, whether or not such contract is contingent on this application, the applicant shall list the names of the contract purchasers below, including any and all principal officers, stockholders, beneficiaries or partners. If any of the contact purchasers are corporations, partnerships, limited liability companies, trusts, or other corporate entities, the applicant shall further disclose the identity of the individuals(s) (natural persons) having the ultimate ownership interest in the entity. If any contingency clause or contract terms involve additional individuals, corporations, partnerships, limited liability companies, trusts, or other corporate entities, list all individuals and/or corporate entities.

**NAME****DATE OF CONTRACT**

NAME, ADDRESS AND OFFICE

% OF STOCK

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application is filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

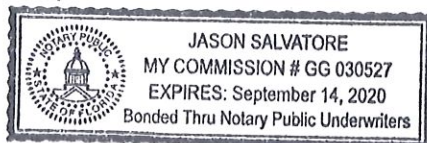
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Bonifacio Diaz, Principal**PRINT NAME (and Title, if applicable)****SIGNATURE**

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NOTARY SEAL OR STAMP



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**NAME****DATE OF CONTRACT**

NAME, ADDRESS AND OFFICE

% OF STOCK

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

In the event of any changes of ownership or changes in contracts for purchase, subsequent to the date that this application if filed, but prior to the date of a final public hearing, the applicant shall file a supplemental disclosure of interest.

**DISCLOSURE OF INTEREST**  
**CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY**

If the property that is the subject of the application is owned or leased by a corporation, partnership or limited liability company, list ALL of the owners, shareholders, partners, managers and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

City of Miami Beach (a Florida municipal corporation)

**NAME OF CORPORATE ENTITY**

NAME AND ADDRESS

% OF OWNERSHIP

N/A

**NAME OF CORPORATE ENTITY**

NAME AND ADDRESS

% OF OWNERSHIP

If there are additional corporate owners, list such owners, including corporate name and the name, address and percentage of ownership of each additional owner, on a separate page.



**DISCLOSURE OF INTEREST**  
**CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY**

If the property that is the subject of the application is owned or leased by a corporation, partnership or limited liability company, list ALL of the owners, shareholders, partners, managers and/or members, and the percentage of ownership held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

Deco Bike, LLC

**NAME OF CORPORATE ENTITY**

NAME AND ADDRESS	% OF OWNERSHIP
Bonifacio Díaz	100%
41 NE 17 Terrace	
Miami, FL 33132	

**NAME OF CORPORATE ENTITY**

NAME AND ADDRESS	% OF OWNERSHIP

If there are additional corporate owners, list such owners, including corporate name and the name, address and percentage of ownership of each additional owner, on a separate page.

**DISCLOSURE OF INTEREST**  
**TRUSTEE**

If the property that is the subject of the application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

N/A

**TRUST NAME**

NAME AND ADDRESS

% INTEREST


**DISCLOSURE OF INTEREST**  
**TRUSTEE**

If the property that is the subject of the application is owned or leased by a trust, list any and all trustees and beneficiaries of the trust, and the percentage of interest held by each. If the owners consist of one or more corporations, partnerships, trusts, partnerships or other corporate entities, the applicant shall further disclose the identity of the individual(s) (natural persons) having the ultimate ownership interest in the entity.

**N/A**

<b>TRUST NAME</b>	
<b>NAME AND ADDRESS</b>	<b>% INTEREST</b>

**DISCLOSURE OF INTEREST**  
**TRUSTEE**

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N/A

TRUST NAME	
NAME AND ADDRESS	% INTEREST

**COMPENSATED LOBBYIST**

Pursuant to Section 2-482 of the Miami Beach City Code, all lobbyists shall, before engaging in any lobbying activities, register with the City Clerk. Please list below any and all persons or entities retained by the applicant to lobby City staff or any of the City's land development boards in support of this application.

NAME	ADDRESS	PHONE
N/A		

Additional names can be placed on a separate page attached to this application.

**APPLICANT HEREBY ACKNOWLEDGES AND AGREES THAT (1) AN APPROVAL GRANTED BY A LAND DEVELOPMENT BOARD OF THE CITY SHALL BE SUBJECT TO ANY AND ALL CONDITIONS IMPOSED BY SUCH BOARD AND BY ANY OTHER BOARD HAVING JURISDICTION, AND (2) APPLICANT'S PROJECT SHALL COMPLY WITH THE CODE OF THE CITY OF MIAMI BEACH AND ALL OTHER APPLICABLE CITY, STATE AND FEDERAL LAWS.**

**APPLICANT AFFIDAVIT**

STATE OF FLORIDA

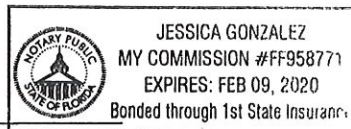
COUNTY OF MIAMI-DADE

I, Jimmy Morales, City Manager, being first duly sworn, depose and certify as follows: (1) I am the applicant or representative of the applicant. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.

[Signature]  
SIGNATURE

Sworn to and subscribed before me this 31 day of October, 2019. The foregoing instrument was acknowledged before me by Jimmy Morales, who has produced Driver License as identification and/or is personally known to me and who did/did not take an oath.

NOTARY SEAL OR STAMP



My Commission Expires: \_\_\_\_\_

[Signature]  
NOTARY PUBLIC

Jessica Gonzalez  
PRINT NAME



**COMPENSATED LOBBYIST**

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NAME	ADDRESS	PHONE
Michael W. Larkin and Michael J. Marrero	200 S. Biscayne Blvd., Suite 850, Miami, FL 33131	(305) 377-6238
_____	_____	_____
_____	_____	_____

Additional names can be placed on a separate page attached to this application.

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**APPLICANT AFFIDAVIT**

STATE OF FLORIDA

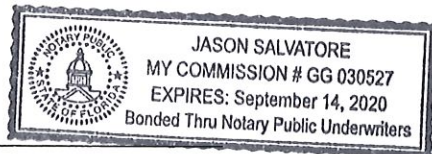
COUNTY OF MIAMI-DADE

I, Bonifacio Diaz, being first duly sworn, depose and certify as follows: (1) I am the applicant or representative of the applicant. (2) This application and all information submitted in support of this application, including sketches, data, and other supplementary materials, are true and correct to the best of my knowledge and belief.

[Signature]  
**SIGNATURE**

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NOTARY SEAL OR STAMP



My Commission Expires: \_\_\_\_\_

[Signature]  
**NOTARY PUBLIC**

Jason Salvatore  
**PRINT NAME**



# BERCOW RADELL FERNANDEZ & LARKIN

ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6238  
E-Mail: MMarerro@brzoninglaw.com

## VIA HAND DELIVERY AND ELECTRONIC SUBMISSION

October 29, 2019

James G. Murphy, Chief of Urban Design  
Planning Department  
City of Miami Beach  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, Florida 33139

Re: Request to Strike Design Conditions for Citywide Bike Kiosks

Dear Mr. Murphy:

This firm represents Deco Bike, LLC (the "Applicant"), operator of the citywide bicycle rental program in the City of Miami Beach ("City"). Please consider this letter the Applicant's Letter of Intent supporting the request to strike conditions B.1.b and B.1.c of Design Review Board ("DRB") File No. 22494 Final Order. See Exhibit A, DRB 22494 Final Order.

Pursuant to Request for Proposal No. 44-07/08 on July 15, 2009, the Applicant entered into a Concession Agreement with the City of Miami for the delivery and operation of a self-service bicycle rental fleet for the public use to be station within the public rights-of-way. See Exhibit B, Concession Agreement. Then, on October 6, 2009, the DRB reviewed and approved the installation of bicycle rental kiosks within the public rights-of-way throughout the City. See Exhibit C, DRB After Action.

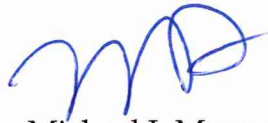
Following the DRB's approval, in 2014, the Applicant entered into a sponsorship agreement with Citibank, N.A, which the City Commission approved and incorporated in the Concession Agreement. See Exhibit D, Amendment No. 2 to the Concession Agreement. Subsequently, the City approved permits for the kiosks and the Applicant installed them throughout the City. The design of the kiosks and bikes are substantially in compliance with this agreement and the proposed design conditions were not thereafter incorporated.

James G. Murphy, Chief of Urban Design  
Modification of DRB 22494  
October 29, 2019  
Page 2 of 2

Granting the request to strike the design related conditions found in the Final Order for DRB 22494 will ensure the existing, operational kiosks comply with the DRB's approval and the City's Concession Agreement with Deco Bike. Moreover, the deletion will be in harmony with the intent and purpose of the City's Comprehensive Plan and Land Development Regulations, and will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on these reasons, the Applicant respectfully requests your favorable review and recommendation of this application. If you have any questions or comments with regard to the application, please give me a call at (305) 377-6238.

Sincerely,



Michael J. Marrero

Enclosures

cc: Jimmy Morales, City Manager  
Emily K. Balter

**DESIGN REVIEW BOARD  
City of Miami Beach, Florida**

MEETING DATE: October 6, 2009

FILE NO: 22494

PROPERTY: Citywide Bike Rentals

LEGAL: Citywide

IN RE: The Application for Design Review Approval for the installation of bicycle rental kiosks within the public rights-of-way throughout the City.

**ORDER**

The applicants, the City of Miami Beach and Deco Bikes, filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Design Review Criteria in Section 118-251 of the Miami Beach Code.
- B. The project would remain consistent with the criteria and requirements of section 118-251 if the following conditions are met:
  - 1. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
    - a. The final design and details of the proposed bicycle sharing facilities, including materials and finishes, shall be further developed and refined, subject to the review and approval of staff.
    - b. The proposed kiosks shall incorporate a a graphic representation of the late 1930's emphasis on 'speed', in a manner to be reviewed and approved by staff.
    - c. All kiosks shall be painted green instead of blue, in a manner to be reviewed and approved by staff.
  - 2. The applicant shall obtain all required permits and approvals from the Public Works Department.



3. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
4. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph B of the Findings of Fact (Condition Nos. 1-4, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Design Review Board, as determined by staff, entitled "DecoBike Colors, Finishes & Kiosks", modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the first bicycle rental facility is not installed or the required permit for the first bicycle rental facility is not issued, within eighteen (18) months of the meeting date at which the original Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions.

In accordance with Section 118-264 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code.





Dated this 9<sup>th</sup> day of October, 2009.

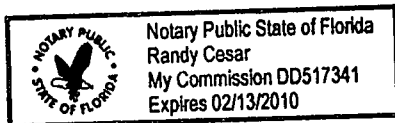
DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: THOMAS R. MOONEY, AICP

DESIGN AND PRESERVATION MANAGER  
FOR THE CHAIR

STATE OF FLORIDA                    )  
  )SS  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me this 9 day of  
October 2009 by Thomas R. Mooney, Design and Preservation Manager,  
Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf  
of the Corporation. He is personally known to me.



Randy Cesar  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: 2-13-2010

Approved As To Form: \_\_\_\_\_  
Legal Department: J. Kelly ( 10-8-09 )

Filed with the Clerk of the Design Review Board on 10-9-09 ( RC )

THM

Deco Bike, LLC.  
City of Miami Beach

Concession Agreement  
for a Self-Service Bicycle Rental &  
Sharing Program

PROCUREMENT

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**CONCESSION AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA AND  
DECO BIKE, LLC.  
FOR THE  
IMPLEMENTATION, MANAGEMENT AND  
OPERATION OF A SELF-SERVICE BICYCLE SHARING PROGRAM  
PURSUANT TO REQUEST FOR PROPOSALS NO. 44-07/08.**

THIS AGREEMENT made on July 15, 2009 (Effective Date), between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter called "City"), and **DECO BIKE, LLC.**, a Florida corporation, with offices at 3301 NE 1<sup>st</sup> Avenue LPH-6, Miami, Florida 33137 (hereinafter called "Concessionaire").

WITNESSETH

**WHEREAS**, self-service bicycle sharing programs are revolutionizing the way residents and tourists commute within cities in Europe and North America, and a self-service bicycle sharing program with public access has been determined by the City to be a desirable and valuable mode of alternative public transportation for the community; and

**WHEREAS**, a self-service bicycle sharing program serves as a great health benefit to residents and tourists, alleviates parking and vehicular traffic congestion, and reduces vehicle emissions and reliance on fossil fuels, serving as a vital and integral part of the community; and

**WHEREAS**, a self-service bicycle sharing program will generate substantial revenues for the City and create a variety of new jobs for locals; and

**WHEREAS**, on September 10, 2008, the City Commission authorized the issuance of a Request for Proposals No. 44-07/08 to solicit proposals for the City-wide implementation, management and operation of a self-service bicycle rental program available to the public (the RFP); and

**WHEREAS**, the Mayor and City Commission, at its January 28, 2009, meeting, passed and adopted Resolution No. 2009-26993, which accepted the recommendation of the City Manager, pursuant to the RFP; and authorized the Administration to enter into negotiations with Concessionaire as the top-ranked responsive proposer; and

**WHEREAS**, accordingly, the City and Concessionaire have negotiated the following Agreement for the implementation, management and operation of an exclusive City-wide self-service bicycle sharing program (the "program").

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:



The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the right to operate the following described concession within the Concession Service Zone and upon the Concession Areas (both as defined herein) in conformance with the purposes and for the period stated herein and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

## SECTION 1. TERM.

- 1.1 The initial term of this Agreement shall be for five (5) years, commencing on the date of Operational Rollout. The "Operational Rollout" date shall be defined as the earlier of: (i.) the first date that access to bicycles in the program is available to the public; or (ii.) seven (7) months from the Effective Date (as set forth on p. 4 hereof).

Concessionaire shall provide the City Manager or his designee with written notice of the Operational Rollout date no later than thirty (30) days prior to the commencement of said date.

- 1.1.1 The collection of security deposits (if any) by Concessionaire prior to the Operational Rollout date, as a part of the member subscription registration process for the program or any free public demonstration periods, shall not be used in determining the Operational Rollout date.

- 1.1.2 The Operational Rollout date may be extended by the City Manager, in writing, at his sole discretion, upon written request from Concessionaire, which notice shall state the reason for the request and the anticipated period of time requested.

- 1.2 At the City's sole discretion, and provided further that the Concessionaire is not in default, commencing upon written notice from Concessionaire to the City, which notice shall be given in the fifth contract year of the initial term (and then no later than ninety (90) days prior to expiration of said term), the City may extend the term of this Agreement, for one (1) additional five (5) year renewal term.

As a condition to such renewal, the City may require Concessionaire to purchase new Equipment (as defined herein), if the City Manager deems necessary. Concessionaire shall deliver to City, no later than ninety (90) days prior to the expiration of the initial term: (i.) a schedule of any Equipment which was replaced during the initial term; and (ii.) an itemized list of proposed replacement Equipment. The schedule and list shall be delivered to, reviewed, and approved by the City Manager prior to, and as a condition of, the City's consideration and approval of the renewal term.

- 1.3 For purposes of this Agreement, a "Contract Year" shall be defined as that certain 365 day period commencing on the date of Operational Rollout.

## SECTION 2. CONCESSION AREA(S) AND CONCESSION SERVICE ZONE.

The City hereby grants to the Concessionaire the right, during the Term of this Agreement, to operate the concession, as described herein, generally, in the following Concession Service Zone and, specifically, upon the following Concession Areas (hereinafter such areas shall be referred to individually as a Concession Area, or collectively as the Concession Areas):

### 2.1 Concession Service Zone.

The Concession Service Zone shall be defined as the geographical scope of the program, which is deemed to be City-wide, and shall include all the Concession Areas (as defined below and in Exhibit 2.2) within the city limits of Miami Beach.

### 2.2 Concession Area (s).

The Concession Areas are the actual physical site locations for the program rental kiosks, as delineated on the Site Plan and Site List, which plan/lists shall be approved by the City Manager or his designee, in writing, and attached and incorporated as Exhibit 2.2 to this Agreement, no later than thirty (30) days prior to the Operational Rollout date. In selecting the Concession Areas for this Agreement, the parties shall give consideration to minimizing the impact upon the available number of public parking areas/spaces in the City.

2.2.1 In the event that a Concession Area(s) indicated on the approved Site Plan and Site List is subsequently found to be unsuitable for a kiosk location, Concessionaire and the City shall use reasonable efforts in mutually cooperating to find a replacement Concession Area, within a distance equal to one (1) city block, within thirty (30) days, and the approved Site Plan and Site List (in Exhibit 2.2) shall be amended accordingly. The same procedure shall be followed for the addition of new Concession Areas.

### 2.2.2 Underutilized Concession Area (s).

The City Manager may deem a Concession Area an "Underutilized" Concession Area upon written request by Concessionaire to the City Manager and upon Concessionaire presenting usage data for that Concession Area which indicates that the quantity of daily rentals or member uses originating from or returning to that Concession Area falls 50% below the Average Program Usage (as defined below); or as may otherwise be reasonably demonstrated by Concessionaire to the satisfaction of the City Manager. The "Average Program Usage" ("APU") shall be defined as the average number of bicycle trips/uses per day per kiosk operating in the program during a given calendar month. In the event the City Manager determines that a Concession Area is an Underutilized Concession Area, the City shall use reasonable efforts to cooperate with Concessionaire to transfer to or

create a new Concession Area, and shall amend the Site Plan and Site List (Exhibit 2.2) accordingly.

2.2.3 High-Risk Concession Area (s).

The City Manager may deem a Concession Area a "High-Risk" Concession Area, upon written request by Concessionaire to the City Manager, when its incidence of theft and/or vandalism is 50% higher than the Average Theft-Vandalism Rate; or as may otherwise be reasonably demonstrated by Concessionaire to the City Manager. The "Average Theft-Vandalism Rate" ("ATVR") shall be defined as the average number of acts of theft or vandalism per kiosk operating in the program within a given calendar month. The Concessionaire shall present usage data for the Concession Area in question which indicates that the rate of theft and/or vandalism is 50% higher than the Average Theft/Vandalism. In the event that the City Manager determines that a Concession Area is a High-Risk Concession Area, the City shall use reasonable efforts to cooperate with Concessionaire to transfer to or create a new Concession Area and shall amend the Site Plan and Site List (Exhibit 2.2) accordingly.

SECTION 3. USE(S).

The Concessionaire is hereby authorized to conduct the following kind(s) of program related businesses and provide the following kind(s) of program related services within the Concession Area(s), all at its sole cost and expense:

3.1 Bicycle Rental Services

Concessionaire shall provide bicycle rentals at automated, self-service kiosks in the Concession Areas, on a short-term and subscription basis. The City herein approves the: (i.) types of bicycles, as set forth in Exhibit 3.1, attached hereto; and (ii.) prices for rental and/or subscriptions for same, as set forth in Exhibit 3.2.1, attached hereto. Any amendments to Exhibits 3.1 and/or 3.2.1, whether as to type of bicycles to be rented, or as to changes in prices, must be approved in writing by the City Manager or his designee prior to such changes being implemented within the Concession Area(s), and the respective exhibit(s) will be amended accordingly.

The Concessionaire agrees to maintain an adequate supply of bicycles necessary to accommodate demand. Bicycle rental and subscription services shall be offered daily to patrons at all times during the Concession Area(s) hours of operation, as set forth in Section 9 hereof.

Concessionaire and/or the City may desire to add new technologies or equipment which may be developed in the future and are not contemplated under the Agreement.

In the event Concessionaire determines new equipment or technology should be used in the program, Concessionaire shall make a request, in writing, to the City Manager which outlines the proposed new equipment or

technologies and the advantages resulting from their implementation. The City Manager shall use reasonable efforts to approve or deny such request within thirty (30) days. In the event such a request is denied, the City Manager shall provide a detailed explanation stating why such changes to the program equipment or technology should not be made.

Concessionaire shall integrate any approved new equipment and/or technology at Concessionaire's sole cost and responsibility and at no cost to the City.

- 3.1.1 Intentionally Omitted.
- 3.1.2 All respective equipment within an individual Concession Area including, without limitation, the rental kiosks, bicycle racks, and bicycles (all of which may be hereinafter referred to collectively as the Equipment) shall be placed substantially in accordance with the approved Site Plan and Site List in Exhibit 2.2. Concessionaire shall not materially deviate from the approved Site Plan and Site List without the prior written consent of the City Manager or his designee.
- 3.1.3 It is the City's intent, and Concessionaire hereby agrees and acknowledges, to develop and promote a world class bicycle rental and sharing program that is comparable to those found at other world class communities similar to the City of Miami Beach. The condition and quality of Concessionaire's Equipment shall at all times adhere to the highest responsible ongoing maintenance standards, in a manner that is consistent with the aforesaid standards.

Concessionaire shall maintain its bicycles in good working order and repair and useable condition. At a minimum, this shall require the following: chain in good working order and free of rust; all moving components lubed; bicycle frame and fork structurally sound and in a clean condition; lights and reflectors functioning as designed; pedals in functional order; brakes functioning properly; handlebars properly attached and functional; tires inflated and free of excessive wear; wheels/spokes functional and free of excessive wear; seat in proper working order; all bolts and nuts properly secured; and all RFP-required accessories present and functioning as designed.

Concessionaire shall maintain the rental kiosks and bicycle racks in the Concession Areas in a good, clean working order and repair, including without limitation, keeping them free of graffiti.

In the event that a kiosk or rack is damaged for any reason, Concessionaire shall, at a minimum, commence repairs within forty-eight (48) hours, and, in any event, complete repairs or (if irreparable) replace the damaged kiosk or rack so that same is fully operational, no later than ten (10) days from the date Concessionaire first becomes aware (or should be aware) of the damage.

In the event that a bicycle is damaged for any reason, Concessionaire shall, at a minimum, commence repairs within forty-eight (48) hours and, in any event, complete repairs or (if irreparable) replace the damaged bicycle(s) within ten (10) days from the first date of removal (at which time the fully repaired bicycle or a replacement bicycle shall be put back into service).

Following the Effective Date, the City may, at its option, request that Concessionaire provide it with a full inventory of all program Equipment, including types and numbers (per item); dates of lease and/or purchase; and initial condition (established as of the date of inventory). Thereafter, City and Concessionaire may jointly prepare a plan and schedule for the ongoing replacement and/or updating of Equipment throughout the Term of this Agreement.

Many small/light maintenance items may be done on-site by Concessionaire and/or its subcontractors to eliminate or minimize unit downtime, while moderate to heavy maintenance may require Equipment to be removed from circulation and serviced at Concessionaire's repair center.

The quality of Equipment offered in the program will be first-rate and comparable to similar bike sharing programs in world-class communities (similar to the City of Miami Beach).

3.2 Intentionally Omitted.

3.3 Rental Kiosks and Bicycle Racks

Concessionaire shall erect, install, operate, and maintain, at its sole cost and expense, and at no cost to the City, all program rental kiosks and bicycle racks within the Concession Areas contemplated in Exhibit 2.2.

Concessionaire shall not erect, install, operate, and maintain additional kiosks and bicycle racks (unless Concessionaire is undertaking the repair or replacement of an existing kiosk or bicycle rack in an approved Concession Area), nor identify additional or alternate locations for same (other than as identified in Exhibit 2.2), without the prior written approval of the City Manager or his designee.

