

VAN DAALEN TENNIS, LLC.  
ONE (1) YEAR PILOT AGREEMENT  
TO PROVIDE PROGRAMMING AT THE  
CITY'S NORTH SHORE TENNIS  
CENTER

## INDEX

TITLE	PAGE
<b>SECTION 1. TERM.....</b>	<b>4</b>
<b>SECTION 2. CENTER WHERE PROGRAM OCCURS.....</b>	<b>4</b>
<b>SECTION 3. USE(S).....</b>	<b>5</b>
3.1 Public Tennis Facility.....	5
3.2 Prohibited Activities.....	5
3.3 Hurricane Evacuation Plan.....	6
3.4 Personnel Background Checks, ID Badge Requirements.....	6
3.5 Business Tax Receipt.....	6
<b>SECTION 4. FEES AND REPORTS.....</b>	<b>7</b>
4.1 Contractor Payment.....	7
4.2 Contractor Reports.....	7
4.3 Sales and Use Tax.....	8
<b>SECTION 5. EMPLOYEES AND INDEPENDENT CONTRACTORS.....</b>	<b>8</b>
<b>SECTION 6. HOURS OF OPERATION AND COURT USAGE.....</b>	<b>9</b>
6.1 Center Hours.....	9
6.2 Change of Hours.....	9
6.3 Court's Usage.....	9
6.4 Public Benefits.....	10
<b>SECTION 7. TENNIS FEES, CHARGES AND PROGRAMS, AND RELATED SERVICES TO BE PROVIDED.....</b>	<b>10</b>
<b>SECTION 8. ALTERATIONS, MAINTENANCE, REPAIRS AND SECURITY.....</b>	<b>11</b>
8.1 Building and Facility Alterations.....	11
8.2 Building and Facility Maintenance.....	11
8.3 Courts and Related Facilities Maintenance Standards.....	12
8.4 Equipment.....	12
8.5 Orderly Operation.....	13
8.6 Dangerous Materials.....	13
8.7 Security.....	13
8.8 Inspection.....	13
<b>SECTION 9. INSURANCE.....</b>	<b>13</b>
<b>SECTION 10. FINES AND PENALTIES.....</b>	<b>14</b>
<b>SECTION 11. INDEMNITY.....</b>	<b>15</b>
11.4 Subrogation.....	15
11.5 Force Majeure.....	16
11.6 Labor Dispute.....	16
11.7 Waiver of Loss From Hazard.....	16
<b>SECTION 12. DEFAULT AND TERMINATION.....</b>	<b>16</b>
12.1 Bankruptcy.....	16
12.2 Non-Monetary Default.....	17
12.3 City's Remedies for Contractor's Default.....	17
12.4 Surrender of Center.....	17

12.5	Termination for Convenience. ....	18
<b>SECTION 13. ASSIGNMENT</b> .....		18
<b>SECTION 14. SPECIAL EVENTS.</b> .....		19
14.1	City Special Events.....	19
<b>SECTION 15. NO IMPROPER USE.</b> .....		20
<b>SECTION