Concessionaire shall provide, at its sole cost and expense, any and all design services including, but not limited to, architectural and engineering services, as reasonably required for the design of the kiosks and bicycle racks. This shall include, without limitation, the following (as may be required by the City): preparation of schematic design documents consisting of drawings, site plans, elevations, samples as required to show the scale and relationship of the components and the design concept as a whole; and, based upon the schematic design documents, as approved by the City,

design development documents which may consist of, but not be limited to, drawings, outline specifications and other documents necessary to fix and describe the size and character of the kiosks and bicycle racks in terms of architectural, structural (if any), and electrical (if any) systems, construction finish materials, and such other elements as the City may deem reasonably necessary and appropriate.

With regard to the design of the kiosks and bicycle racks, the Concessionaire may be required to participate in a number of public presentations, workshops, community meetings, etc., as required for review and approval from regulatory bodies, and as may otherwise be deemed necessary by the City Manager, in his reasonable discretion, for community and public involvement. This shall include, without limitation, meeting with the staff of the City's Planning Department to determine whether the kiosks and bicycle racks will require Design Review and Historic Preservation Board approvals. If so required, Concessionaire shall be responsible for securing all final, non-appealable approvals from any and all such regulatory boards, at Concessionaire's sole cost and expense; provided, however, that the City (as the owner of the land for the Concession Areas) shall reasonably cooperate with Concessionaire in assisting with the timely submittal of any owner's affidavits (and/or such other documents that may be required by the City, as owner of the land).

The Concessionaire herein warrants and represents to the City that any architects utilized by Concessionaire shall be duly licensed and admitted to practice architecture in the State of Florida pursuant to Chapter 481, Florida Statutes, and additionally possess the requisite occupational licenses from the City and the County. Any and all engineers required herein shall also be duly licensed and certified by the State of Florida to engage in the practice of engineering in Florida.

The Concessionaire shall, at its sole cost and expense, fabricate, construct, and install (or cause to be fabricated, constructed, and installed) the kiosks and bicycle racks, based on the approved design (and subject to the conditions, if any, or any regulatory board orders). Concessionaire shall be responsible for preparation of any and all plans and specifications for same, and shall be responsible for obtaining all required governmental approvals and permits prior to fabrication/construction/installation.

In the event any notice or claim of lien shall be asserted against the interest of the City on account of or arising from any work done by or for Concessionaire, or any person claiming by, through or under Concessionaire, or for improvements or work, the cost of which is the responsibility of Concessionaire, Concessionaire agrees to have such notice or claim of lien cancelled and discharged within fifteen (15) days after notice to Concessionaire by City. In the event Concessionaire fails to do so, City may terminate this Agreement for cause without liability to City.

City shall not be liable for any claims, losses or damages suffered by third

parties arising from Concessionaire's or its officers, agents, employees or contractors; fabrication, construction, and installation of the kiosks and bicycle racks, unless caused by City's gross negligence or willful misconduct. In addition to the preceding sentence, Concessionaire shall maintain, or require that its contractor(s) maintain, worker's compensation insurance in at least the minimum amounts required by Florida law, and shall provide to City a certificate evidencing such coverage.

### 3.3.1 Project Schedule / Project Implementation Launch

Concessionaire shall implement the program in two (2) phases:

#### Phase I:

Shall include the South Beach District and portions of the Middle Beach District, and specifically including the Concession Areas delineated in Exhibit 3.3.1, attached hereto. The Operational Ceiling (as hereinafter defined) shall be 500 bicycles for Phase I.

#### Phase II:

Shall include the remainder of the Middle Beach District and the North Beach District, and specifically including the following Concession Areas delineated in Exhibit 3.3.1, attached hereto. The Operational Ceiling shall be 400 bicycles for Phase II.

Once implemented, Phase I and Phase II shall have a combined program Operational Ceiling of 900 bicycles on a Citywide basis.

Concessionaire shall first commence the program with the setup and implementation of Phase I. Phase I shall be installed and implemented no later than the Operational Rollout date.

Upon Concessionaire notifying the City Manager, in writing, that Phase I is installed, functioning properly, and operating as designed, and acceptance of the same, in writing, by the City Manager or his designee shall provide written notice to Concessionaire that it can proceed with the setup and implementation of Phase II.

The procedure for implementation, set up, and City acceptance of Phase II shall be the same as for Phase I. Phase II will be installed and implemented no later than three (3) months from the Operational Rollout date.

For purposes of the completion dates above, neither Phase I nor Phase II shall be deemed "installed and implemented" unless it has been accepted by the City Manager, in writing, on or prior to such date.

#### 3.3.1.1 Project Schedule

Within thirty (30) days from the Commencement Date,



Concessionaire and City shall mutually agree upon a detailed schedule for the fabrication, construction, and installation of the kiosks and bicycle racks, specifying the design and permitting phases; fabrication time; commencement and completion of construction; commencement and completion of installation; and implementation and set-up date (up to the Operational Rollout date); and including, without limitation, specific milestones; timelines, etc. Said schedule, when completed, shall be attached and incorporated as Exhibit 3.3.1.1 to this Agreement (the Project Schedule).

The Project Schedule, or specific dates thereon, may be extended by the City Manager, in writing, at his sole discretion, upon written request from the Concessionaire, which notice shall state the reason for the request and the anticipated period of time requested.

3.3.1.2 Intentionally Omitted.

3.4 Operational Ceiling for Program

3.4.1 “Operational Ceiling” shall be defined as the maximum number of bicycles permitted to be operating and available to the public at any time.

3.4.2 The Operational Ceiling shall be 500 bicycles for Phase I, and 400 bicycles for Phase II, for a total of 900 bicycles combined upon the implementation of both phases City-wide.

3.4.3 Intentionally Omitted.

3.4.4 Intentionally Omitted.

3.4.5 The City Manager or his designee may authorize an increase in the Operational Ceiling on a temporary basis for special events or conventions, specifying the number of additional bicycles permitted to be in operation and the dates for which the increase applies to. Such increases shall be authorized in writing by the City Manager or his designee prior to allowing any additional bicycles.

3.4.7 Intentionally Omitted.

3.5 Hurricane Evacuation Plan.

Concessionaire agrees that any and all Equipment not permanently affixed, must be removed within twelve (12) hours from the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, and stored at a private, off-site storage facility. Prior to the Commencement Date, Concessionaire shall provide the City Manager or his designee with a hurricane preparedness/evacuation plan, which shall include the location and

proof of ownership and/or control by Concessionaire (either through a deed, lease or other document satisfactory to the City Manager or his designee) of the aforesaid off-site storage facility; both of which shall be referenced in Exhibit 3.4, attached hereto. Concessionaire shall begin to restock the fleet into the Concession Areas only upon receiving verbal or written notice to do so from the City Manager or his designee, and said restocking shall be completed within four (4) business days.

3.6 Intentionally Omitted.

SECTION 4. CONCESSION FEES.

4.1 Percentage of Gross Sales (PG):

Commencing with the Operational Rollout date, an amount equal to 12% percent of gross sales (PG), based on Concessionaire's gross sales receipts up to \$2,999,999.99, shall become due and payable by Concessionaire to the City within fifteen (15) days following the end of each calendar month (during each contract year throughout the Term).

Commencing with the Operational Rollout date, an amount equal to 15% PG, based on Concessionaire's gross sales receipts surpassing \$3,000,000, shall become due and payable by Concessionaire to the City within fifteen (15) days following the end of each calendar month (during each contract year throughout the Term).

Commencing with the first contract year following the Operational Rollout date, an amount equal to 25% PG of Concessionaire's gross sales receipts derived solely from Concessionaire's Bicycle Basket Sponsorship Program, shall become due and payable by Concessionaire to the City fifteen (15) days following the end of each calendar month, (during each contract year throughout the Term).

Concessionaire shall be exempt from sharing revenues on the first \$1,000,000 in gross sales receipts generated during the first contract year following the Operational Rollout date, which period of time shall serve as a "grace period." Concessionaire shall commence revenue sharing payments to the City upon collecting gross sales receipts surpassing \$1,000,000 following the Operational Rollout date.

The term "gross sales receipts" is understood to mean "all income retained or accrued as a result of sales activity, derived by the Concessionaire under the privileges granted by this Agreement, including without limitation, Concessionaire's short-term bicycle rentals, bicycle subscription program, and membership sales, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority." Any sales which result in credit card chargebacks where the customer's credit card company refuses or denies payment on transactions shall not be

calculated as a part of any revenues subject to revenue sharing.

4.2 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve (12%) percent per annum, or the maximum interest allowable pursuant to Florida law, whichever is greater, from the due date of payment until such time as payment is actually received by the City.

4.3 Sales and Use Tax.

Any required Florida State Sales and Use Tax shall be paid by Concessionaire directly or added to payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax.

4.4 Intentionally Omitted.

SECTION 5. MAINTENANCE AD EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records (on an accrual basis) related to its operations herein. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or his designee, upon reasonable prior notice, whether verbal or written, and during normal business hours. Such records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. In the event Concessionaire accepts cash as a form of payment, it shall maintain accurate receipt-printing cash registers or the like which will record and show the payment for every sale made or service provided in the Concession Areas; and such other records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Supervisor, to be received no later than thirty (30) days after the close of each month (during each contract year throughout the Term).

SECTION 6. INSPECTION AND AUDIT.

Concessionaire shall maintain its financial records pertaining to its operations herein for a period of three (3) years after the expiration or other termination of this Agreement, and such records shall be open and available to the City Manager or his designee, as deemed necessary by them. Concessionaire shall maintain all such records at its principal office, currently located at 3301 NE 1<sup>st</sup> Ave. LPH-6, Miami, Florida, 33137, or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location in Miami Beach, within ten (10) days' notice (written or verbal) from the City.

The City Manager or his designee shall be entitled to audit Concessionaire's records

pertaining to its operations, as often as he deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement (regardless of whether such termination results from the natural expiration of the Term or for any other reason). The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five (5%) percent or more in Concessionaire's statement of gross receipts for any year or years audited, in which case Concessionaire shall pay to the City, within thirty (30) days of the audit being deemed final by the City, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest. These audits are in addition to periodic audits by the City of Resort Tax collections and payments, which are performed separately. Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

Concessionaire shall submit at the end of each contract year (throughout the Term), an annual statement of gross receipts, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be accompanied by a report from an independent CPA firm.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of each contract year, Concessionaire shall meet with the City Manager or his designee to review Concessionaire's performance under the Agreement for the previous contract year. At the meeting, Concessionaire and City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

## SECTION 7. TAXES, ASSESSMENTS.

7.1 Concessionaire agrees and shall pay before delinquency all taxes (including but not limited to Resort Taxes) and assessments of any kind levied or assessed upon a Concession Area or the Concession Areas, and/or on Concessionaire by reason of this Agreement, or by reason of Concessionaire's business and/or operations within a Concession Area or Areas. Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law. However, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax, if so ordered.

Concessionaire shall also be solely responsible (at its sole cost and expense) for obtaining and maintaining current any applicable licenses or permits, as required for the operations contemplated in this Agreement including, without limitation, any occupational licenses required by law for the proposed uses contemplated in Section 3 and for each Concession Area (if required).

7.2 Procedure If Ad Valorem Taxes Assessed.

If ad valorem taxes are assessed against a Concession Area or the Concession Areas (or any portion thereof) by reason of Concessionaire's business and/or operations thereon, Concessionaire shall be solely responsible for prompt and timely payment of same.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

8.1 Concessionaire's Employees.

8.1.1 Concessionaire shall select, train and employ such number of employees as is necessary or appropriate for Concessionaire to satisfy its responsibilities hereunder. Concessionaire shall be the sole authority to hire, terminate and discipline any and all personnel employed by Concessionaire.

8.1.2 Concessionaire shall designate a competent full-time employee to oversee the day-to-day operations, and who shall act as the contract administrator for the program and serve as Concessionaire's primary point-person with the City. This individual shall have the requisite amount of experience in operating, managing, and maintaining the program and operations contemplated herein. The employee shall be accessible to the City Manager or his designee at all reasonable times during normal business hours to discuss the management, operation and maintenance of the program, and within a reasonable time frame during non-business hours in the event of emergency. Consistent failure by the employee to be accessible shall be reported to Concessionaire's principal(s), and if not rectified, shall be grounds for replacement of the employee.

8.2 Concessionaire's employees and/or contractors shall wear identification badges and uniforms approved by the City Manager or his designee, during all hours of operation when such employee or contractor is acting within the scope of such employment or such contractor relationship. All employees and/or contractors shall observe all the graces of personal grooming. The Concessionaire shall hire people to work in its operation who are neat, clean, well groomed, and who shall comport themselves in a professional and courteous manner. The Concessionaire and any persons hired or otherwise retained by Concessionaire, shall never have been convicted of a felony.

8.3 Concessionaire shall make good faith efforts to hire employees and/or contractors for the program from among unemployed workers in the City of Miami Beach workforce.

SECTION 9. HOURS OF OPERATION.

All Concession Areas and operations thereon shall be open every day of the year, weather or events of force majeure permitting, and shall be open to the public 24 hours per day, 365 days per year.



## SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

The Concessionaire accepts the use of any and all Concession Areas provided in this Agreement **"AS IS," "WHERE IS,"** and **"WITH ALL FAULTS,"** existing of at the Commencement Date.

Concessionaire assumes sole responsibility and expense for maintenance of the Concession Areas and all Equipment thereon.

### 10.1 Improvements.

- 10.1.1 In addition to the specific procedures set forth in Section 3.3 for the design, fabrication, construction, and installation of the kiosks and bicycle racks, Concessionaire shall also be solely responsible (including cost) and shall pay for the design, fabrication, construction, and installation of any and all other improvements to a Concession Area or Areas. Any plans for such improvements shall be submitted to the City Manager or his designee for the City's written approval.

All improvements (including any made pursuant to Section 3.3) intended to be permanent and fixed shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed from the Concession Areas by Concessionaire.

Concessionaire will permit no liens to attach to the Concession Areas arising from, connected with, or related to the design, fabrication, construction, and installation of any improvements. Moreover, any permitted construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all approvals, permits, and or licenses required for the design, construction, and/or installation of improvements shall be the sole cost and responsibility of Concessionaire.

- 10.1.2 Upon termination and/or expiration of this Agreement any and all improvements erected or installed in the Concession Areas (not intended to be permanent or fixed, but subject to the City's election in immediately following sentence) shall be removed by Concessionaire, at its sole cost and expense, in accordance with Subsection 13.7 hereof. Additionally, Concessionaire may also be required to remove any permanent or fixed improvements at the City Manager's sole discretion, upon written request from the City Manager or his designee. Any such improvements shall be promptly removed by Concessionaire, at its sole cost and expense, and Concessionaire

shall restore the Concession Area or Areas to its/their original condition prior to the improvements being made.

10.2 Maintenance/Repair.

The Concessionaire shall maintain, at its sole cost and expense, the Concession Areas and any Equipment thereon (as required to operate the program).

10.2.1 Concessionaire shall be solely responsible for the day to day operation, maintenance and repair of all Concession Areas. Concessionaire shall maintain the Concession Areas and any Equipment thereon in good working order and condition. Concessionaire shall keep all Equipment free of graffiti.

10.2.2 All damage of any kind to a Concession Area and any Equipment thereon shall be the sole obligation of Concessionaire, and shall be repaired, restored or replaced promptly by Concessionaire, at its sole cost and expense, to the reasonable satisfaction of the City Manager or his designee. In the event any Equipment is lost, stolen, or damaged, it shall be promptly replaced or repaired by Concessionaire no later than ten (10) days from the date of loss, theft, or damage.

10.2.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work (or Equipment) and shall be done in good and workmanlike manner.

10.2.4 If Concessionaire fails to make such repairs, restorations and/or replacements to a Concession Area and/or to any particular Equipment thereon, the same may be made by the City, at the City's sole option and discretion, but not its obligation. Concessionaire shall be responsible for any costs associated therewith, and shall reimburse the City within ten (10) days after rendition of a bill or statement.

10.2.5 It shall be Concessionaire's sole obligation to insure that any renovations, repairs and/or improvements made by Concessionaire to the Concession Areas comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

10.3 Orderly Operation.

The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Concession Areas and any Equipment thereon. The Concessionaire shall make available all Equipment within a Concession Area for examination by the City Manager or his authorized representative, upon reasonable verbal and/or written notice from the City.

10.3.1 Concessionaire agrees, also at its sole cost and expense to pay for all

garbage disposal generated by its operations.

10.4

No Dangerous Materials.

The Concessionaire agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida, on or within any of the Concession Areas, or on any City property and/or right of way.

Concessionaire shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Areas as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection 10.5 shall survive the termination or earlier expiration of this Agreement.

10.5

Security.

The Concessionaire shall be responsible, at its sole option, to employ or provide reasonable security measures, as it may deem necessary to protect the Concession Area and any Equipment thereon. Under no circumstances shall the City be responsible for any stolen or damaged Equipment, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's employees, contractors, agents, patrons, guests, invitees, and/or other third parties.

Notwithstanding the preceding paragraph, Concessionaire shall not be obligated to have a duty to provide security services (whether manned or automated) to patrons using the program, as the program is contemplated as an unattended self-service and automated system. Concessionaire shall not employ any recorded video surveillance without the approval of the City Manager or his designee.

City and Concessionaire understand that bicycle theft has been identified as a problem in other bicycle sharing programs. One of the potential causes for theft may be that the locking mechanism may leave inexperienced users of these types of bike sharing programs unsure of whether their bicycle is properly locked. Accordingly, in order to deter theft, Concessionaire shall prominently disclose on each kiosk, in visible, plain, easy to read/understand language and/or symbols, the proper procedure(s) for safely docking and locking a bike into the bike docking station. Similarly, Concessionaire shall utilize a locking system that clearly indicates to users when a bicycle has been fully and properly locked. It is highly recommended that

Concessionaire utilize a mechanism that is fully incorporated into the bicycle design, so that it should be impossible to remove the lock without breaking the bicycle.

Concessionaire shall also place a clearly visible, legible disclaimer on kiosks, and on patron/customer receipts, advising users that program bikes do not come equipped with individual locks and that neither City nor Concessionaire shall be liable or otherwise responsible to users if the bicycle is stolen while in use (including bicycles that are not properly locked at the conclusion of use).

10.6 Intentionally Omitted.

10.7 Inspection.

The Concessionaire agrees that the any Concession Area (including, without limitation, any Equipment thereon) may be inspected at any time by the City Manager or his designee, or by any other municipal, County, State officer, or officers of any other agency(ies) having responsibility and/or jurisdiction for inspections of such operations. The Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operation as a result of inspection by any public agency(ies) or officials, (including, without limitation, by reason of any such public agency or official in enforcing any laws, ordinances, or regulations as a result thereof). Any such interference shall not relieve the Concessionaire from any obligation hereunder.

#### SECTION 11. INSURANCE.

Concessionaire shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the Term of this Agreement:

- a. Comprehensive General Liability in the minimum amount of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products and contractual liability.
- b. Workers Compensation Insurance shall be required in accordance with the laws of the State of Florida.
- c. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his

designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten (10%) percent of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire fails to repay City's expenditures within fifteen (15) days of demand such failure shall be deemed an event of default, and the total sum owed shall accrue interest at the rate of twelve (12%) percent until paid.

## SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officials, directors, employees, contractors, agents, and servants from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, its officials, directors, employees, contractors, agents, and servants with regard to the program and operations contemplated in Agreement.
- 12.2 In addition, in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officials, directors, employees, contractors, agents, and servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officials, directors, employees, contractors, agents, and servants not included in the paragraph in the subsection above and for which the City, its officials, directors, employees, contractors, agents, and servants are alleged to be liable.
- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability that arises as a result of the willful misconduct or gross negligence of the City.
- 12.4 Subrogation.  
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective



officers, employees, contractors, agents, and servants.

12.5 Force Majeure.

Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:

- a. Any act or chain of related acts resulting in Equipment destruction, vandalism or theft which renders at least fifty (50%) percent of the Concessionaire Areas in the Concession Service Zone unusable at any one point in time and which is not caused by negligence of Concessionaire;
- b. earthquake; hurricane; flood; act of God; direct act of terrorism; or civil commotion occurring which renders at least fifty (50%) percent of the Concession Areas in the Concession Service Zone unusable.
- c. any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war which renders at least fifty (50%) percent of the Concession Areas in the Concession Service Zone unusable.

12.6 Labor Dispute.

In the event of a labor dispute which results in a strike, picket or boycott affecting at least fifty (50%) percent of the Concession Areas within the Concession Service Zone, Concessionaire shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by Concessionaire of applicable collective bargaining Agreements (and there has been a final determination of such fact which is not cured by Concessionaire within thirty (30) days).

12.7 Waiver of Loss from Hazards.

The Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from any Force Majeure contemplated in Subsection 12.5 and Labor Dispute in Subsection 12.6 above, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

12.8 Intentionally Omitted.

SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4 and Section 14.

13.1

Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2

Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of Fifty (\$50.00) Dollars per day for such late payment, in addition to interest at the highest rate allowable by law. If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues seven (7) days after written notice thereof, then the City may, without further demand or notice, terminate this Concession Agreement without being prejudiced as to any remedies which may be available to it for breach of contract; and may begin procedures to collect the Performance Bond required in Section 14 herein.

13.3

Non-Monetary Default.

In the event that Concessionaire or the City fails to reasonably perform or observe the non-monetary covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City Manager with written notice of same.

13.4

City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after expiration of the cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are

necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Area(s) and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, the Performance Bond in Section 14 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5 If an event of default by the City shall occur, the Concessionaire may, after expiration of the cure periods, as provided above, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area(s) to City pursuant to the provisions of Subsection 13.7.

13.6 Intentionally Omitted.

13.7 Surrender of Concession Areas / Removal by Concessionaire of Equipment/Improvements.

Upon expiration, or earlier termination of this Agreement, Concessionaire shall surrender the Concession Areas in the same condition as the Concession Areas were prior to the Commencement Date, reasonable wear and tear excepted. Concessionaire shall, at its sole expense and at no charge to the City, remove all Equipment from the Areas, (as well as any other permanent or fixed improvements if so requested by the City Manager or his designee) no later than sixty (60) days after the conclusion of the Term, (or from the date of other termination of this Agreement) unless a longer time period is agreed to, in writing, by the City Manager).

Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy

of any Concession Areas after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day per Area as liquidated damages for such trespass and holding over.

13.8 Intentionally Omitted.

13.9 Substitute Performance

In the event that the Concessionaire fails to properly perform the removal of any Equipment and restoration of the Concession Areas to their original condition in accordance with the terms of the Agreement, then the City shall have the right to undertake and/or purchase, as the City Manager deems appropriate, any such supplies, materials, services, etc., covered herein and to charge Concessionaire for all actual costs thereby incurred by the City. Concessionaire shall be responsible for paying all of said costs.

SECTION 14. PERFORMANCE BOND OR ALTERNATE SECURITY.

Concessionaire shall, on or before the Operational Rollout date, furnish to the City Manager or his designee a Performance Bond in the penal sum stated below for the payment of which Concessionaire shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of One Hundred Thousand (\$100,000.00) Dollars, shall be provided by the Concessionaire in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or his designee, in his sole and reasonable discretion. The form of the Performance Bond or alternate security shall be approved by the City's Chief Financial Officer. In the event that a Certificate of Deposit is approved, it shall be a One Hundred Thousand (\$100,000.00) Dollar one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Concessionaire shall be so required to maintain said Performance Bond or alternate security in full force and effect throughout the Term of this Agreement. Concessionaire shall have an affirmative duty to notify the City Manager or his designee, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Concessionaire, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

SECTION 15. ASSIGNMENT.

Concessionaire shall not assign all or any portion of its costs or obligations under this Agreement without the prior written consent of the City Manager, which shall not be unreasonably withheld. Concessionaire shall notify the City Manager of any proposed assignment, in writing, at least sixty (60) days prior to the proposed effective date of such assignment. In the event that any such assignment is approved by the City Manager, the assignee shall agree to be bound by all the covenants of this Agreement required of Concessionaire.

## SECTION 16. SPONSORSHIPS.

- 16.1 The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark property, brand, logo and/or reputation, shall belong exclusively to the City. Concessionaire shall be specifically prohibited from entering into, or otherwise creating any, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation. The prohibition on Concessionaire entering into such sponsorship and/or endorsement Agreements utilizing the City's property, trademark, logo, brand and reputation, as defined above in this Section, shall not be interpreted to include nor prohibit the Concessionaire's right to sell, rent, or use, exclusively, any particular brand or product that would be permitted for use, sale, or rental pursuant to this Agreement. Moreover, the City will not limit Concessionaire's ability to negotiate a reduced rate for purchase, from any vendor, whose product(s) Concessionaire uses or offers for sale or rent pursuant to this Agreement.

It is further acknowledged that the name, likeness, equipment, concepts, logos, designs and other intellectual property rights of Deco Bike, LLC. shall remain in the exclusive possession and control of Concessionaire at all times; provided, however, that Concessionaire hereby grants City an irrevocable license to use any DecoBike, LLC trademark, brand, and/or logo, for purposes of the City's promotion of the program and including, without limitation, the right to use such trademarks, brand, and/or logo in all media (for such public marketing purposes) whether now existing or as may exist in the future.

### 16.2 Advertisements

The City acknowledges that Concessionaire may display limited commercial advertising material through the sale by Concessionaire of sponsorship placements upon bicycle baskets in the program (the Bicycle Basket Sponsorship Program). The Bicycle Basket Sponsorship Program is described in, and shall be subject to, the requirements in Exhibit 16.2, attached hereto.

Any Advertisements displayed on bicycles shall comply with all Federal, State, Miami-Dade County, and City of Miami Beach laws, rules, regulations, ordinances, and codes, including, but not limited to, those pertaining to and/or related to billboards, outdoor advertisements, and signage, as applicable. In addition, the construction, materials, content and appearance of any Advertisements to be installed on the bicycles must be allowable and, if allowed, shall comply with such other and future requirements as Federal, State, County, and City authorities may from time to time impose, including, but not limited to, public safety, zoning, building, and aesthetic requirements.



Accordingly, any unauthorized Advertisements on bicycles (or on other Equipment, or within any Concession Area), or any Advertisements failing to comply with any applicable Federal, State, County, and City provisions shall and must be removed by Concessionaire, at its sole cost and expense, within forty-eight (48) hours from receipt of written notice from the City Manager or his designee. In the event such Advertisements are not removed within said time period, the City may, at its sole option and discretion, terminate this Agreement for cause, without further notice to Concessionaire, and without liability to City.

Concessionaire herein acknowledges that the City reserves the right to impose such additional requirements for the installation and display of the Advertisements, at any time, at its sole option and discretion; provided that the City Manager or his designee shall provide Concessionaire with written notice of such additional requirements and such requirements do not frustrate the purpose and intent of this Agreement.

The permissible content of Advertisements shall not include firearms, alcohol or tobacco products, or be of a sexually offensive nature.

#### SECTION 17. NO IMPROPER USE.

The Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, any Concession Areas or improvements on equipment thereon, for any illegal, improper, immoral or offensive purpose, or for any other purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officials, employees, contractors, and agents from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Concessionaire, or any official, director, agent, contractor, or servant regarding the concession. In the event of any violation by the Concessionaire, or if the City or its authorized representative shall deem any conduct on the part of the Concessionaire to be objectionable or improper, the City shall have the right to suspend concession operation should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or his designee within twenty-four (24) hours following written notice of the nature and extent of such violation, conduct, or practice. Such suspension to continue until the violation is cured to the satisfaction from the City Manager or his designee.

#### SECTION 18. PRICE SCHEDULES.

Concessionaire agrees that prices charged for bicycle rentals and membership subscriptions will be consistent with the price schedule(s) (herein submitted by the Concessionaire and approved by the City), in Exhibit 3.2.1 hereto. All subsequent price approvals and changes must be approved in writing by the City Manager or his designee.

The City shall have the final right of approval for all such price changes, but said approval shall not be arbitrarily or unreasonably exercised.

#### SECTION 19. NOTICES.

All notices from the City to the Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to the Concessionaire at the following address:

Deco Bike, LLC.  
3301 NE 1<sup>st</sup> Avenue, Suite LPH-6  
Miami, FL 33137  
Attn: Ricardo Pierdant

With copies to:

Ozzie Schindler, Esq.  
Greenberg & Traurig, LLP.  
1221 Brickell Avenue  
Miami, FL 33131

All notices from the Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

With copy to:

Parking Department  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attn: Saul Frances, Parking Director

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.

#### SECTION 20. LAWS.

20.1

##### Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited

to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

20.2        Governing Law.  
Intentionally Omitted.

20.3        Equal Employment Opportunity.  
Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability (as defined in Title I of ADA). Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

20.4        No Discrimination.  
The Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in the operations referred to in this Agreement; and, further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Areas. All operations and services offered in the Concession Areas shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation, and security of the Areas and improvements and equipment thereon.

20.4.1       Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", Concessionaire, by executing this Agreement, certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

20.4.2       Equal Benefits Requirements:  
Concessionaire by its execution of this Agreement, further acknowledges that it is required to comply with all applicable provisions of City Ordinance No. 2005-3494, as same may be amended from time to time, which requires certain Concessionaire to provide equal benefits for domestic partners (the Ordinance). This Ordinance applies to all employees of Concessionaire who work within the City limits of the City of Miami Beach, Florida, and the Concessionaire's employees located in the United States, but outside of the City of Miami Beach limits, which are directly performing work on a contract within the City of Miami Beach.

**CONCESSIONAIRE, BY ITS EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE PROVISIONS OF THE ORDINANCE, AS SAME MAY BE AMENDED FROM TIME TO TIME.**

## SECTION 21. MISCELLANEOUS.

### 21.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

### 21.2 Modifications.

This Agreement cannot be changed or modified except by Agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.

### 21.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and Agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

### 21.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

### 21.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### 21.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

### 21.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall.

### 21.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours

of operation, have the right to enter into and upon any and all parts of the Concession Area(s) for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

21.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that it is a concessionaire and not a lessee; that the Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.

21.10 Signage.

Concessionaire shall provide, at its sole cost and expense, any signs utilized for its program. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire shall be subject to the prior approval of the City as to size, shape and placement of same, and no such approvals will be unreasonably withheld.

City shall be responsible to provide, at its sole cost and expense, and as (or if) it deems necessary in its sole and reasonable judgment and discretion, any traffic, regulatory or public safety signs, whether related directly or indirectly to the program.

21.11 Procedure for Approvals and/or Consents.

In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or his designee by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or his designee is allowed or required in this Agreement, Concessionaire shall send to the City Manager a written request for approval or consent (the "Approval Request"). The City Manager or his designee shall use reasonable efforts to provide written notice to Concessionaire approving of consent to, or disapproving of the request, within thirty (30) days from the date of Approval Request (or within such other time period as may be expressly set forth for a particular approval or consent under this Agreement). However, the City Manager or his designee's failure to consider such request within this time provided shall not be deemed a waiver, nor shall Concessionaire assume that the request is automatically approved and consented to. The City Manager or his designee shall not unreasonably withhold such approval or consent. This Subsection shall not apply to approvals required herein by the Mayor and City Commission.

21.12 Intentionally Omitted.

21.13 No Waiver.

- 21.13.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 21.13.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.
- 21.13.3 The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by the City.
- 21.14 No Third Party Beneficiary.  
Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subconcessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.
- 21.15 Proposal Documents  
"Proposal Documents" shall mean Request For Proposals No. 44-07/08 For a Self-Service Bicycle Rental Program, issued by the City in contemplation of this Agreement, together with all amendments thereto, if any, and the Consultant's proposal in response thereto (Proposal), which is incorporated by reference in this Agreement and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, this Agreement shall prevail.

## SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the operation and management of the Concession Area(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a One Hundred Thousand (\$100,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of One Hundred Thousand (\$100,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars,

for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

#### SECTION 23. VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA(S).**

#### SECTION 24 CITY'S CONTRIBUTION TO PROGRAM.

The City agrees to provide Concessionaire with the following forms of assistance for the program:

1. Banner and link for program on City's website;
2. Monthly feature in Miami Beach Magazine (PSA's, Editorials and/or other placements) during the first contract year following the Operational Rollout date. (Concessionaire shall provide camera-ready artwork);
3. Quarterly e-mail blasts to all City employees and others on City e-mail lists during first contract year following Operational Rollout date;
4. Participation in the Federal Bicycle Commuter Act Employee Reimbursement Program, if possible;
5. Provide concrete or other appropriate surface pads or pavers for Concession Areas that are not already paved; remove grass and debris from Concession Areas prior to Concessionaire's installation of Equipment, and upon written notice by Concessionaire (per Area);
6. In the event of a hurricane, provide a "loading area" for Concessionaire to use where Concessionaire can temporarily park trailers or shipping containers to load bicycles (and/or as a point for pick up/drop off of same by Concessionaire);
7. Provide an area sufficient for Concessionaire to use in the event of a hurricane where Concessionaire can temporarily park trailers or shipping containers to store bicycles and/or as a point for pick up/drop off of same by Concessionaire.
8. Regular PSA features on Channel 77 for first six (6) months following Operational Rollout date, to announce program implementation and, thereafter, on at least a quarterly basis throughout Term.



**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their Agreement.

**Attest:**

**CITY OF MIAMI BEACH, FLORIDA**

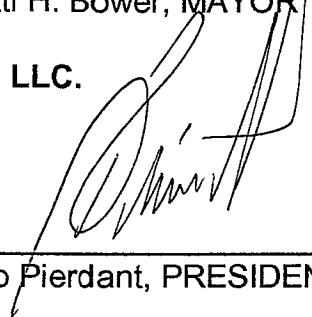
  
\_\_\_\_\_  
Robert Parcher, CITY CLERK

  
\_\_\_\_\_  
Matti H. Bower, MAYOR

**Attest:**

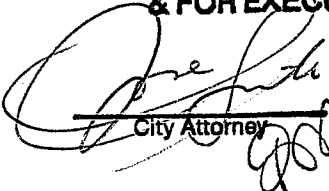
**DECO BIKE, LLC.**

\_\_\_\_\_  
Signature/Secretary

  
\_\_\_\_\_  
Ricardo Pierdant, PRESIDENT

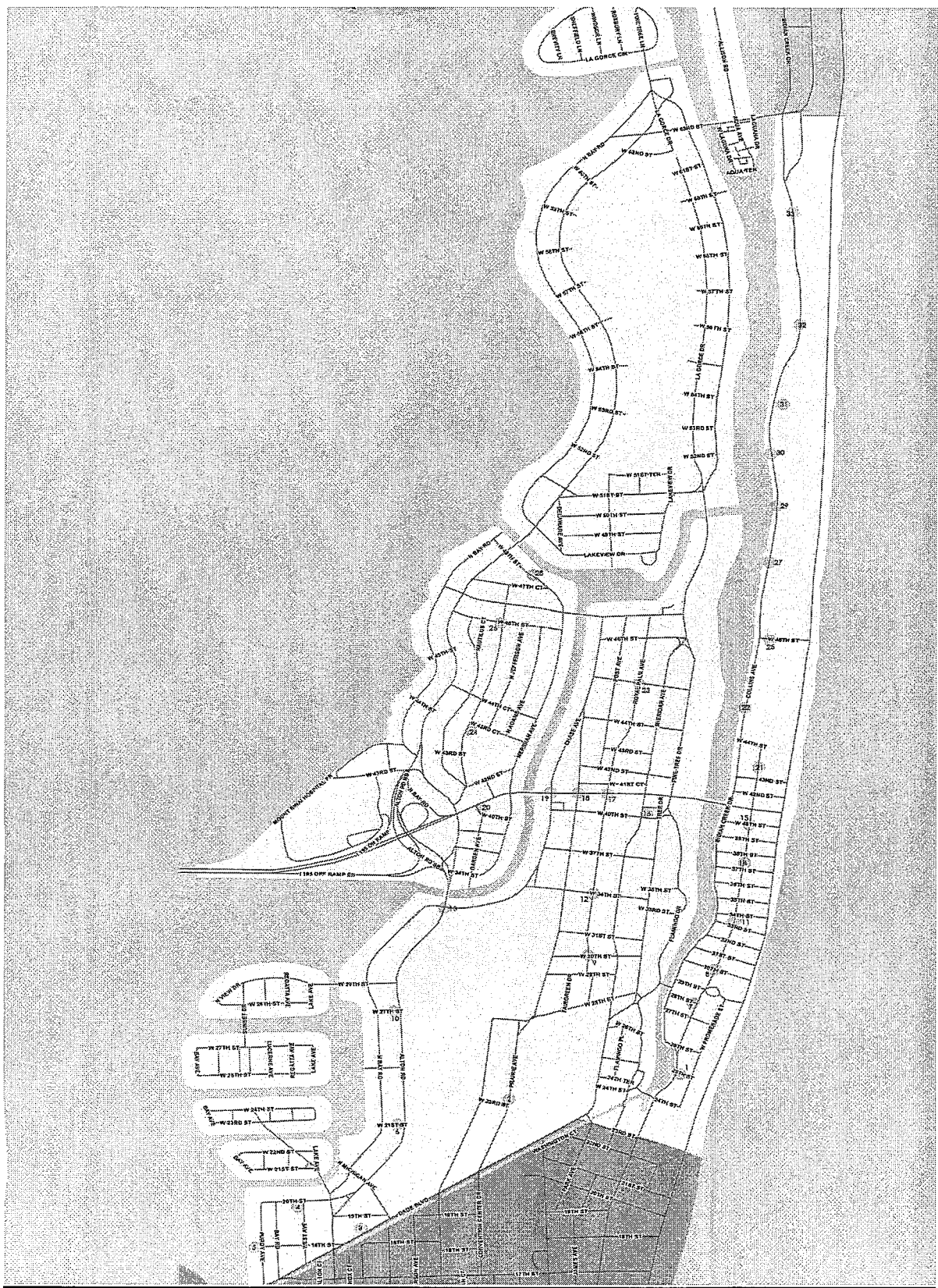
\_\_\_\_\_  
Print Name

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

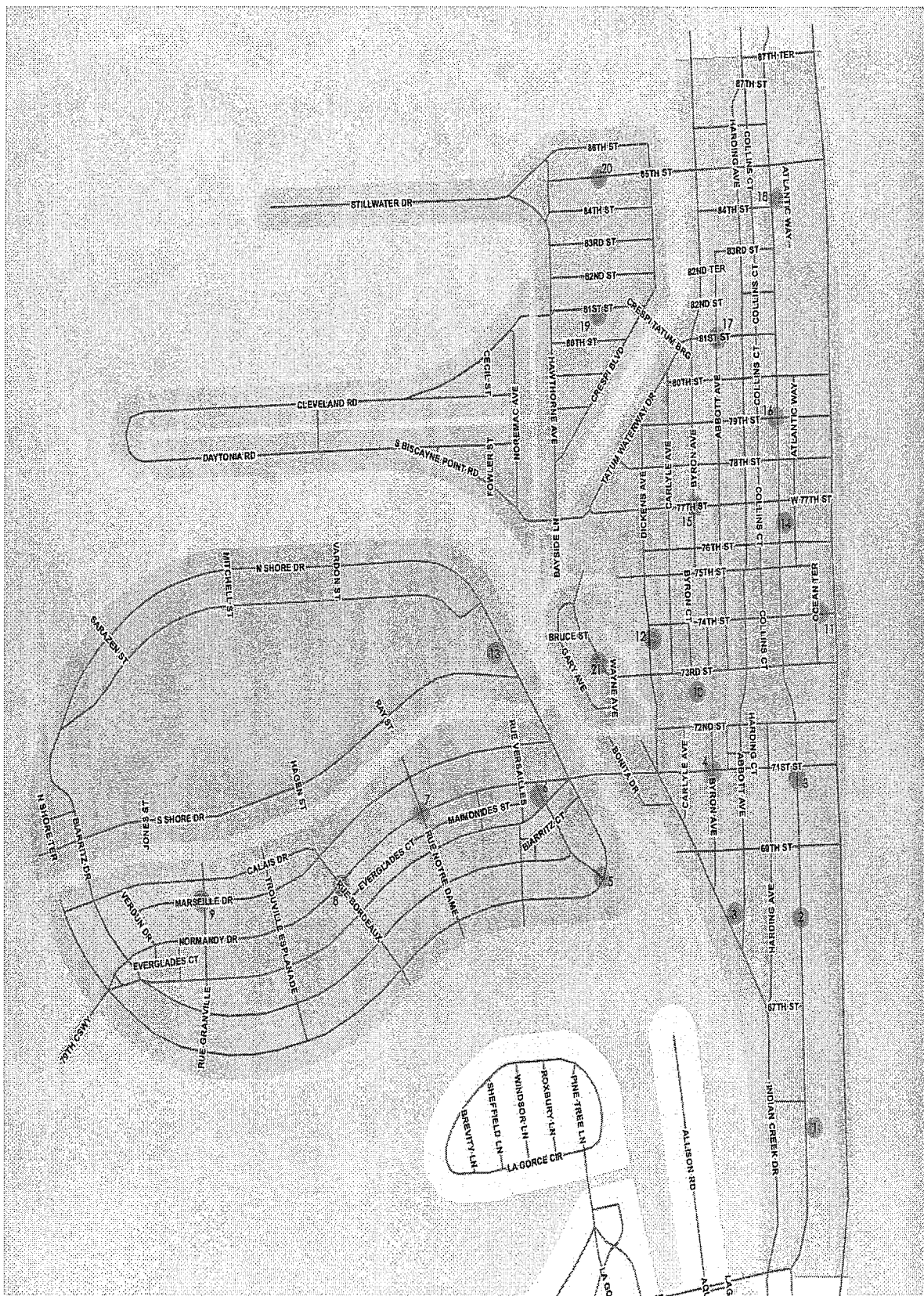
  
\_\_\_\_\_  
City Attorney

8/17/09  
\_\_\_\_\_  
Date

[illegible]







**Exhibit 2.2 (b)**  
**Concession Area Site List**

South Beach		Closest Crossroads	
Station #:	Phase:	Street:	Avenue:
1	1	South Point Drive	Washington
2	1	1st Street	Ocean Drive
3	1	1st Street	Washington
4	1	1st Street	Alton Road
5	1	2nd Street	Jefferson Ave.
6	1	b/t 1st & 2nd	Ocean Drive
7	1	3rd Street	Washington
8	1	5th Street	Euclid Ave
9	1	4th Street	Jefferson Ave.
10	1	4th Street	Alton Road
11	1	5th Street	Ocean Drive
12	1	6th Street	Washington
13	1	6th Street	Michigan
14	1	7th Street	Ocean Drive
15	1	7th Street	Washington
16	1	7th Street	Meridian
17	1	7th Street	West Ave
18	1	9th Street	Ocean Drive
19	1	9th Street	Washington
20	1	9th Street	Euclid Ave
21	1	9th Street	Michigan
22	1	10th Street	Alton Road
23	1	11th Street	Ocean Drive
24	1	11th Street	Washington
25	1	11th Street	Euclid Ave
26	1	11th Street	Jefferson Ave.
27	1	11th Street	Lennox Ave
28	1	13th Street	Washington
29	1	13th Street	Pennsylvania Ave
30	1	13th Street	Michigan
31	1	Espanola	Ocean Drive
32	1	Espanola	Washington
33	1	Espanola	Euclid Ave
34	1	12th Street	West Ave
35	1	14th Street	West Ave
36	2	Venetian Way	Island Ave
37	1	16th Street	Pennsylvania Ave
38	1	16th Street	Michigan Ave.
39	1	15th Street	Bay Road
40	1	16th Street	Bay Road
41	1	Lincoln Road	Collins Ave.

South Beach		Closest Crossroads	
Station #:	Phase:	Street:	Avenue:
42	1	Lincoln Road	Drexel Ave.
43	1	Lincoln Road	Pennsylvania Ave
44	1	Lincoln Road	Euclid Ave
45	1	Lincoln Road	Meridian
46	1	Lincoln Road	Jefferson Ave.
47	1	Lincoln Road	Michigan Ave.
48	1	Lincoln Road	Alton Court
49	1	17th Street	Beachwalk
50	1	17th Street	Convention Center Drive
51	1	16th Street	Collins Ave.
52	1	18th Street	Collins Ave.
53	1	19th Street	Washington
54	1	21st Street	Collins Ave.
55	1	23rd Street	Collins Ave.

Middle Beach		Closest Crossroads	
Station #:	Phase:	Street:	Avenue:
1	1	25th Street	Collins Ave.
2		REMOVED	
3	1	Dade Boulevard	N. Michigan Ave.
4	1	20th Street	West Ave.
5	1	18th Street	Purdy Ave.
6	1	21st Street	Alton Road
7	1	28th Street	Collins Ave.
8	1	30th Street	Collins Ave.
9	2	West 30th Street	Royal Palm Ave.
10	2	West 27th Street	Alton Road
11	2	34th Street	Collins Ave.
12	2	West 24th Street	Royal Palm Ave.
13	2	North Bay Road	Alton Road
14	2	37th Street	Collins Ave.
15	2	40th Street	Collins Ave.
16	2	West 40th Street	Sheridan Ave.
17	2	41st Street	Royal Palm Ave.
18	2	41st Street	Prairie Ave.
19	2	41st Street	Chase Ave.
20	2	41st Street	Garden Ave.
21	2	43rd Street	Collins Ave.
22	2	45th Street	Collins Ave.
23	2	W. 45th Street	Royal Palm Ave.
24	2	W. 43rd Court	N. Michigan Ave.
25	2	46th Street	Collins Ave.
26	2	W. 46th Street	N. Michigan Ave.
27	2	48th Street	Collins Ave.
28		REMOVED	
29	2	50th Street	Collins Ave.
30	2	52nd Street	Collins Ave.
31	2	54th Street	Collins Ave.
32	2	56th Street	Collins Ave.
33	2	59th Street	Collins Ave.



North Beach		Closest Crossroads	
Station #:	Phase:	Street:	Avenue:
1	2	64th Street	Collins Ave.
2	2	69th Street	Collins Ave.
3	2	71st Street	Collins Ave.
4	2	71st Street	Byron Ave.
5	2	Bay Drive	Rue Vendome
6	2	Normandy Drive	Rue Vendome
7	2	Normandy Drive	Rue Notre Dame
8	2	Normandy Drive	Trouville Esplanade
9	2	Marseille Drive	Rue Granville
10	2	72nd Street	Carlyle Ave.
11	2	74th Street	Ocean Terrace
12	2	74th Street	Dickens Ave.
13	2	Fairway Drive	Northshore Drive
14	2	77th Street	Collins Ave.
15	2	77th Street	Byron Ave.
16	2	79th Street	Collins Ave.
17	2	81st Street	Abbot Avenue
18	2	84th Street	Collins Ave.
19	2	81st Street	Crespi Blvd.
20	2	85th Street	Crespi Blvd.

### Exhibit 3.1

#### Program Equipment: Bicycle Image & Specs

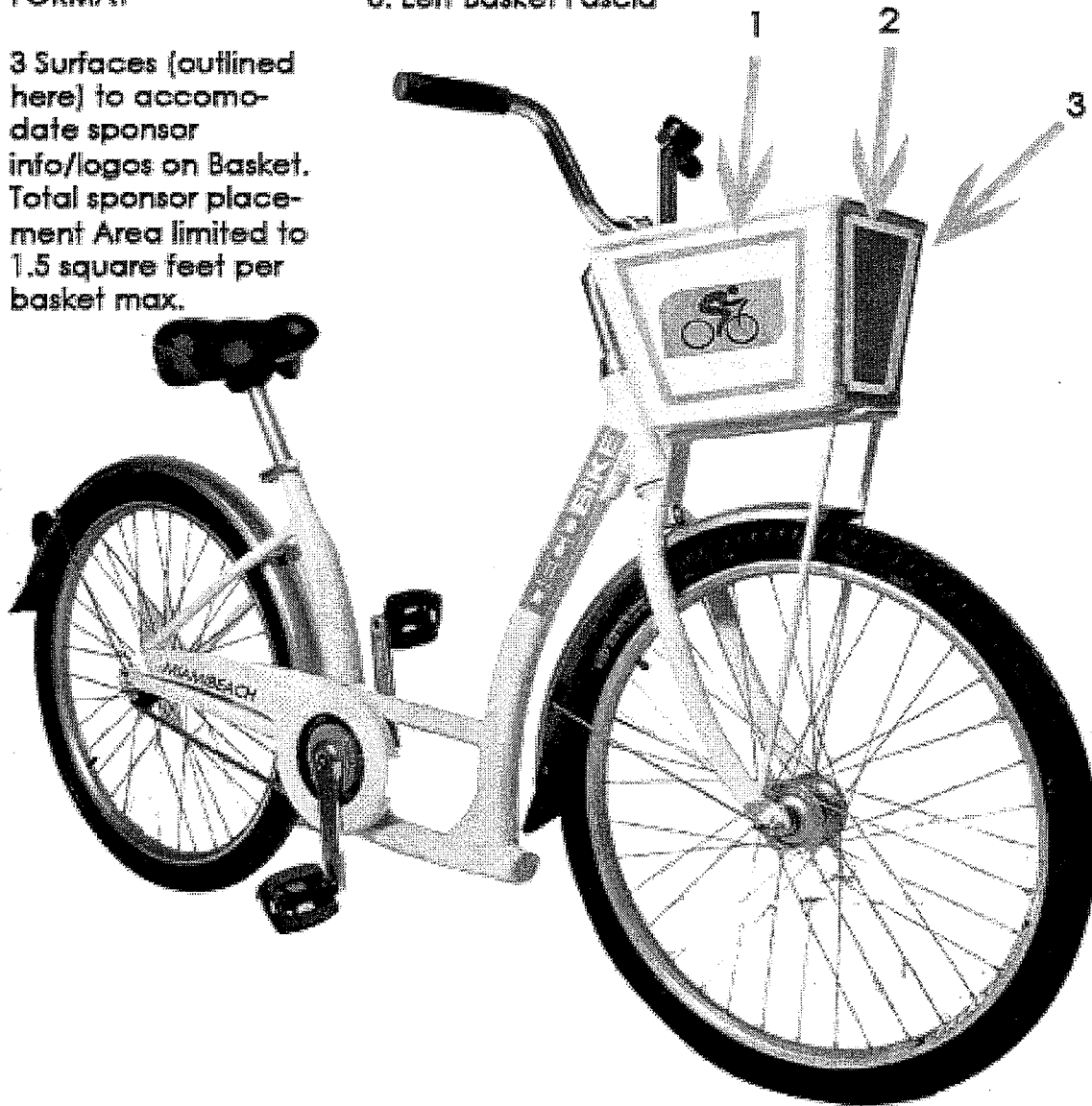
Base Unit/Stock Image Shown, Subject to Modifications.

Will feature all equipment required by the RFP.

#### DECO BIKE BASKET SPONSORSHIP FORMAT

1. Right Basket Fascia
2. Front Basket Fascia
3. Left Basket Fascia

3 Surfaces (outlined here) to accommodate sponsor info/logos on Basket. Total sponsor placement Area limited to 1.5 square feet per basket max.

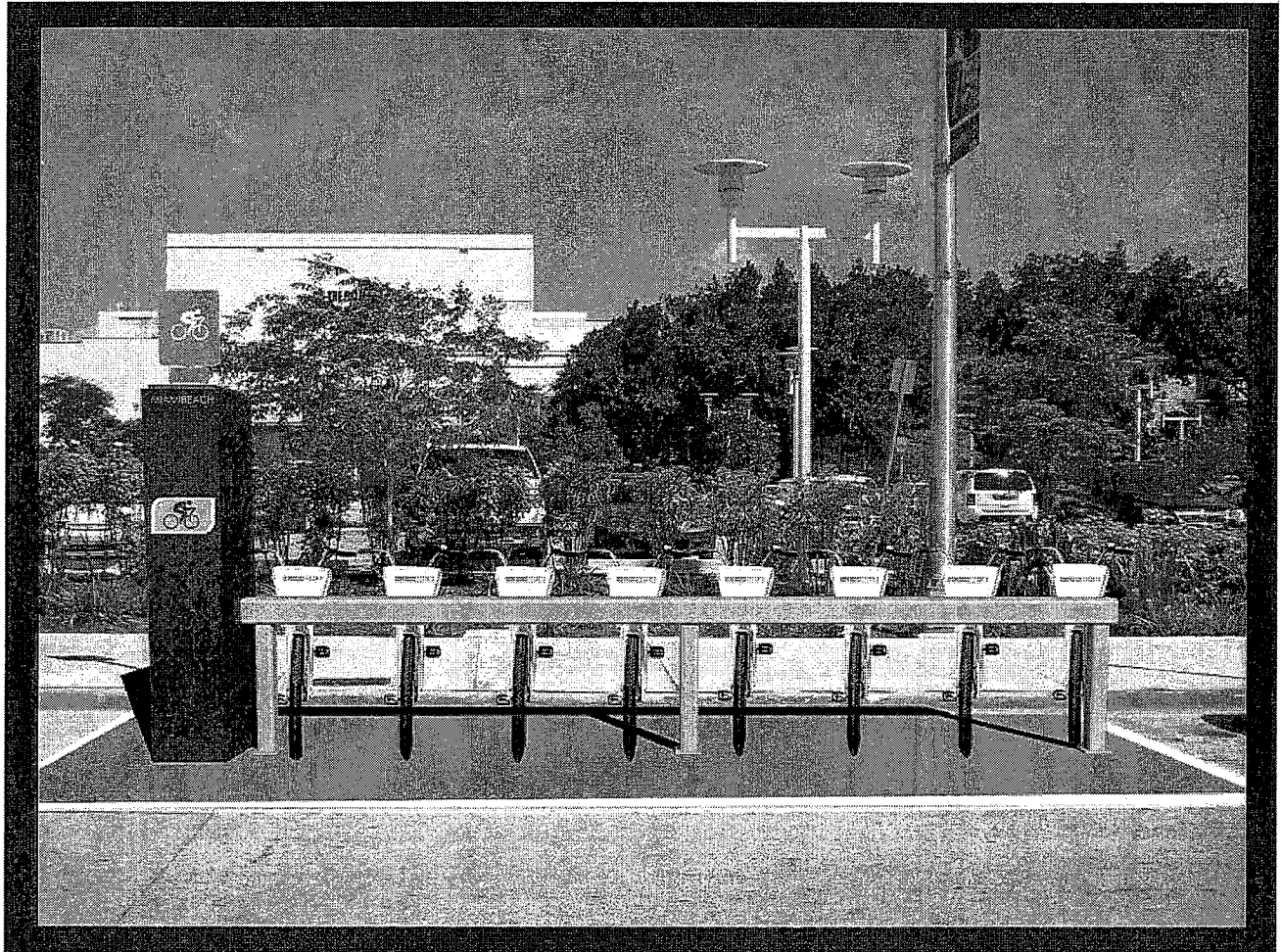


<b>Deco Bike Custom Cruiser</b>	<b>26" Coaster Brake Model</b>
<b>Frame</b>	6061 PG Aluminum (T4/T6) H/T:50*44*34x132
<b>Fork</b>	CS-9101 Hi Tensile Steel, Integrated Style Crown, Curved Legs with Double Eyelets 28.6x1.4T
<b>Headset</b>	Alloy, 25.4-44-30, Semi Integrated Bearings
<b>Handlebar</b>	Custom, Alloy & Steel
<b>Stem</b>	Alloy, 180mm Quill x 90mm Extension x 30 Degree Rise25.4mm Barbore
<b>Grips</b>	Black/Grey, 130mm Length
<b>Seat Binder</b>	Alloy Seat Clamp with Quick Release, w/Locking Mech.
<b>Seat Post</b>	Alloy w/Integrated Clamp, 31.8mm x 400mm , Accommodates Riders 5'-6'3"
<b>Saddle</b>	Cionlli 7257 with Chromoly Rails and Elastomer Suspension
<b>Cranks</b>	Alloy 3-Piece Crank with PVC Disc Cover-Grey, 170mm, 42T Steel Ring
<b>Chainring</b>	Steel, 42T x 1/2" x 1/8"
<b>BB</b>	Steel, BC1.37" x 24T. Double Sealed Bearings (Shimano Tool Compatible)
<b>Chain</b>	K.M.C. Z410 Rust Buster, 1/2" x 1/8"
<b>Chain Guard</b>	Steel or alloy
<b>Pedals</b>	VP-LED1, Boron Axle, 9/16"
<b>F-Hub</b>	DH-3N20NT Dynamo Front Hub 12G x 36H, Nutted
<b>R-Hub</b>	Shimano Internal Coaster Brake, 12G x 36H x 3/8" x 150mm Axle
<b>Sprocket / Freewheel</b>	20T x 1/2" x 1/8"
<b>Rims</b>	26" x 1.95"/2.125" x 36H x 12G, Alloy
<b>Spokes</b>	12G Stainless Steel with Brass Nipples
<b>Tires</b>	CST 26 x 1.95"
<b>Tubes</b>	Tubes with Puncture Sealant, American Schrader Valves,
<b>Kickstand</b>	Alloy
<b>Lighting</b>	Active Front and Rear
<b>Fenders</b>	PC Fender Set. Rear Fender Must have 2 Struts instead of 1 Fender Must also have SW-803G Fender Protector or similar
<b>Bell</b>	Alloy Bell with Plastic Base
<b>Basket</b>	Stainless Steel or Alloy Custom Integrated Basket Structure
<b>Reflectors</b>	4 pieces to Meet CPSC Standards
<b>Bike Weight</b>	36-38 Pounds, Based on Custom Specs
<b>Note</b>	Specs Subject to Change and Modification

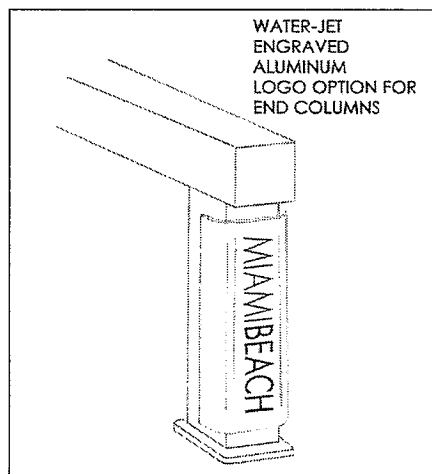
**Exhibit 3.1.1**  
**Program Equipment: Kiosk Station Image**

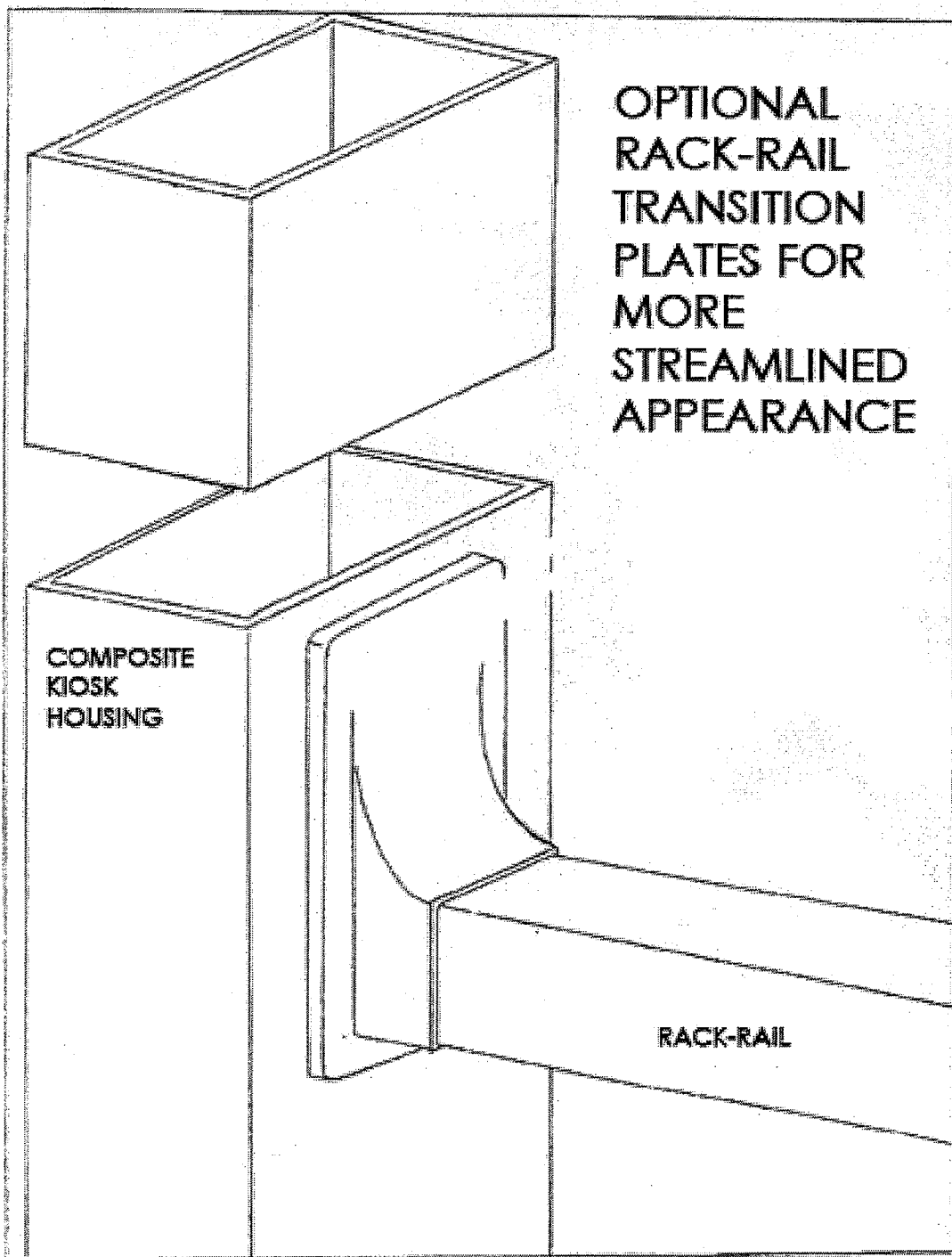
For Informational Purposes Only, Subject to Planning/Zoning Approval and modification as necessary.

**DECOBIKE**



 **MIAMIBEACH**

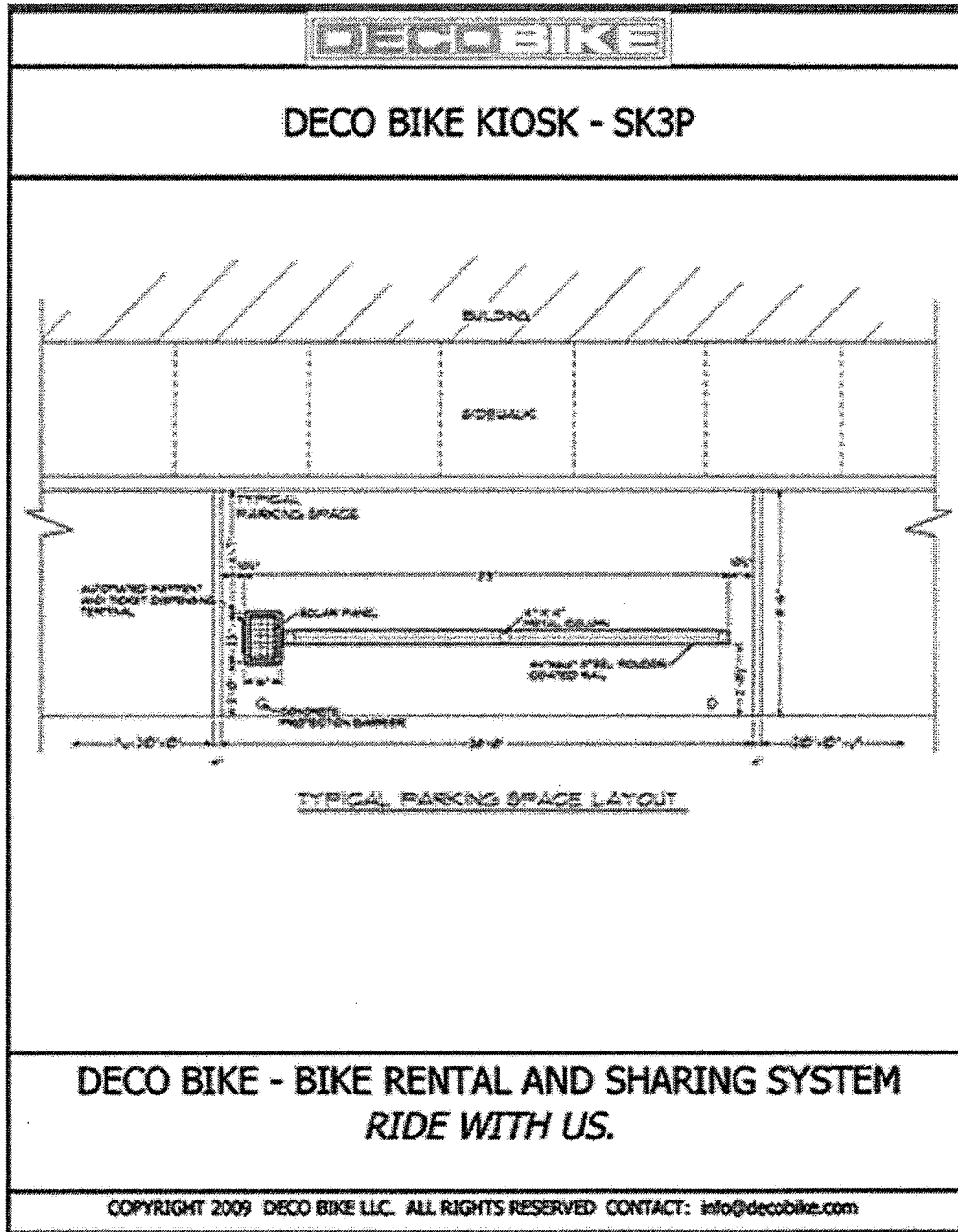




### Exhibit 3.1.2

#### Program Equipment: Typical Site Plan & Elevations

For Informational Purposes Only, Subject to Planning/Zoning Approval and modification as necessary.



## **EXHIBIT 3.2.1 PRICE SCHEDULE**

### **Short-Term Bicycle Rentals:**

- \$1.95 per half-hour to \$3.50 per half-hour
- \$3.95 per hour to \$6.95 per hour
- Benefits: All short-term bicycle rentals provide the user access to any bike available in the program at any location. A member can pickup and return a bicycle to and/or from any kiosk location with docking space or inventory available. All members will enjoy the amount of time contracted for. Should a member not return their bicycle to a rack within that time, their credit card will continue to be charged in the same increments in which they chose to rent.
- Acceptable Forms of payment: Credit Card

### **Membership Subscriptions:**

- Monthly - \$9 per month to \$16 per month
- Weekly - \$12 to \$14
- Benefits: All membership subscriptions provide the user access to any bike available in the program at any location. A member can pickup and return a bicycle to and/or from any kiosk location with docking space or inventory available. All members will enjoy an unlimited amount of daily trips up to thirty (30) minutes in length each. If the 30 minute time limit is exceeded, escalating late fees will be assessed to insure prompt returns.
- The following free period and fees apply:
  - **Free 1<sup>st</sup> half-hour**
  - \$2 2<sup>nd</sup> half-hour
  - \$4 3<sup>rd</sup> half-hour
  - \$6 4<sup>th</sup> half-hour and each half-hour thereafter
- Acceptable Forms of payment: Credit Card and/or checks and money orders

Patrons are required to operate the bicycles at their own risk while checked out. In the event of bicycle theft while a patron has a bicycle checked out, such should be reported to the police and patrons shall be required to obtain a police report. Concessionaire may, at its sole option, choose to refund all or part of any patron's security deposit or rental fees it deems necessary on a case-by-case basis.



**Exhibit 3.4**  
**Hurricane Plan Documents**

Contained herein is a copy of the following documents applicable to the hurricane preparedness plan in Section 3.4:

- Warranty Deed for Warehouse/Storage/Parking
- Authorization Letter from Owner

Concessionaire also intends to lease an additional warehouse facilities capable of accommodating the bulk of the program's equipment.

Alejandro Diaz

---

March 1, 2009

To: Deco Bike, LLC.  
3301 NE 1<sup>st</sup> Avenue  
Miami, FL 33137

Re: Hurricane Storage  
Miami Beach Bicycle Rental Program

To whom it may concern:

I hereby authorize Deco Bike, LLC, to utilize my warehouse, parking and storage facilities (in addition to their own premises) in the event of a hurricane so that they may store equipment as needed to protect it from the adverse weather conditions.

Attached you will find a copy of my deed. Should you have any questions, please feel free to contact me at 305-742-7333.

Regards,



Alejandro Diaz  
Property Owner  
13321 SW 135th Avenue  
Miami, FL 33185

THIS WARRANTY DEED made and executed this October 31, 2003 by LUCIANO R. A. MACHADO, a married man, hereinafter called the grantor, to ALEJANDRO DIAZ, a single man, whose post office address is 13265 S.W. 147th Street, Miami, FL 33186, hereinafter called the grantee:

**WITNESSETH:** That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situate in Miami-Dade County, Florida, viz:

Condominium Unit 11, Building 1, of EAGLE WEST CONDOMINIUM, a Condominium according to the Declaration of Condominium thereof, as recorded in Official Records Book 19233, Page 522, of the public records of Miami-Dade County, Florida.

**SUBJECT TO:**

1. Taxes for the year 2003 and subsequent years, not yet due and payable.
2. Covenants, conditions, restrictions and encumbrances contained in the underlaid plat or exhibit

This instrument was prepared by  
And is to be returned to:  
Carmen Wamag, Esq.  
C/A Gold Leaf Title Company  
2720 Coral Way, 4th Floor  
Miami, Florida 33145

**WARRANTY DEED**

Property Appraisal Bureau  
Identification (Folio) Number(s):  
36-391407-01.0

- (Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of the said parties, and the successors and assigns of corporations, and all persons and any
4. City of this DEED dated May 20, 1999 in Official Records Book 18710, Page 2100
  5. Zoning, restrictions, prohibitions, and other requirements imposed by or at the direction of any governmental authority.
  6. Public utility easements of record.

3. Terms, provisions, covenants, liens, conditions, amendments and options contained in, and rights and easements established by, the Declaration of Condominium recorded in Official Records Book 19233, Page 522, of the public records of Miami-Dade County.

of Title recorded July 30, 1990 in Official Records Book 18712, Page 4750  
STATE OF FLORIDA  
COUNTY OF MIAMI-DADE }

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Luciano R.A. Machado, who is personally known to me to be the person described in and who executed the foregoing instrument or who has produced Passport from Brazil as identification and who swore and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 31<sup>st</sup> day of October, A.D. 2003.

Lilian Correa  
NOTARY PUBLIC, State of Florida  
Print Name: Lilian Correa  
My Commission Expires: Nov 01, 2006  
Brenda Thru  
Atlantic Bonding Co., Inc.

HP LRSRJET FAX 813084 8002 51 15

And the said grantor hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Grantor affirms that said property does not constitute the homestead of the Grantor. Grantor resides at RUA CANARI  
756 4720 161 - ALUMINA - SAO PAULO - SP - 05004-200 - BRASIL

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered  
in the presence of:

Carmen Wamag  
Print Name: Carmen Wamag  
[Signature]  
Print Name: [Signature]

[Signature]  
LUCIANO R.A. MACHADO

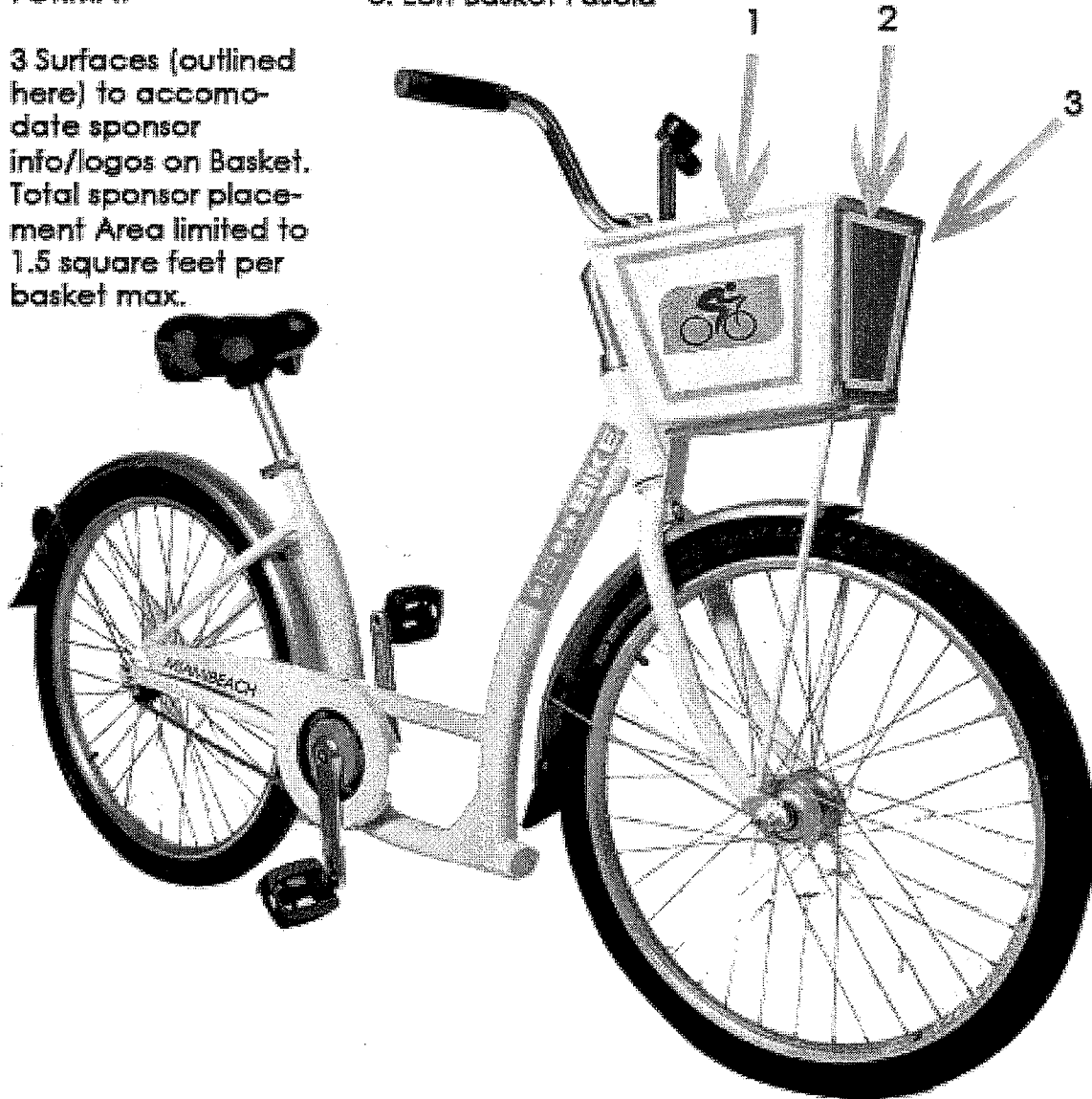
**Exhibit 16.2**  
**Bicycle Basket Sponsorship Format**

The maximum sponsor placement surface area shall be limited to a total of 1.5 square feet per bicycle, regardless of shape or form. Such sponsor placements shall only appear on bicycles in the program and not upon other structures in the Concession Areas.

**DECO BIKE BASKET  
SPONSORSHIP  
FORMAT**

1. Right Basket Fascia
2. Front Basket Fascia
3. Left Basket Fascia

3 Surfaces (outlined here) to accommodate sponsor info/logos on Basket. Total sponsor placement Area limited to 1.5 square feet per basket max.





# MIAMIBEACH

## PLANNING DEPARTMENT

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### DESIGN REVIEW BOARD AFTER ACTION REPORT

FOR MEETING HELD

**Tuesday, October 6, 2009**

#### I. REQUESTS FOR CONTINUANCES

1. DRB File No. 22347, 31 Venetian Way – **Belle Isle Apartments**. The applicant, Euroamerican Group, Inc. is requesting Design Review Approval for the construction of a new 5-story multifamily building, which will replace four (4) existing 3-story buildings, to be demolished.

**CONTINUED TO NOVEMBER 3, 2009**

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2. DRB File No. 20485, 1398 Bay Drive – **Kunkel Residence**. The applicants, John and Jennifer Kunkel are requesting after-the-fact modifications to a previously issued Design Review approval for alterations to an existing pre-1942 architecturally significant 2-story home, including the construction of two (2) new second floor additions to the existing single-story portions of the home. Specifically, the applicants are requesting to remove the condition of the Final Order limiting the height of the perimeter fence to five (5') feet.

**CONTINUED TO NOVEMBER 3, 2009**

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#### II. JOINT MEETING WITH THE HISTORIC PRESERVATION BOARD

1. DRB File No. 22494, **Citywide Bike Rentals**. The applicants, the City of Miami Beach and Deco Bikes, are requesting Design Review Approval for the installation of bicycle rental kiosks within the public rights-of-way throughout the City.

**APPROVED**

---

2. HPB File No. 6790, **Citywide Bike Rentals**. The applicants, the City of Miami Beach and Deco Bikes, are requesting a Certificate of Appropriateness for the installation of bicycle rental kiosks within the public rights-of-way throughout the City.

**APPROVED**

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#### III. APPLICATIONS FOR DESIGN REVIEW APPROVAL

1. Single Family Homes

- a. DRB File No. 22345, 4445 Jefferson Avenue – **Single Family Home**. The applicant, Juda Jay Schechter, is requesting revisions to a previously issued Design Review Approval for the construction of a new 2-story home, which will replace an existing single story home, to be demolished. Specifically, the applicant is requesting to reduce the front setback previously required by the Board and modify the design of the home.

**APPROVED**

---

- b. DRB File No. 22475, 288 S. Coconut Lane – **Single Family Home**. The applicant, Candido Viyella, is requesting Design Review Approval for the construction of a new 2-story home, which will replace an existing 2-story home, to be demolished.

**APPROVED**

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1. New Projects

- a. DRB File No. 22476, 4221-4229 Pine Tree Drive. – **The Galbut Family Jewish Community Center**. The applicant, the Miami Beach Jewish Community Center, is requesting Design Review Approval for the construction of a new 2-story educational, cultural and recreational facility, which will replace the existing structures, to be demolished.

**CONTINUED TO NOVEMBER 3, 2009**

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IV. NEXT MEETING DATE REMINDER  
**Tuesday, November 3, 2009 @ 8:30 a.m.**

**EXHIBIT D**

**AMENDMENT NO. 2 TO THE CONCESSION AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND DECO BIKE, LLC FOR THE IMPLEMENTATION, MANAGEMENT AND OPERATION OF A SELF-SERVICE BICYCLE SHARING PROGRAM PURSUANT TO REQUEST FOR PROPOSALS (RPF) NO. 44-07/08**

**This Amendment No. 2 ("Amendment")** to the Concession Agreement for a Self-Service Bicycle Rental & Sharing Program, between the City of Miami Beach, a Florida municipal corporation, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 ("City") and Deco Bike, LLC, a Florida limited liability company, whose address is 41 NE 17<sup>th</sup> Terrace, Miami Florida 33132 ("Concessionaire" or "Deco Bike"), dated July 15, 2009 ("Agreement") is made and entered into this 12 day of ~~April~~<sup>May</sup>, 2015 ("Effective Date"):

**RECITALS**

**WHEREAS**, on July 16, 2009, Concessionaire and the City executed the Agreement in response to RFP No. 44-07/08 for the delivery and operation of a self-service bicycle rental fleet for public use to be stationed in the public right of way (the "program"); and

**WHEREAS**, the Agreement required Concessionaire to implement a program which would enable the public to self-rent bicycles from any or a number of locations and return them to another location, on a 24 hour, 365 day a year basis; and

**WHEREAS**, thereafter, it became evident to the Administration that without intervention by the City, either through a contract term modification or additional revenue source, the program would not achieve a return of capital or modest profit to the Concessionaire, or recover the City's forgone parking revenues over the long term; and

**WHEREAS**, on July 18, 2012, the Mayor and City Commission adopted Resolution No. 2012-27975 (the "Resolution") accepting the recommendation of the City Manager and authorizing Amendment No. 1 to the Agreement, dated December 16, 2013, which provided, among other modifications, the extension of the term of the Agreement for an additional ten years, commencing October 1, 2012, and ending on September 30, 2023; increasing the bicycle fleet from 900 to 1,100; permitting advertising on the bicycle's basket through a Sponsorship Program; permitting advertising on certain kiosks; and providing for revenue sharing provisions, including a return of capital and windfall provision (the Agreement and Amendment No. 1 shall be collectively referred to herein as the "Agreement"); and

**WHEREAS**, Concessionaire has been approached by Citibank, N.A. ("Citibank") with an advertising sponsorship proposal, set forth in the agreement between Citibank and Concessionaire, dated June 7, 2014 ("Citibank Sponsorship Agreement"), over a term of five (5) years, with an initial base sponsorship budget of \$750,000, and with five percent (5%) annual escalators; a copy of which Citibank Sponsorship Agreement is attached hereto and made a part hereof as Exhibit "A"; and

**WHEREAS**, City and Concessionaire agree that the advertising revenues generated from the Citibank Sponsorship Agreement would be shared with the City, as part of the Bicycle Basket Sponsorship Program and the Kiosk Advertising Program described in Subsection 16.2 of this Agreement, retroactively effective November 1, 2014; and

**WHEREAS**, the Citibank Sponsorship Agreement provides, in material part, for the replacement of the existing bicycles with new bicycles containing the Citibank mark, "Citi Bike", for

the program; advertising on the kiosks; and revenue connected with advertising using the name Citi Bike, which sponsorship agreement would improve the quality of the bicycles and generate more revenue for the Concessionaire and the City, as more particularly set forth herein.

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Concessionaire hereby amend the Agreement and Amendment No. 1 to the Agreement (collectively referred to herein as the "Agreement") as follows:

1. The aforestated recitals are true and correct and incorporated herein by reference.
2. Subsection 16.2 of the Agreement is hereby amended by adding the following paragraph at the end of said Subsection, and by incorporating a new Exhibit 16.6, a copy of which is attached hereto:

The City hereby approves the Citibank Sponsorship Agreement, attached hereto and incorporated herein as Exhibit "A", as part of the Bicycle Basket Sponsorship Program and Kiosk Advertising Program, effective, retroactively, as of November 1, 2014, subject to the terms and conditions of this Agreement, and subject to receipt of the shared advertising revenues, as more particularly set forth in Exhibit 16.6, attached hereto and incorporated herein by reference.

3. Exhibit 3.1 "Program Equipment: Bicycle Image & Specs" is hereby deleted in its entirety and replaced with the Amended Exhibit 3.1, attached hereto and incorporated herein by reference, to add the image of the new bikes with the approved Citibank marks on the bikes and on the baskets of said bikes.
4. Exhibit 3.1.1 "Program Equipment: Kiosk Station Image" is hereby deleted in its entirety and replaced with the Amended Exhibit 3.1.1, attached hereto and incorporated herein by reference, to add the image of the approved use of the Citibank marks on the kiosk station advertising.
5. Amended Exhibit 3.2.1 "Price Schedule" is hereby deleted in its entirety and replaced with the attached Second Amended Exhibit 3.2.1.
6. Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**



IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By:

  
Rafael E. Granado  
City Clerk

Date

5/12/15

  
Jimmy L. Morales  
City Manager

Date


5/11/15

**FOR CONCESSIONAIRE:**

**DECO BIKE, LLC**

**ATTEST:**

By:

  
Bonifacio Diaz, Vice President

Date

5-8-2015

  
Ricardo Pierdant, President

Date

5/8/2015

F:\ATTO\TORG\AGREEMENTS\DECO BIKE\AMENDMENT NO. 2 4-16-2015

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

Date

4/16/15

**Amended Exhibit 3.1**  
**Program Equipment: Bicycle Image & Specs**  
Base Unit/Stock Image Shown, Subject to Modifications.  
Will feature all equipment required by the RFP.

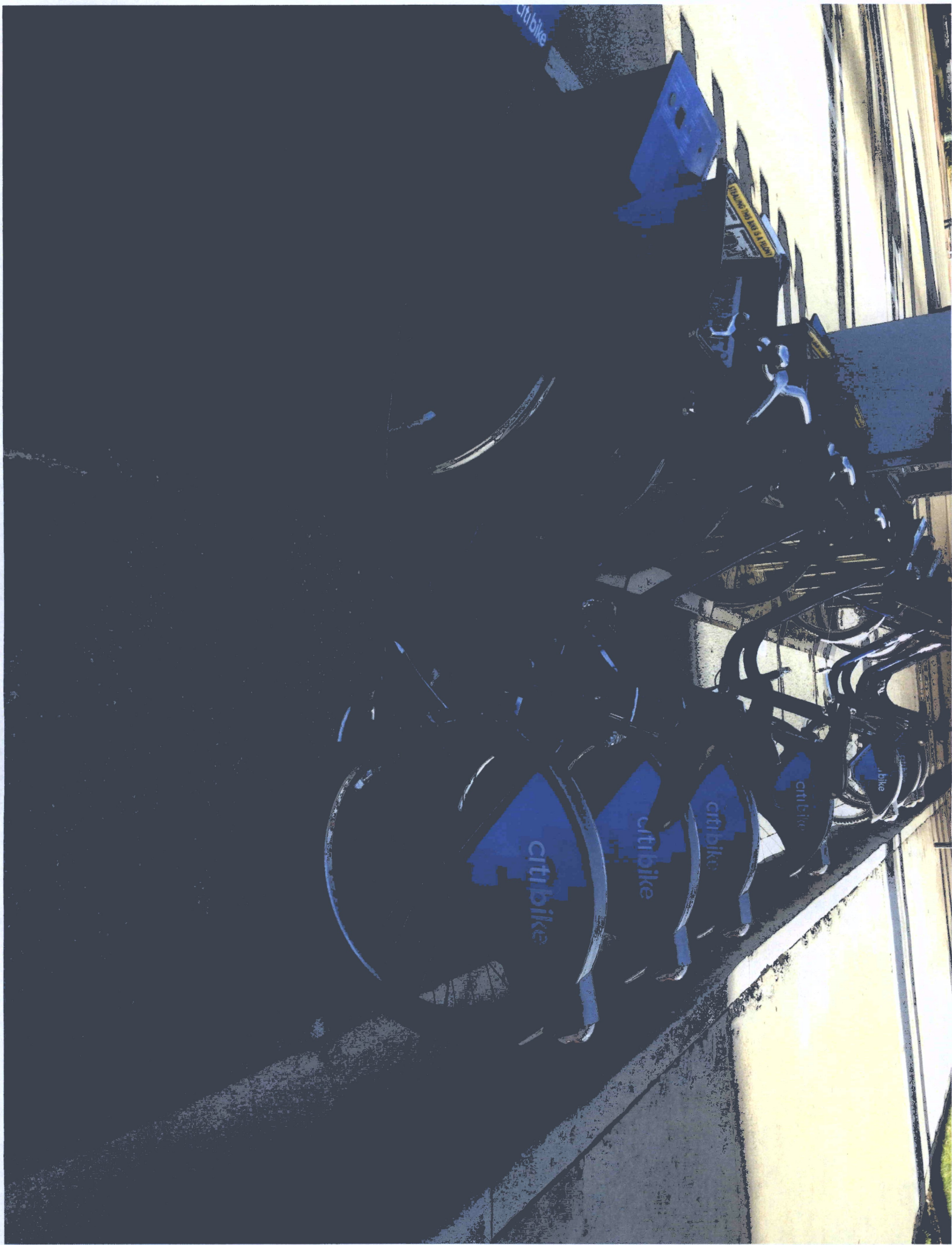
**DECO BIKE BASKET  
SPONSORSHIP  
FORMAT**

1. Right Basket Fascia
2. Front Basket Fascia
3. Left Basket Fascia

3 Surfaces (outlined here) to accommodate sponsor info/logos on Basket. Total sponsor placement Area limited to 1.5 square feet per basket max.



<b>Deco Bike Custom Cruiser</b>	<b>26" Coaster Brake Model</b>
<b>Frame</b>	6061 PG Aluminum (T4/T6) <b>H/T:50*44*34x132</b>
<b>Fork</b>	CS-9101 Hi Tensile Steel, Integrated Style Crown, Curved Legs with Double Eyelets 28.6x1.4T
<b>Headset</b>	Alloy, 25.4-44-30, Semi Integrated Bearings
<b>Handlebar</b>	Custom, Alloy & Steel
<b>Stem</b>	Alloy, 180mm Quill x 90mm Extension x 30 Degree Rise 25.4mm Bar bore
<b>Grips</b>	Black/Grey, 130mm Length
<b>Seat Binder</b>	Alloy Seat Clamp with Quick Release, w/Locking Mech.
<b>Seat Post</b>	Alloy w/Integrated Clamp, 31.8mm x 400mm , Accommodates Riders 5'-6'3"
<b>Saddle</b>	Cionlli 7257 with Chromoly Rails and Elastomer Suspension
<b>Cranks</b>	Alloy 3-Piece Crank with PVC Disc Cover-Grey, 170mm, 42T Steel Ring
<b>Chainring</b>	Steel, 42T x 1/2" x 1/8"
<b>BB</b>	Steel, BC1.37" x 24T. Double Sealed Bearings (Shimano Tool Compatible)
<b>Chain</b>	K.M.C. Z410 Rust Buster, 1/2" x 1/8"
<b>Chain Guard</b>	Steel or alloy
<b>Pedals</b>	VP-LED1, Boron Axle, 9/16"
<b>F-Hub</b>	DH-3N20NT Dynamo Front Hub 12G x 36H, Nuted
<b>R-Hub</b>	Shimano Internal Coaster Brake, 12G x 36H x 3/8" x 150mm Axle
<b>Sprocket / Freewheel</b>	20T x 1/2" x 1/8"
<b>Rims</b>	26" x 1.95"/2.125" x 36H x 12G, Alloy
<b>Spokes</b>	12G Stainless Steel with Brass Nipples
<b>Tires</b>	CST 26 x 1.95"
<b>Tubes</b>	Tubes with Puncture Sealant, American Schrader Valves,
<b>Kickstand</b>	Alloy
<b>Lighting</b>	Active Front and Rear
<b>Fenders</b>	PC Fender Set. Rear Fender Must have 2 Struts instead of 1 Fender Must also have SW-803G Fender Protector or similar
<b>Bell</b>	Alloy Bell with Plastic Base
<b>Basket</b>	Stainless Steel or Alloy Custom Integrated Basket Structure
<b>Reflectors</b>	4 pieces to Meet CPSC Standards
<b>Bike Weight</b>	36-38 Pounds, Based on Custom Specs
<b>Note</b>	Specs Subject to Change and Modification





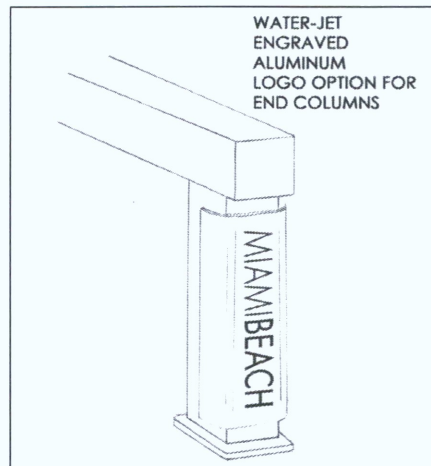
**Amended Exhibit 3.1.1**  
**Program Equipment: Kiosk Station Image**

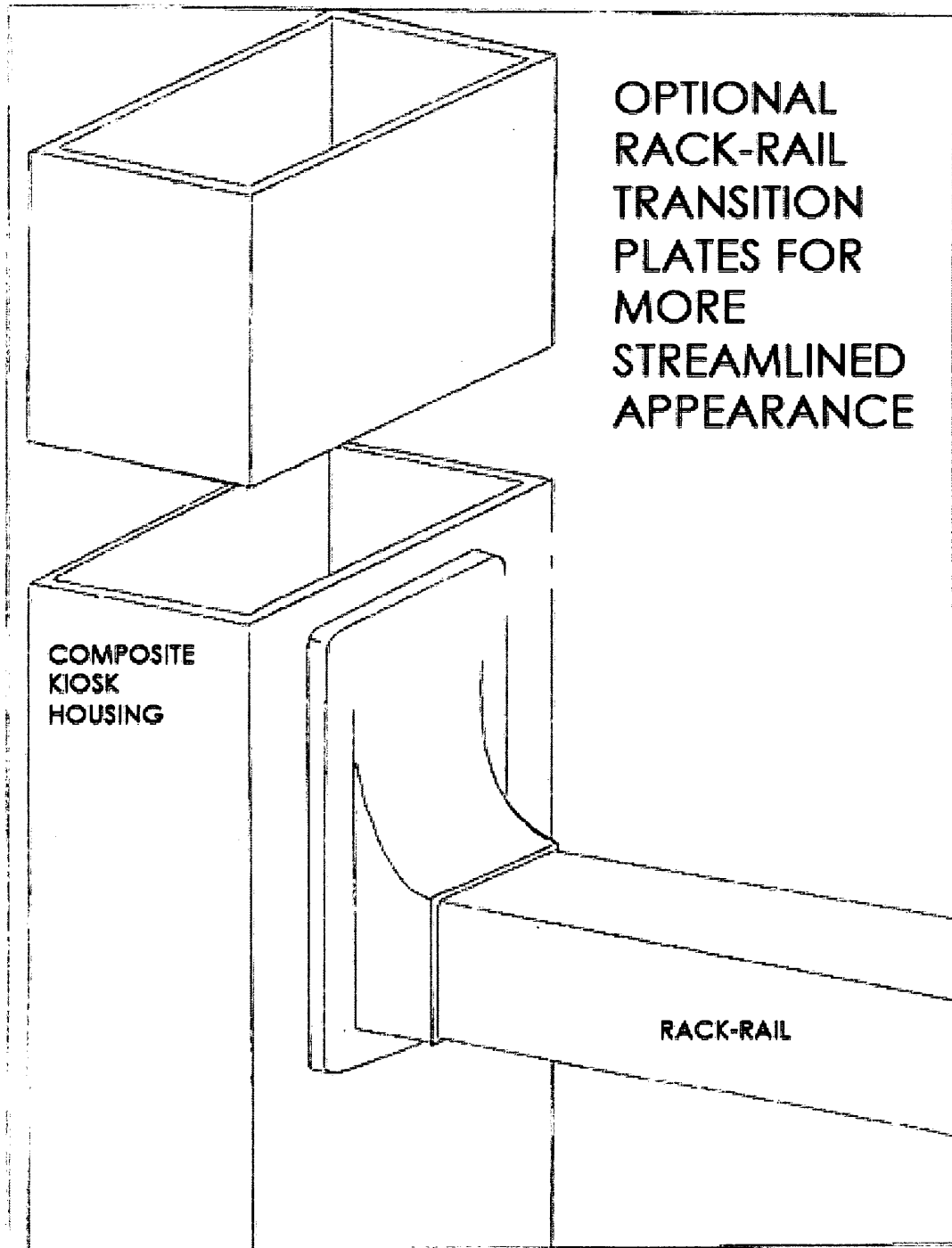
For Informational Purposes Only, Subject to Planning/Zoning Approval and modification as necessary.

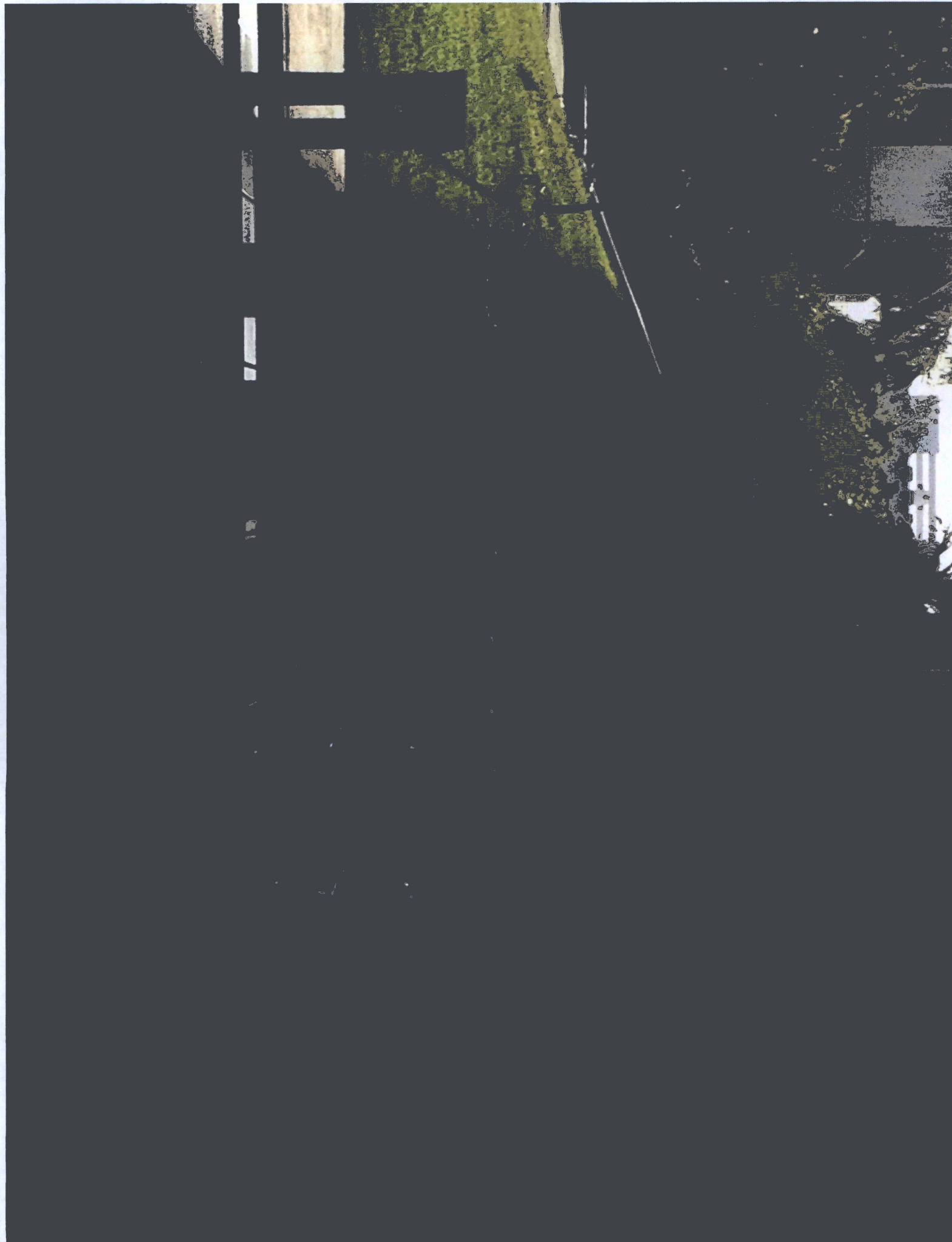
**DECOBIKE**



 **MIAMI BEACH**







## **SECOND AMENDED EXHIBIT 3.2.1 PRICE SCHEDULE**

Concessionaire and City acknowledge the need to be flexible and dynamic based on customer feedback and changes in sales patterns. The parties agree to the following prices and price ranges:

### **Short-Term Bicycle Rentals:**

- \$4.00 per half-hour to \$6.00 per half-hour
- \$6.00 per hour to \$9.00 per hour
- 2 Hour: \$10.00-\$13.00
- 4 Hour: \$18.00-\$22.00
- 1 Day: \$24.00-\$30
- Benefits: All short-term bicycle rentals provide the user access to any bike available in the program at any location. A member can pick up and return a bicycle to and/or from any kiosk location with docking space or inventory available. All members will enjoy the amount of time contracted for. Should a member not return their bicycle to a rack within that time, their credit card will continue to be charged in the same increments in which they chose to rent.
- Acceptable form of payment: Credit Cards

### **Memberships Subscriptions:**

- Standard Monthly Bike Pass Subscription (unlimited 30 minute Rides) - \$15.00 per month to \$18.00 per month
- Deluxe Monthly Bike Pass Subscription (no subscription) - \$25.00 to \$30.00
- Annual Prepaid Bike Pass (unlimited 30 minute rides) - \$150.00 to \$160.00
- Benefits: All membership subscriptions provide the user access to any bike available in the program at any location. A member can pick up and return a bicycle to and/or from any kiosk location with docking space or inventory available. All members will enjoy an unlimited amount of daily trips up to thirty (30) minutes in length each. If the 30 minute time limit is exceeded, escalating late fees will be assessed to insure prompt returns.
- The following free period and fees apply:
  - Free 1st half-hour
  - \$4.00 2<sup>nd</sup> half-hour and each half-hour thereafter
- Acceptable forms of payment: Credit Card, Debit Card, checks and money orders.
- Concessionaire may discount memberships and rentals at its discretion for marketing and promotional purposes.

Any further rate changes during the term of this Agreement shall be negotiated by the City Manager and need not go before the Commission for approval.

Patrons are required to operate the bicycles at their own risk while checked out. In



the event of bicycle theft while a patron has a bicycle checked out, such should be reported to the police and patrons shall be required to obtain a police report. Concessionaire may, at its sole option, choose to refund all or part of any patron's security deposit or rental fees it deems necessary on a case by case basis.

# EXHIBIT 16.6

## Miami Beach - \$750,000 Year 1 Base

Miami Beach Naming Rights/App/Web \$182.5/bk/yr

Gross Sponsorship	Bikes - Annual Escalator 5%	Agency Comm @ 16%	Deco Net
Year 1 Payment	\$182,500.00	\$ (29,200.00)	\$153,300.00
Year 2 Payment	\$191,625.00	\$ (30,660.00)	\$160,965.00
Year 3 Payment	\$201,206.25	\$ (32,193.00)	\$169,013.25
Year 4 Payment	\$211,266.56	\$ (33,802.65)	\$177,463.91
Year 5 Payment	\$221,829.89	\$ (35,492.78)	\$186,337.11
<b>TOTAL</b>	<b>\$1,008,427.70</b>	<b>\$ (161,348.43)</b>	<b>\$847,079.27</b>

## Miami Beach KIOSKS

Gross Sponsorship	Kiosks - Annual Escalator 5%	Agency Comm @ 16%	City Kiosk Rev Share 12%	Kiosk Net After City Rev Share & Agency Comm	Pearl Rev Share 50%	Deco Net After All Rev Share
Year 1 Payment	\$120,000.00	\$ (19,200.00)	\$14,400.00	\$86,400.00	\$43,200.00	\$43,200.00
Year 2 Payment	\$126,000.00	\$ (20,160.00)	\$15,120.00	\$90,720.00	\$45,360.00	\$45,360.00
Year 3 Payment	\$132,300.00	\$ (21,168.00)	\$15,876.00	\$95,256.00	\$47,628.00	\$47,628.00
Year 4 Payment	\$138,915.00	\$ (22,226.40)	\$16,669.80	\$100,018.80	\$50,009.40	\$50,009.40
Year 5 Payment	\$145,860.75	\$ (23,337.72)	\$17,503.29	\$105,019.74	\$52,509.87	\$52,509.87
<b>TOTAL</b>	<b>\$663,075.75</b>	<b>\$ (106,092.12)</b>	<b>\$79,569.09</b>	<b>\$477,414.54</b>	<b>\$238,707.27</b>	<b>\$238,707.27</b>

## Miami Beach - BIKES

Gross Sponsorship	Bikes - Annual Escalator 5%	Agency Comm @ 16%	City Bike Rev Share 25%	Deco Net After City Rev Share
Year 1 Payment	\$447,500.00	\$ (71,600.00)	\$111,875.00	\$264,025.00
Year 2 Payment	\$469,875.00	\$ (75,180.00)	\$117,468.75	\$277,226.25
Year 3 Payment	\$493,368.75	\$ (78,939.00)	\$123,342.19	\$291,087.56
Year 4 Payment	\$518,037.19	\$ (82,885.95)	\$129,509.30	\$305,641.94
Year 5 Payment	\$543,939.05	\$ (87,030.25)	\$135,984.76	\$320,924.04
<b>TOTAL</b>	<b>\$2,472,719.98</b>	<b>\$ (395,635.20)</b>	<b>\$618,180.00</b>	<b>\$1,458,904.79</b>

## EQUIP FEES

## CHARGED BY

## DECO

## Agency Comm

## Deco Net Gain

Dock Pods, Kiosks	\$2,449,440.00	\$ (195,955.20)	\$2,253,484.80
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## SUMMARY

Gross Sponsorship			Total City Share	Deco Net After City Rev Share
Year 1			\$126,275.00	\$460,525.00
Year 2			\$132,588.75	\$483,551.25
Year 3			\$139,218.19	\$507,728.81
Year 4			\$146,179.10	\$533,115.25
Year 5			\$153,488.05	\$559,771.02
Total all Years			\$697,749.09	\$2,544,691.33
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$697,749.09</b>	<b>\$4,798,176.13</b>

## EXHIBIT A

7/7/2014

### MIAMI AREA BICYCLE SHARE SPONSORSHIP AGREEMENT

This MIAMI AREA BICYCLE SHARE SPONSORSHIP AGREEMENT ("Agreement"), effective June 7, 2014 is entered into by and between Citibank, N.A. ("Citi"), a national banking association and DecoBike, LLC, a Florida limited liability company ("Deco"). Each of Citi and Deco is referred to herein individually as a "Party" and collectively, the "Parties."

#### RECITALS

WHEREAS, Deco has entered into agreements with the cities of Miami and Miami Beach (the "Cities") to operate a 24-hour bicycle share program for Miami and Miami Beach (the "Program"); and

WHEREAS, Deco and Citi desire to enter into an agreement whereby Citi will become the title sponsor of the Program; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Grant of Rights. Subject to the terms and conditions of this Agreement, Deco hereby grants the following rights and benefits to Citi during the Term (as defined below):

A. The exclusive right to be the sole commercial sponsor of the Program and to designate the name of the Program during the Term;

B. The right to be the sole and exclusive title sponsor of the Program and the only entity whose name, logo and/or marks shall appear on the Program bicycles or other equipment. The Parties acknowledge and agree that the title level of sponsorship shall be the highest level of the sponsorship for the Program, meaning that no other Program sponsor (if any) shall have the same, similar or better benefits than those granted to Citi herein;

C. The sponsorship benefits set forth herein and in Exhibit A, attached hereto and made a part hereof; and

D. The right to use the Deco Marks (defined below) in its advertising and promotional materials.

II. Other Sponsors or Promotional Partners. During the Term of this Agreement, Citi acknowledges and agrees that Deco shall have the right to secure additional non-commercial sponsors or promotional partners. Deco shall, prior to entering into any agreement with or providing any sponsorship or promotional benefits to additional sponsors or partners, present all additional sponsors or partners to Citi for its written approval, which shall not unreasonably be withheld or delayed.

III. Deco' Responsibilities. Subject to the terms and conditions of this Agreement, Deco agrees, at its own cost and expense, to:

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- A. Operate, establish, administer and conduct the Program, including but not limited to by securing and maintaining the bicycles to be used in the Program, building and managing the stations for such bicycles, maintaining and staffing a 24-hour customer service call center for the Program, sitting of stations, conducting a variety of bicycle safety education initiatives and collecting Program membership fees, all in accordance with the Service Level Agreements ("SLAs") set forth in Exhibit B attached hereto and made a part of this Agreement as applicable, the Program metrics set forth in Exhibit C attached hereto and made a part of this Agreement, and with all applicable federal, state, and local laws, regulations, ordinances and codes. As part of such operations, Deco, in consultation with the cities of Miami and Miami Beach shall be responsible for the setting of prices for Program memberships, provided, however, that in the event that Deco seeks to increase prices by more than twenty percent (20%) than the prices set forth in Exhibit F, Deco shall secure Citi's prior approval;
- B. Provide the benefits set out in Exhibit A, including the title sponsor naming rights. Deco will obtain all of the necessary rights, consents, licenses and permission to both perform its obligations hereunder and to allow Citi to exercise all of the rights and benefits provided by Deco herein;
- C. Incorporate the Citi Marks (as defined below) including the Program Marks (as defined below) on the bicycles to be used in the Program, the stations for the Program, the maintenance trucks for the Program, receipts given to customers participating in the Program, and in all advertising and promotional materials for the Program, including but not limited to any web-based and printed materials, all subject to the terms set forth in Section VI(C) of this Agreement;
- D. Conduct ongoing system research and analysis, including but not limited to a survey of Program members, on at least an annual basis. Such research and analysis shall be designed to understand public attitudes, impressions and use of the Program and may be executed through online, telephone and/or in-person surveys;
- E. Develop and operate the Program website and Program mobile application(s) in accordance with Section VII below (including, subject to the mutual agreement of the Parties, acquiring the Program website URL(s) and Program mobile application(s), provided, however, that if any Program domain name or Program application name contains a Citi Mark, such name(s) will be owned by Citigroup Inc.);
- F. In addition to maintaining the condition of the bicycles as set forth in Exhibit B, after any bicycle has been in service for three (3) years, Deco examine the condition of such bicycle and where the bicycle frame shows wear, tear, or fading of color of an excessive nature, Deco will replace or recondition such bicycle;
- G. Provide Citi with copies of the ridership and usage reports it submits to the Cities of Miami and Miami Beach regarding the Program;
- H. Promote and advertise the Program; and
- I. Produce marketing and promotional materials for the Program.

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IV. Citi's Responsibilities. In consideration of the rights and benefits granted to Citi hereunder, Citi agrees to:

- A. Make timely payments to Deco of the consideration set forth in Section V below;
- B. Coordinate and consult with Deco on the marketing plan and all of the promotional efforts to be made in support of the Program, regardless of the Party making such efforts;
- C. Grant Deco the non-exclusive right to use the Citi Marks only in connection with the Program and the advertising, marketing and promotion of the Program in the United States (the "Territory") in accordance with the terms and conditions of this Agreement; and
- D. Provide fender stickers with the Program Logo (defined below) and Program Name (defined below) for installation on the bicycles by Deco.

V. Sponsorship & Equipment Fees.

A. Sponsorship Fee. In consideration for the rights and benefits granted to Citi hereunder, Citi agrees to pay Deco the following fees for the title sponsorship (the "Sponsorship Fee") during the term as follows:

- For the 2014-2015 contract year which shall begin on the Re-Launch Date (defined below), Citi shall pay Deco a total not to exceed \$1,645,000.00 in four installments each of which shall be due on the fifteenth day of the first month of the calendar quarter (in the following amounts: (i) \$399,500.00, (ii) \$423,000.00, (iii) \$411,250.00 and (iv) \$411,250.00); provided, however, that Deco re-launches, operates and maintains the Program with 1750 bicycles and 170 station kiosks (it is agreed and understood that bicycles may be out of circulation temporarily for maintenance and servicing). In the event that Deco fails to re-launch and continually operate the Program with 1750 bicycles and 170 station kiosks, Citi's Sponsorship Fee for such year will decrease based on the pro rata number of bicycles and kiosks that are operational. The first installment of \$399,500.00 shall be due on the Re-Launch Date. Each subsequent installment shall be due sixty (60) days after Citi's receipt of an acceptable invoice from Deco which include the amount of installment of the Sponsorship Fee based on a calculation completed as of the first day of the calendar quarter which shall be for amount of the applicable installment due or the pro rata amount of such fee based on the number of bicycles that are operational (using 1750 as the denominator), if not all 1750 are operational. In the event that Deco fails to have 700 bicycles and 85 kiosks ready for the re-launch of the Program by November 15, 2014, Citi shall have the right to terminate this Agreement.
- For the 2015-2016 contract year, Citi shall pay Deco a total not to exceed \$1,801,275.00 in four installments each of which shall be due on the fifteenth day of the first month of the calendar quarter, the first two of \$444,150.00 and the last two of \$456,487.50 based on invoices received from Deco at the start of each calendar quarter; provided that 1800 bicycles and between 170 and 175 kiosks continue to be operational for the Program. In the event that 1750 bicycles and 170 kiosks are not operational then the invoices submitted by Deco shall be for a pro rata amount of

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the applicable installment based on the number of bicycles that are operational (using 1800 as the denominator).

- For the 2016-2017 contract year, Citi shall pay Deco a total not to exceed \$1,969,065.00 in equal quarterly installments, each of which shall be due on the fifteenth day of the first month of the calendar quarter, of \$492,266.25 based on invoices received from Deco at the start of each calendar quarter; provided that 1900 bicycles and be kiosks continue to be operational for the Program. In the event that 1900 bicycles and between 175 - 180 kiosks are not operational then the invoices submitted by Deco shall be for a pro rata amount of \$492,266.25 based on the number of bicycles that are operational (using 1900 as the denominator). In addition, the first installment of the Sponsorship Fee for this year of the Term shall only be due if seventy-five percent (75%) new racks with the Program Logo and colors have been installed in Miami Beach. In the event that seventy-five (75%) of the new racks have not been installed Citi shall be able to withhold payment until the racks are installed.
- For the 2017-2018 contract year, Citi shall pay Deco a total not to exceed \$2,176,340.00 in equal quarterly installments, each of which shall be due on the fifteenth day of the first month of the calendar quarter, of \$544,085.00 based on invoices received from Deco at the start of each calendar quarter; provided that 2000 bicycles and between 180 - 185 kiosks continue to be operational for the Program. In the event that 1900 bicycles and between 180 - 185 kiosks are not operational then the invoices submitted by Deco shall be for a pro rata amount of \$544,085.00 based on the number of bicycles that are operational (using 1900 as the denominator).
- For the 2018-2019 contract year, Citi shall pay Deco a total not to exceed \$2,285,160 in equal quarterly installments, each of which shall be due on the fifteenth day of the first month of the calendar quarter, of \$571,290.00 based on invoices received from Deco at the start of each calendar quarter; provided that 2000 bicycles and between 180 - 185 kiosks continue to be operational for the Program. In the event that 2000 bicycles and between 180 - 185 kiosks are not operational then the invoices submitted by Deco shall be for a pro rata amount of \$571,290.00 based on the number of bicycles that are operational (using 2000 as the denominator).

B. Equipment Fees. Citi shall also pay Deco the following equipment fees which shall be used by Deco to purchase new kiosk payment terminals and dock pods ("Equipment Fees"):

- For the 2014-2015 contract year, Citi shall pay Deco Equipment Fees totaling \$749,440.00 to purchase new kiosk payment terminals in two installments as follows: (i) \$449,440.00 which shall be due in the first calendar quarter of 2015 and (ii) \$300,000.00 which shall be due in the third calendar quarter of 2015.
- For the 2015-2016 contract year, Citi shall pay Deco Equipment Fees totaling \$550,000.00 to purchase new dock pods in four installments as follows: (i) \$200,000.00 in the fourth calendar quarter of 2015, (ii) \$125,000 in the first calendar quarter of 2016, (iii) \$125,000 in the second calendar quarter of 2016, and (iv) \$100,000 in the third calendar quarter of 2016..

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- For the 2016-2017 contract year, Citi shall pay Deco Equipment Fees totaling \$400,000.00 payable in four equal quarterly installments to purchase new dock pods.
- For the 2017-2018 contract year, Citi shall pay Deco equipment fees totaling \$400,000.00 payable in four equal quarterly installments to purchase new dock pods.
- For the 2018-2019 contract year, Citi shall pay Deco equipment fees totaling \$350,000.00 to purchase new dock pods in four installments as follows: (i) \$100,000 in fourth calendar quarter of 2018, (ii) \$100,000 in the first calendar quarter of 2019, (iii) \$75,000 in the second calendar quarter of 2019, and (iv) \$75,000 in the third calendar quarter of 2019.

Deco shall maintain books and records which include invoices for the equipment purchases set forth above and shall supply such invoices and books and records to Citi at Citi's request. In the event that Deco is able to purchase the equipment specified above for less money than provided by Citi, Deco shall refund Citi the monies unspent on such equipment.

C. Advances. During the first contract year, Citi shall advance Deco a total of \$800,000, payable as follows: (i) \$290,500 on the first day of the fourth calendar quarter of 2014; (ii) \$400,000 on the first day of the first calendar quarter of 2015; (iii) \$54,750 on the first day of the second calendar quarter of 2015; and (iv) \$54,750 on the first day of the third calendar quarter of 2015. Deco shall then provide Citi with quarterly \$50,000 credits which shall be used to reduce Citi's Sponsorship Fee payments beginning in the fourth quarter of 2015 until the end of the Term.

D. Payment Terms. All payments made hereunder shall be payable and delivered by wire transfer and shall be made upon invoice sent by Deco no less than sixty (60) days prior to each of the due dates set forth herein. Except as otherwise specifically set forth herein, as between Citi and Deco, each Party shall be responsible for any costs and expenses incurred by them associated with the performance of their obligations under this Agreement. For accounting purposes, Deco may designate and direct Citi to make full or partial payments to an affiliate or subsidiary of Deco, approved by Citi, that is legitimately performing duties covered by this agreement as Deco has, or may have, different shareholders and financial obligations under different corporate entities in the performance of its duties on behalf of several independent municipalities.

#### VI. Naming, Marks & Hyperlinks.

A. Program Name. Deco and Citi agree that the initial Program name shall be "Citi Bike." In the event that Citi (i) changes its corporate name or (ii) changes its branding strategy, Citi shall be entitled to change the Program Name by substituting its new corporate name or national brand in place of its current name, subject to the prior written approval of Deco, such approval not be unreasonably withheld, and, so long as such change is permissible under Deco's municipal agreements and applicable local ordinances relating to branding the public right of way. Deco agrees that it will consent to the change of Program Name pursuant to this Section VI(A) if such name reflect the then current corporate name of Citi or Citi's then current brand.

B. Program Logo. Citi has developed a program logo that incorporates the Program Name ("Program Logo") and is attached hereto in Exhibit D. The Program Name and Program Logo shall both

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be considered Citi Marks. In the event of a change in the Program Name, Citi and Deco agree to work in good faith to jointly develop a new Program Logo. Given the centrality of the Citi Marks to Citi's brand identity, Citi shall have the sole and exclusive ownership of any and all right, title, and interest in and to the Program Name and Program Logo

C. The Parties' Marks & Hyperlinks.

1. Citi Marks. Citi, on behalf of its affiliate Citigroup Inc., hereby grants to Deco a non-exclusive, non-transferable, non-sublicensable, royalty-free license in the United States and on the Internet during the term of this Agreement to use the Program Name, Program Logo, and trademarks, service marks, and other indicia of ownership of Citi set forth on Exhibit D (the "Citi Marks") in operating, advertising and promoting the Program in any media whether existing now or later invented, including but not limited to for incorporation on the bicycles and stations, provided, however, that Citi approves all such uses of the Citi Marks (including, but not limited to approval of messages containing any of the Citi Marks delivered through social media platforms such as Facebook and Twitter) in writing in advance of distribution or printing. Notwithstanding the forgoing it is understood that Deco can only use the Citi Marks to operate the Program in the cities of Miami, Miami Beach, Surfside, Bay Harbor Islands (or any other municipalities that Deco may expand to locally that may become subject to this agreement) and any uses outside the state of Florida shall solely be related to the promotion and advertising of the Program as it is available in Miami and Miami Beach. Citi's approvals shall not be unreasonably withheld or delayed. All uses by Deco of the Citi Marks shall (1) be appropriate and dignified and benefit Citi's public image and (2) inure solely to the benefit of Citi. Deco shall have the limited right to sublicense the Program Name and Logo during the Term in the Territory in connection with operating, advertising and promoting the Program in any media whether existing now or later invented to third parties who promote the Program or advertise offers in connection with the Program as part of their participation in the Program, provided, that such third parties are approved by Citi and the sublicense is a form approved by Citi and includes Citi as a third party beneficiary of the license for the purposes of enforcing Citi's rights to the Program Name and Program Logo. Notwithstanding the forgoing, Deco shall not be permitted to sublicense the Citi Marks to any mobile application providers. Rather, Citi shall enter into such agreements with such providers directly, as Citi determines necessary. Citi hereby grants to Deco permission to establish and maintain a hyperlink from the Program website where the Citi Marks appear to citi.com (or such other URLs as Citi may designate) (the "Citi Hyperlinks"). The Citi Hyperlinks will be used for the purposes of promoting and advertising Citi's sponsorship of the Program, and Deco may link to Citi's websites solely for those purposes. Citi reserves the right, in its sole discretion, to eliminate, disable or discontinue the Citi Hyperlinks at any time, or to require Deco to eliminate, disable or discontinue the Citi Hyperlinks at any time.

2. Deco Marks. Deco hereby grants to Citi a non-exclusive, non-transferable, non-sublicensable, royalty-free license in the United States and on the Internet during the term of this Agreement to use the trademarks, services marks and other indicia of ownership of Deco attached hereto as Exhibit E (collectively, the "Deco Marks") in advertising and promoting the Program in any media whether existing now or later invented. Deco shall have the right to approve all such uses in writing in advance of distribution or printing. Such approvals shall not be unreasonably withheld or delayed. Deco



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hereby grants to Citi permission to establish and maintain a hyperlink from the Citi.com (or any other Citi website) to the Program website (the "Deco Hyperlinks"). The Deco Hyperlinks will be used for the purposes of promoting and advertising the Program, and Citi may link to the Program website solely for those purposes. Deco reserves the right, in its sole discretion, to eliminate, disable or discontinue the Deco Hyperlinks at any time, or to require Citi to eliminate, disable or discontinue the Deco Hyperlinks at any time.

**VII. Program Website & Application**

A. **Functionality & Ownership.** As set forth in Section III(E) Deco shall be responsible for creating, updating, hosting, and operating a Program website and Program mobile application, including but not limited to creating and adhering to terms and conditions and privacy policies for the such website and application. Deco shall ensure that the Program website is available to users as of the Program Re-Launch Date (defined below) and that the Program mobile application is available to users on a date that is mutually agreed upon by the parties but no later than one month before the Program Re-Launch Date. The version of the Program mobile application that shall launch on such mutually agreed upon date shall allow users to locate Program stations, available bicycles, and Citibank branches and shall be created for Apple and Google platforms. Deco shall be responsible for expanding the Program mobile application to run on other platforms as mutually agreed to by the Parties and shall, at regular intervals as reasonably necessary for the operation of the application, update the mobile application and issue new versions of the application which shall include functionality that will be mutually agreed upon by the Parties. Except as set forth in Section VI(C)(1), Deco shall own the Program mobile application and website, both of which shall relate solely to the Program.

B. **Takedown Notices.** Deco authorizes Citi and its affiliates and their designee(s) to act as agent for and on behalf of Deco for purposes of seeking the takedown, removal, or deletion of any unauthorized reproductions or colorable imitations of the Program mobile application or website, and undertaking activities in connection therewith (and Deco shall provide related consents and authorizations or join as a party if reasonably requested by Citi). The Parties acknowledge and agree that Citi shall have no obligation to seek such takedown, removal, or deletion and may cease pursuing the takedown, removal, or deletion of any such reproduction or imitation at any time and in Citi's sole discretion. Citi shall have no liability to Deco or affiliates or any other person or entity in connection with its or its designee(s) actions or omissions in connection with any such takedown, removal, or deletion, and any such actions or omissions shall be considered those of Deco for the purposes of Section VII(B) of this Agreement.

C. **Security Incident Reporting.** In order to ensure a consistent process for identifying, reporting, investigating and closing information security incidents, Deco shall develop, implement, document and maintain an information security incident reporting process (hereinafter a "SIRP"). Such SIRP shall (a) provide an accurate and up-to-date list of Deco and Citi personnel to be contacted in the event of an actual or suspected information security incident related to the Program website and/or Program mobile application which may or could result in the disclosure of personally identifying information from Program members, including but not limited to credit or debit card numbers, (b) detail incident severity definitions, and (c) set specific escalation procedures and timeframes for same based upon the breach

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severity level of the actual or suspected information security incident. At a minimum, the SIRP must (1) mandate that all of Deco personnel notify their management in the event that any of Deco personnel become aware of any action which indicates that there has been or may be an information security incident, and (2) mandate that an officer of Citi must be contacted immediately in the event of any actual or likely disclosure of personally identifying information from members, in accordance with the aforementioned escalation procedure.

D. Vulnerability Assessment. At Citi's request, no less than semi-annually, Deco will allow Citi or a third party engaged by Citi, to perform a vulnerability assessment of the Program website and/or Program mobile application, including but not limited to Deco's technology infrastructure ("Vulnerability Assessment"). Citi shall be responsible for all expenses associated with the performance of the Vulnerability Assessment. Deco will provide information requested by Citi to enable Citi or a third party engaged by Citi to perform the Vulnerability Assessment within seven (7) days of Citi's request for such information. Citi shall keep complete and accurate records regarding the results of the Vulnerability Assessment. Citi will notify Deco of security risks identified by Citi or by a third party engaged by Citi (singular "Deficiency", or plural, "Deficiencies"). Deco shall have thirty (30) days to cure all Deficiencies identified as "high" according to industry standards. All other Deficiencies identified will be cured by Deco within ninety (90) days of Citi's notification to Deco of such Deficiencies. Deco shall be responsible for all expenses associated with curing Deficiencies identified as a result of the Vulnerability Assessment. Citi shall have the right to re-perform the Vulnerability Assessment upon receipt of Deco's notification that Deficiencies were eliminated. If, in Citi's sole and exclusive discretion, the results of such Vulnerability Assessment demonstrate that Deco has failed to cure any Deficiency, Citi shall have the right to terminate this Agreement immediately upon written notice, without liability. Further, if Citi terminates this Agreement in accordance with this Section, Citi shall be entitled to a prorated refund of the fees paid to Deco.

Industry standard definition of HIGH, MEDIUM, and LOW Deficiencies

High Risk: These issues identify conditions that could directly result in the compromise or unauthorized access of a network, system, application or information. Examples of High Risks include known buffer overflows; weak/no passwords, no encryption, which could result in denial of service on critical systems or services; unauthorized access; and disclosure of information. In addition, all non-compliant Citigroup policy issues will be categorized as High Risk.

Medium Risk: These issues identify conditions that do not immediately or directly result in the compromise or unauthorized access of a network, system, application or information, but do provide a capability or information that could, in combination with other capabilities or information, result in the compromise or unauthorized access of a network, system, application or information. Examples of Medium Risks include unprotected systems, files, and services that could result in denial of service on non-

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critical services or systems; and exposure of configuration information and knowledge of services or systems to further exploit.

Low Risk: These issues identify conditions that do not immediately or directly result in the compromise of a network, system, application, or information, but do provide information that could be used in combination with other information to gain insight into how to compromise or gain unauthorized access to a network, system, application or information. Low risk issues may also demonstrate an incomplete approach to or application of security measures within the environment. Examples of Low Risks include cookies not marked secure; IP hopping; revealing system banners; and general best practices recommendations.

#### VIII. Term & Termination.

A. Term. The initial term of this Agreement shall begin on the effective date and shall continue for a period of five (5) years from the date that the Program is re-launched to include the downtown Miami area and all Program bicycles include the Program Logo (the "Program Re- Launch Date") (the "Initial Term"), unless terminated earlier in accordance with Section VIII(B). Such Program Re-Launch Date shall occur no later than November 15, 2014. Thereafter, the Parties may automatically renew this Agreement for (a) an additional five (5) year term in Deco's City of Miami program and (b) to the natural expiration of Deco's municipal contract term in the City of Miami Beach (Expiration Date: September 30, 2023), upon the mutual agreement of the Parties no less than one-hundred and twenty (120) days prior to the end of the then-current term (each, a "Renewal Term"). The Parties will mutually agree on the Sponsorship Fee for any Renewal Term, while all of the other terms and conditions set forth herein shall remain the same, except as otherwise agreed to by the Parties in writing. Notwithstanding the foregoing, in the event that Deco elects not to renew the Agreement and enter into an agreement with a third party for the title sponsorship, Deco must, prior to entering into such an agreement, provide Citi with the option to renew its sponsorship under the same terms and conditions as those offered to such third party. The Initial Term together with each Renewal Term shall collectively be referred to herein as the "Term."

#### B. Termination.

1. Citi shall have the right to terminate this Agreement upon ten (10) days prior written notice to Deco in the event that the City of Miami, the City of Miami Beach, or any other governmental or administrative body or agency having jurisdiction related to the Program, terminates its agreement with Deco governing the Program or passes any rule, regulation, or law that would significantly limit Deco's ability to operate the Program as contemplated herein. In the event of such termination, Deco shall refund Citi a pro-rata portion of the Sponsorship Fee and any applicable advances paid for the contract year during which such termination occurs. Nothing herein shall be interpreted to preclude Citi from entering into an agreement with another operator of the Program in the event that the contract between Deco and the City of Miami or the City of Miami Beach is terminated.
2. Citi shall have the right to terminate this Agreement immediately in the event that a change in law, regulation, or other regulatory requirement applicable Citi (herein referred to as "New

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Legislation”), would prohibit Citi from sponsoring the Program or would render Citi’s obligations hereunder impermissible or impracticable without a violation of the New Legislation. Notwithstanding the forgoing, in the case of termination by Citi pursuant to this paragraph, Citi shall provide Deco with the amount of prior notice allowed based on the effective date and the content of such New Legislation. Any Equipment Fees already paid by Citi to Deco shall not be refundable if Citi terminates for this reason and Citi shall continue to make such payments pursuant to a separate written agreement which will be entered by the parties, provided, that Deco has made purchases for which such Equipment Fees were to be used (and can provide supporting documentation of such purchases), the equipment is necessary and capable of functioning as intended, and Deco is not able, after using all commercially reasonable efforts to immediately cancel the order(s), return or reduce the amount of such purchases.

3. Citi shall also have the right to terminate this Agreement if Deco breaches this Agreement and the breach remains uncured for more than twenty (20) days after Deco receives written notice of such breach from Citi, except for breaches by Deco of Section III(C), (D), (E), (F), (G), in which case Deco shall have sixty (60) days to cure such breach and breaches which result from Deco’s failure to meet the non-safety related SLAs for which Deco shall have ninety (90) days to cure such breach. In the event of such termination, Deco shall refund Citi a pro-rata portion of the Sponsorship Fee paid for the contract year and any applicable advances during which such termination occurs. Notwithstanding the forgoing, in the event of that Citi terminates this Agreement as a result of a breach for with a sixty (60) or ninety (90) cure period applies, then any advances made by Citi of the Sponsorship Fees and the Equipment Fees paid by Citi shall not be refundable; provided that Deco has made purchases for which such advances and Equipment Fees were to be used (and can provide supporting documentation of such purchases), the equipment is necessary and capable of functioning as intended, and Deco is not able, after using all commercially reasonable efforts to immediately cancel the order(s), return or reduce the amount of such purchases and provided, further, such termination is not the result of Deco’s misuse of such Equipment Fees or the advances.
4. Citi shall also have the right to terminate this Agreement upon one hundred eighty (180) days written notice in the event that the Program fails to meet the agreed upon utilization metrics set forth in Exhibit C by the end of the fourth quarter of the first year of the Term. Such termination would become effective on the last day of the first quarter of the second year of the Term. Any Equipment Fees and advances of Sponsorship Fees used to pay for equipment for the Program provided by Citi shall not be refundable and Citi shall continue to pay the Equipment Fees pursuant to a separate written agreement which will be entered by the parties; provided that Deco has made such purchases (and can provide supporting documentation of such purchases), the equipment is necessary and capable of functioning as intended and Deco is not able, after using all commercially reasonable efforts to cancel, return or reduce the amount of such purchases and provided, further, such termination is not the result of Deco’s misuse of such Equipment Fees or the advances.

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5. Deco shall have the right to terminate this Agreement upon prior written notice to Citi if Citi fails to make a payment to Deco of any sums due hereunder, provided that Citi is notified in writing of such nonpayment by Deco and such payment is not made within twenty (20) days following Citi's receipt of such notification. In the event of such termination, Citi will still be obligated to pay the sums due hereunder up to the date of termination, but shall be relieved of any future payment obligations hereunder, except for Equipment Fee for purchases which Deco can demonstrate through documentary evidence are non-cancellable or refundable.
6. Either Party shall have the right to terminate this Agreement upon prior written notice to the other Party in the event of: (i) the other Party's insolvency; (ii) the filing of any petition by or against the other Party under bankruptcy, reorganization, or receivership law which petition is not withdrawn or dismissed within thirty (30) days thereafter; (iii) the other Party's execution of an assignment for the benefit of creditors; or (iv) the appointment of any trustee or receiver of the other Party's business or assets or any part thereof, unless such petition, assignment, or appointment is withdrawn or nullified within fifteen (15) days of such event. In the event of termination by Citi hereunder, Deco shall refund Citi a pro-rata portion of the Sponsorship Fee paid for the contract year during which such termination occurs. Any Equipment Fees paid by Citi shall not be refundable; provided that Deco has made such purchases (and can provide supporting documentation of such purchases), the equipment is necessary and capable of being functioning as intended and Deco is not able, after using all commercially reasonable efforts to cancel, return or reduce the amount of such purchases.
7. Upon termination or expiration of this Agreement, each Party shall immediately cease using the Marks of the other Party.

VIII. Representations, Warranties & Covenants.

- A. By Deco. Deco represents, warrants and covenants that:
  1. It is authorized by the cities of Miami and Miami Beach and has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any third party;
  2. It has or will obtain all government licenses, waivers, releases, registrations, approvals, permits or other authorizations necessary to perform its obligations as contemplated under this Agreement and that such licenses, agreements, permits, waivers, releases, registrations, approvals, and/or authorizations will be valid and sufficient for the performance of its obligations hereunder;
  3. It will comply with all applicable laws, regulations, ordinances and codes pertaining to the fulfillment of its obligations under this Agreement; and

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4. The Deco Marks and all content, promotions, and advertising created or furnished by Deco (except to the extent they use the Citi Marks) for use in connection with the Agreement will not violate or infringe upon the rights of any third party when used by Citi in accordance with the terms of this Agreement.
5. Deco has and will maintain information security standards and procedures for the Program website and Program mobile application in accordance with industry standards and maintains appropriate procedures to remediate any information security breach that may occur. If Deco learns that an information security breach has occurred on the Program website or Program mobile application, Deco will promptly notify Citi of such information security breach to the extent legally permissible.

B. By Citi. Citi represents, warrants and covenants that:

1. It has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any third party;
2. The use of the Citi Marks as permitted and approved hereunder shall not infringe upon the intellectual property rights of any third party; and
3. It will comply with all applicable laws, regulations, ordinances and codes pertaining to the fulfillment of its obligations under this Agreement.

IX. Indemnification.

A. Deco shall defend, indemnify, and hold harmless Citi, its parents, affiliates and subsidiaries and its and their respective directors, officers, employees and agents from and against any liabilities, losses, investigations, inquiries, claims, suits, damages, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) (each, a "Claim") arising out of or otherwise relating to (i) Deco's breach of its obligations under this Agreement, including but not limited to its representations and warranties; (ii) the failure of Deco or those acting under its control to comply with all applicable laws, regulations, codes, ordinances or other requirements of any governmental authority; (iii) the authorized use of the Deco Marks and materials provided by or on behalf of Deco; (iv) the acts or omissions of Deco or anyone acting under its direction or control; (v) the unauthorized use by Deco of the Citi Marks or other Citi-owned materials provided pursuant to this Agreement; (vi) or any loss, damage, personal injury or death, suffered by any third party arising in connection with the Program.

B. Citi shall defend, indemnify, and hold harmless Deco and its directors, officers and employees from and against any Claims arising out of or otherwise relating to (i) Citi's breach of its obligations under this Agreement, including but not limited to its representations and warranties; (ii) the authorized use of the Citi Marks and any materials provided by Citi in connection with the Program; and (iii) the unauthorized use by Citi of the Deco Marks or other Deco-materials provided pursuant to this Agreement.

C. Notwithstanding the foregoing, neither Party shall be obligated to indemnify the other Party for any Claims that may arise out of the gross negligence or willful misconduct of the party otherwise

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indemnified. Each Party shall provide written notice to the other of any Claims, whether actual or threatened, promptly upon receipt of notice thereof. The other party shall make no settlement of an indemnified claim specifically naming or directing the Indemnified Party without the Indemnified Party's prior written approval.

X. Insurance.

A. During the Term, Deco shall obtain and maintain all insurance coverage needed to provide and the properly run the Program and as required by federal or state law, including without limitation, Workers Compensation with statutory limit and one million dollars (\$1,000,000) Limit Employer's Liability, one million dollars (\$1,000,000) Limit for Automobile Liability, Commercial General Liability including broad form contractual liability and personal injury endorsements, providing coverage against liability for bodily injury and property damage in the minimum amount of \$1MM per occurrence and no less than two million dollars (\$2,000,000) annual aggregate in addition to an Umbrella/Excess Liability providing excess liability coverage in the minimum amount of ten million dollars (\$10,000,000.00) annual aggregate. Upon request of Citi, Deco shall provide a copy of a Certificate of Insurance that conforms to the foregoing requirements. The certification provided to Citi must include the amount and type of the coverage(s), names of the insurance providers, the policy numbers and the expiration date of such coverage(s), or that such coverage information has not materially changed since the effective date of this Agreement or the prior year's certification, as the case may be.

B. Citi, its parent Citigroup Inc. and subsidiaries as "Additional Insured" should be listed on any General Liability, Auto Liability, and Umbrella Liability coverage. In addition, Citi should be named as "Certificate Holder" on the Certificate of Insurance. Insurance Carrier shall notify Citi thirty (30) days prior to any non-renewal or cancellation of the Insurance required.

C. Citi's acceptance of delivery of a Certificate of Insurance that does not conform to the requirements herein shall not relieve Deco of its obligations to provide applicable insurance conforming to the requirements herein. Failure to comply with the insurance requirement above shall constitute a material breach of this Agreement.

XI. Confidentiality.

A. Each Party shall treat as confidential and shall not copy or duplicate or disclose to any person or organization any information obtained from the other Party, either directly or indirectly, that is marked as confidential or which should be reasonably understood to be confidential ("Confidential Information") and will only use or reproduce such Confidential Information (i) to perform its obligations under this Agreement, (ii) as required by the order of any court or any government agency with proper jurisdiction (and provided it gives notice to disclosing Party and an opportunity to object to the disclosure of such Confidential Information) or (iii) to receiving Party's attorneys, accountants or other representatives as necessary in the performance of their duties and in the case of Deco, to the cities of Miami and Miami Beach solely to the extent required under the agreements between Deco and such cities. Confidential Information shall not include (1) information that was in the public domain through no fault of the receiving Party at or subsequent to the time it was communicated to the receiving Party, (2) information

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that was rightfully in the receiving Party's possession free of any obligation of confidentiality at or subsequent to the time it was communicated to the receiving Party by the disclosing Party and (3) information developed by receiving Party independently or and without reference to information provided by the disclosing Party hereunder. Without the disclosing Party's prior written consent and other than as set forth above, receiving Party may not disclose Confidential Information to any third party. The receiving Party shall treat Confidential Information with at least the same degree of care that it treats its own confidential information and shall exercise reasonable precautions to prevent disclosure of Information to unauthorized parties. If the receiving Party becomes aware of any threatened or actual violation of the disclosing Party's obligations with respect to Confidential Information, the receiving Party shall immediately notify the disclosing Party thereof and the receiving Party will, and will assist the disclosing Party with its effort to, cure or remedy such violation.

B. This Agreement and the Parties' dealings under this Agreement, including any payments made by Citi, are confidential and shall not be disclosed by either Party without the prior written consent of the other Party (which may be by e-mail), unless such Party is under a legal obligation to disclose such information or such disclosure is to such Party's advisors or for purposes of enforcement. In such event, the Party with the obligation to so disclose shall make reasonable efforts to provide the other Party with adequate notice of the required disclosure.

## XII. Miscellaneous.

A. Governing Law & Jurisdiction. All matters affecting the interpretation or performance of this Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the laws of the State of New York, exclusive of conflict of laws provisions. Any action or proceeding commenced pursuant to this Agreement shall be commenced in a federal or state court in the State of New York, County of New York. Both Parties hereby irrevocably waive trial by jury.

B. No Subcontractors. Deco may not engage any third party to perform any of its obligations hereunder without Citi's prior written approval. Notwithstanding such approval, Deco shall remain responsible for the performance of all obligations hereunder and for the acts or omissions of any its agents or subcontractors.

C. Assignment. Neither party shall assign this Agreement, in whole or in part (by assigning any right or delegating any duty under this Agreement), voluntarily or involuntarily, by operation of law, or in any other manner, without the other party's prior written consent (which may be by e-mail or facsimile) which may be withheld in such party's sole discretion, provided, however, that Citi may assign this Agreement to an affiliate or subsidiary capable performing hereunder upon notice, but without consent, to Deco. Except for such assignment by Citi, any purported assignment or delegation by a party without the other party's prior written consent is void. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and permitted assigns of the parties.

D. Force Majeure. In the event that Deco is unable to perform its obligations under this Agreement as a result of an Act of God or of the public enemy, act of the government either in its sovereign or



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contractual capacity, suspension or cancellation of the Program, civil commotion, fire, or flood, each of which must have a prolonged impact on the use of bicycles in the cities of Miami and/or Miami Beach (each an "Event") for one hundred twenty days (120), then Citi may, at its option either extend the Term for a period equal to the period that Deco was unable to perform its obligations or, if the impact exceeds one hundred eighty days (180), terminate this Agreement. In addition, if as the result of such Event, Deco is unable to meet the Program metrics in Exhibit C, then Citi shall also have the right to extend the Term for a period equal to the period of the Event. Notwithstanding the above, this Section XII (D) shall not relieve the Parties of any obligations relating to confidentiality, information security or non-infringement under this Agreement.

E. Relationship of the Parties. Deco shall perform services as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent between the Parties hereto or any affiliates or subsidiaries thereof, or to provide either Party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other Party. Deco also agrees that it will not hold itself out as an affiliate of, or partner, joint venturer, co-principal or co-employer with Citi or any of its parent corporations, affiliates or subsidiaries by reason of this Agreement and that Deco will not permit any of its employees, agents or subcontractors to hold themselves out as, or claim to be, officers or employees of Citi or any of its parent corporations, subsidiaries or affiliates by reason of this Agreement.

F. Role of the Cities of Miami & Miami Beach. Pursuant to its agreements with the cities of Miami and Miami Beach, copies of which has been provided to Citi, Citi acknowledges and agrees that the such municipalities may have approval rights regarding the Program Logo, Program Name, colors of the bicycles and stations, and station formats. Deco shall be responsible for securing any necessary approvals which shall not be unreasonably withheld.

G. Waiver. This Agreement constitutes the entire agreement of the Parties and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, relating to the subject matter hereof. This Agreement may be modified only by a written instrument signed by both Parties. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both Parties. However, failure of either Party to require the performance of any term of this Agreement or the waiver by either Party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

H. Severability. Each and every paragraph, sentence, term and provision of this Agreement shall be considered independent, reasonable, and severable. If a court of competent jurisdiction or arbitrator(s) makes a final determination that any paragraph, sentence, term or provision of this Agreement is unreasonable, invalid or unenforceable, the remaining paragraphs, sentences, terms and provisions of this Agreement shall be unimpaired and the unreasonable, invalid or unenforceable paragraph, sentence, term or provision of this Agreement shall be deemed replaced by a paragraph, sentence, term or provision that is valid, reasonable and enforceable and that most closely approximates the intention of the Parties with respect to the unreasonable, invalid or unenforceable term or provision, as evidenced by the remaining valid enforceable terms and conditions of this Agreement.

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I. Audit. At least once during each year of the Term Citi, its internal or external auditors shall be entitled to audit Deco's books and records as related to the Program and Deco's expenditure of the Equipment Fees and advances. In the event that Citi finds that Deco has overstated such expenditures or misused such Equipment Fees or advances, Citi shall be entitled to terminate this Agreement and receive a refund of such Equipment Fees and/or advances.

J. Publicity. Neither Party shall issue any press release or public announcement concerning this Agreement, or identifying, mentioning or using the name of the other Party, without obtaining the prior approval of the other Party hereto, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Citi shall be entitled to include the Program in any list of its sponsorships.

K. Notice. Unless otherwise specified herein, all notices, requests, demands, payments, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given (i) when hand-delivered, (ii) upon delivery when sent by express mail, courier, overnight mail or other overnight or next-day delivery service, (iii) when received when sent by facsimile or via email, provided that such facsimile or email is electronically confirmed to have been received, or (iv) three (3) days after the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, addressed as follows:

Citi: Citibank, N.A.  
Attn: Elyssa Gray  
One Court Square  
Long Island City, NY 11120

With a copy to: Citi Legal Department  
Attn: Jane G. Pollack or Anne Robinson  
One Court Square, 41st Floor  
Long Island City, NY 11120

Deco: 41 NE 17 TER, MIAMI, FL 33132

Citi or Deco may change its address by giving written notice of such change of address to the others.

L. Survival. The following provisions shall survive expiration or termination of this Agreement: Sections VIII(B)(2), VIII(B)(4), VIII(B)(7), IX – XII.

M. Entire Agreement. This Agreement, including all exhibits, schedules, and other attachments to this Agreement as well as documents specifically referenced in this Agreement, constitute the entire expression of the Parties' agreement with regard to the subject matter of this Agreement. All prior and

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contemporaneous negotiations and agreements between the parties with regard to the subject matter of this Agreement are expressly superseded by this Agreement.

N. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITIBANK, N.A.

By: 

Print Name:

HEATHER M. (12)

Title:

Chief Client Experience  
Digital & Marketing Officer

DECOBIKE, LLC

By: 

Print Name:

RICARDO PIERDANT

Title:

PRESIDENT

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**Exhibit A**

**Sponsorship Benefits**

In addition to the benefits outlined in Sections I and III of the Agreement, Deco shall provide to Citi the following sponsorship benefits during each year of the Term:

**1. Status, Rights & Exclusivity**

- Citi will be the exclusive title sponsor of the Program
- Citi colors as selected by Citi shall be incorporated into the branding of the Program, subject to approval by the cities of Miami and Miami Beach
- During each year of the Term, Deco will provide Citi with a most favored discounted rate on all passes and memberships in the Program and will give Citi \$7500 of free Program memberships in the form of passes, member access cards or key fobs to be distributed by Citi in its sole discretion, but in compliance with the terms and conditions of the Program.
- At least once during each year of the Term, Deco shall allow Citi to create an email that may, in Citi's sole discretion, include messaging about Citi products and services, that Deco will deploy to the Program member base (excluding members who have opted out from receiving marketing messages)

**2. Citi Branding Visibility on Bicycles**

- Program Name and Program Logo on the fenders, frames, and baskets of all of the Program bicycles, the exact placement of which shall be mutually agreed upon by the parties. Such Program Name and Program Logo shall appear on all Program bicycles (minimum 1700), as of the Program Re-Launch Date. Deco will add the Program Name and Program Logo to all Program bicycles that it adds to the Program. In addition, in the event that Deco orders new bicycles, such bicycles shall not include the name of the manufacturer of such bicycles on the seats.
- Citi shall choose color of bikes and other graphic design elements, subject to approval by cities of Miami and Miami Beach. Any changes to the design elements of the Program bikes, including but not limited to any proposed addition of any logos or other elements shall be subject to Citi's approval. As of the Program Re-Launch Date, the 700 downtown Miami area Program bicycles shall all include design elements chosen by Citi. By January 30, 2015 the 1000 Miami Beach Program bicycles shall all include design elements chosen by Citi and there should no longer be any Program bicycles that do not include design elements chosen by Citi.
- Citi responsible for paying for the stickers on the bicycles which need to be rebranded. Such costs shall not exceed \$60,000.00.

**3. Citi Branding Visibility on Station Kiosks, Station Docks & Other**

- Program Logo on all station kiosks with the placement to be mutually agreed upon by Citi and Deco. The parties acknowledge and agree that Deco will use best effort to obtain permissions to include Citi branding on any station kiosks or docks which are placed on private property; provided, however, that the Deco shall use best efforts not to place stations on private property and shall work with Citi to determine an acceptable location for a station dock or kiosk if such kiosk or dock needs to be placed on private property. The parties acknowledge and agree that currently there is only one station on private property

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- In the Miami Beach area, Citi shall have the main 22" x 48" ad panel at 40 station kiosks on which Citi commercial advertising can appear. The Program Name and Program Logo will appear on all of the stations kiosks (minimum of 100) in the Miami Beach area. In the event that Citi advertising cannot appear on an ad panel, no information on any commercial entity (other than Deco) shall be included on such ad panel; rather, the ad panel shall consist of Program, city or tourist related information. In addition, the Program Logo will appear on the rail locking docks and the stations kiosks and docks will be Citi blue (or feature Citi blue decals). As Deco adds station kiosks, Citi will receive the same benefits on such kiosks.
- In the downtown Miami area, Citi shall have all of the ad panels at every station kiosk (minimum 70). The main panel shall be 23" W x 58"H and the side panels shall be 16"W x 58"H. One side panel shall be used for the bikeshare station network map on all kiosks. As Deco adds station kiosks, Citi will receive the same benefits on such kiosks.
- Program Logo on all member access cards, Program maintenance trucks, rebalancing trailers, Program uniforms, city makes, and marketing collateral.

#### **4. Marketing and promotions**

- Deco will consult and cooperate with Citi in devising and executing the marketing plan and all promotional efforts in support of the Program
- Deco will consult and cooperate with Citi on any and all third-party collateral, sponsorships and promotional activities in support of the Program or using the Program Name or Logo. Specifically, Citi shall have the right to review and approve all such collateral, sponsorships and promotional activities. Such approval shall not be unreasonably withheld.
- Deco will prominently display the Program Logo on all promotional campaign material for the Program, including in all social media posts, press releases and marketing collateral
- Deco will also prominently display the Program Logo on any materials associated with community and bicycle safety programs
- In the event Deco sells advertising space on the Program website and/or Program mobile application, Deco shall provide Citi with ad inventory on such properties free of charge and will not sell ad space to a third party that is not approved by Citi.
- Deco will undertake at a minimum, the following marketing efforts in support of the Program:
  - Safety, education and community outreach campaign, including dozens of events in many areas of the city
  - Email blast to 4,300 city staff members regarding the Program and the Program Re-Launch
  - Program launch event with national and global media attention
  - Social media activation starting 1 month before Program Re-Launch and ongoing
  - Events, tabling, contests, ambassadors and programs to drive increase in membership, ridership and community ongoing.
  - Outreach to tourists, both prior to visit to Miami and Miami Beach and during their stays
  - Facilitate cross promotional opportunities with hotels, at community events (i.e., Aids Walk, Relay for Life, Bike Miami Days, and the Winter Party)

#### **5. Public relations**

- Citi shall have the right to have Citi designated spokesperson participate in all media events that Citi considers to be key media.

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- Citi will receive a credit as the exclusive title sponsor in all press releases or other controlled media in a form to be mutually approved by the Parties.
- Citi and the Program Name and Program Logo will be featured in all official Program press announcements and at all Program Events
- Deco will use best efforts to arrange for a press conference to announce the sponsorship with the participation of the mayors of the cities of Miami Beach and Miami
- Deco will conduct ongoing press outreach concerning the Program

**6. Safety**

- Deco, together with the cities of Miami and Miami Beach, will execute a variety of programs designed to bring attention to bicycle safety and helmet usage. Deco will consult with Citi regarding the execution of such Programs and provide Citi with the opportunity to participate in such Programs, including but not limited to through helmet giveaways at Citibank branch locations.
- Deco will place safety messaging prominently on the website, emails and newsletters to members, and on the station kiosks
- Deco will continue to conduct bicycle safety workshops, bike safety summer camp programs, and its work with the South Florida Bike Coalition and will provide Citi with the opportunity to participate in these programs
- Deco will continue to provide free helmets to all annual subscribing Program members at Deco office location(s) and, in Citi's discretion, Citi may also allow Deco to provide such helmets at Citi branches in the immediate area

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**Exhibit B**

**SLAs**

All Service Level Agreements are assessed monthly unless otherwise specified.

Ref.	Name	Service Level Agreement	Measurement Tool(s)	Performance Level	Units	Liquidated Damages Per Unit
1	Station & Bicycle cleaning	Every Station, as well as all Bicycles present, is cleaned or wiped down at least once every 14 days.	Deco databases	<98%	Per Station per Day	\$50
2	Bicycle Maintenance	Every Bicycle receives a full mechanical check at least once every calendar month.	Deco databases	<100%	Per Bicycle per Day	\$10
3	Station cleaning after discovery or notification	Stations must be cleaned within 48 hours of discovery or notification. Cleaning includes, but is not limited to wash or wipe-down, graffiti, scratchiti and sticker removal.	Deco databases.	<90%	Per instance, per 24 hour period beyond deadline	\$50
4	Bicycle cleaning after discovery or notification	Operator must clean Bicycles or remove them from the system within 96 hours of discovery or notification. Cleaning includes, but is not limited to wash or wipe-down, graffiti, scratchiti and	Deco databases	<90%	Per instance, per 24 hour period beyond deadline	\$10

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Ref.	Name	Service Level Agreement	Measurement Tool(s)	Performance Level	Units	Liquidated Damages Per Unit
		sticker removal.				
5	Station Uptime	Stations that are not marked for repairs, undergoing repairs or temporarily removed from circulation must be fully functional including all communications and transaction systems.	Deco database(s)	<95%	Per hour per station	\$50
6	Website availability	Website must be fully functional. This includes but is not limited to the ability to: process transactions; provide real-time data and map; and provide subscriber account information, such as rental histories.	Deco database(s)	<97%	Per hour	\$50
7	Central Computer System outage	The Central Computer System must be fully functional	Deco database(s)	<97%	Per hour	\$50
8	Bicycle fleet	The operator will ensure that all bicycles that are not removed from circulation	Deco database(s)	<95%	Per Bicycle	\$15



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Ref.	Name	Service Level Agreement	Measurement Tool(s)	Performance Level	Units	Liquidated Damages Per Unit
		for repair, replacement or cleaning are in circulation as agreed upon by all parties.				
9	<b>Operational Docks</b>	Deployed Docks not marked for repair or replacement must be fully functional. This includes but is not limited to the ability to rent and receive Bicycles.	Deco database(s)	<95%	Per Dock	\$10
10	<b>Bicycle rebalancing</b>	Bicycles shall be redistributed throughout the system as necessary to meet demand.	Deco database(s)	TBD	Measurement method to be mutually agreed upon.	TBD

Deco shall be exempt from the SLA requirements in this exhibit under the following circumstances:

- (a) **Damaged or Stolen Stations and Components:** In the event a station is damaged by acts of god or multiple stations are damaged at the same time as a result of an event beyond the direct control of Deco, Deco shall be excused from complying with SLA terms for such stations, bikes and components; provided, however, that Deco takes all necessary steps to ensure that riders cannot access such stations, bikes or components until they are fixed and provided further that such time Deco is excused is less than thirty (30) days unless further delay is the result of a Force Majeure Event under the Agreement or the result of a delay by the municipality or other governing body. Deco shall use best reasonable efforts to replace or repair such equipment quickly. It is agreed by the parties that in the event equipment must be ordered or removed for repairs, there will be a corresponding downtime for such equipment of which Deco will not be penalized.
- (b) **Temporary Removal or Relocation of Stations:** During the Term, stations may be moved or removed temporarily for repairs, upgrades (including for the rollout of the new equipment as set forth in the Agreement) and/or to make way for construction projects (such as repaving or road infrastructure work). Deco shall be exempt from complying with SLA terms for such stations and shall not be penalized, provided, however, that Deco shall use all commercially

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reasonable effort to have any station that is effected by such construction project relocated to a different area during the project and shall also notify Citi of such removal.

- (c) 3<sup>rd</sup> Party Communication Providers: In the rare event a cellular data service provider (such as AT&T or T-Mobile for example) experiences an issue that impacts that data communication and performance of Deco's stations, Deco shall be exempt from the SLA during such period and shall not be penalized. Deco shall notify the communication provider immediately upon identifying and attempting to troubleshoot the issue. Deco will notify members (via email or social media) and Citi of any impact on the operation of the system if it is likely to persist for more than two hours.

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**Exhibit C**

**Program Metrics**

The utilization metrics for the Program shall be as follows:

- Contract Years 1 & 2 – An average of 2 Rides (defined below) per day per bicycle (based on the Program fleet levels set forth in the Agreement)
- Contract Years 3, 4 & 5 – Any average of 2.5 Rides per day per bicycle (based on the Program fleet levels set forth in the Agreement)

No later first quarter of the second contract year of the Term, Deco would perform a formal ridership analysis to determine the degree of utilization of the Program over the first year of the Initial Term. In the event that the review demonstrates that the degree of utilization of the Program during the first contract year of the Term is less than an average of at least two Rides (as defined below) per day per bicycle has not been met, then Deco and Citi will come to mutually agreeable revised marketing and public relations commitments for Deco, which may include increasing the financial resources and manpower committed by Deco and related to those commitments, including but not limited to providing Citi with additional media placements, increasing public relations activities, and holding additional local promotions with Miami and Miami Beach agencies. After the initial audit, Deco will conduct quarterly ridership analyses and continue the revised marketing and public relations actions until the agreed-upon metrics have been met for at least two consecutive quarters. The parties acknowledge and agree for the purposes of making such calculations the limited time periods during which new docks were installed throughout Miami Beach and locks were changed out throughout Miami Beach will not be counted. Once such metrics have been satisfied for two consecutive quarters such reviews will be conducted at least once annually based on the metrics set forth above for the remainder of the Initial Term, unless any review shows that such metrics have not be satisfied in which case a review shall be conducted for the following quarter. In the event that the metrics are not met for two consecutive quarters, Citi shall have the option to terminate the Agreement as set forth in Section VII(B)(3).

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Exhibit D

Citi Marks

Citi Bike name

Citi Bike Design logo

Blue Wave Design

Citi

Citi with Arc Design

Citibank

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Exhibit E

Deco Marks

DecoBike Name and Logo

DecoBike Bicycle Design

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Exhibit F

Program Membership Pricing Ranges

- Standard Monthly Bike Pass Subscription (unlimited 30 Min rides): \$15-\$18
  - Deluxe Monthly Bike Pass Subscription (unlimited 60 Min rides): \$25-\$30
  - Annual Pre-Paid Bike Pass (unlimited 30 Min rides): \$150-\$160
  - 30 Min: \$4-\$6
  - 1 Hour: \$6-\$9
  - 2 Hour: \$10-\$13
  - 4 Hour: \$18-\$22
  - 1 Day: \$24-\$30
- Deco may modify its prices in accordance with the ranges noted above upon providing ten (10) days prior notice to Citi. Deco shall be permitted to offer other various short-term passes not listed here at its discretion, but all subject to any requirements set forth in the Agreement. For the avoidance of doubt, Deco shall be able to offer discounts off of the prices below in its discretion, provided that it gives notice to Citi and that such discounts are not related to method of payment for such passes.

**DESIGN REVIEW BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: October 6, 2009

FILE NO: 22494

PROPERTY: Citywide Bike Rentals

LEGAL: Citywide

IN RE: The Application for Design Review Approval for the installation of bicycle rental kiosks within the public rights-of-way throughout the City.

**ORDER**

The applicants, the City of Miami Beach and Deco Bikes, filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with the Design Review Criteria in Section 118-251 of the Miami Beach Code.
- B. The project would remain consistent with the criteria and requirements of section 118-251 if the following conditions are met:
  - 1. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
    - a. The final design and details of the proposed bicycle sharing facilities, including materials and finishes, shall be further developed and refined, subject to the review and approval of staff.
    - b. The proposed kiosks shall incorporate a a graphic representation of the late 1930's emphasis on 'speed', in a manner to be reviewed and approved by staff.
    - c. All kiosks shall be painted green instead of blue, in a manner to be reviewed and approved by staff.
  - 2. The applicant shall obtain all required permits and approvals from the Public Works Department.



3. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
4. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph B of the Findings of Fact (Condition Nos. 1-4, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Design Review Board, as determined by staff, entitled "DecoBike Colors, Finishes & Kiosks", modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the first bicycle rental facility is not installed or the required permit for the first bicycle rental facility is not issued, within eighteen (18) months of the meeting date at which the original Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions.

In accordance with Section 118-264 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code.





Dated this 9<sup>th</sup> day of October, 2009.

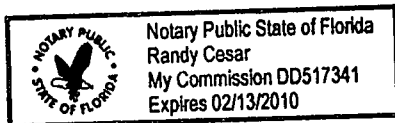
DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: THOMAS R. MOONEY, AICP

DESIGN AND PRESERVATION MANAGER  
FOR THE CHAIR

STATE OF FLORIDA                    )  
  )SS  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me this 9 day of  
October 2009 by Thomas R. Mooney, Design and Preservation Manager,  
Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf  
of the Corporation. He is personally known to me.



Randy Cesar  
NOTARY PUBLIC  
Miami-Dade County, Florida  
My commission expires: 2-13-2010

Approved As To Form: \_\_\_\_\_  
Legal Department: [Signature] ( 10-8-09 )

Filed with the Clerk of the Design Review Board on 10-9-09 ( RC )

[Signature]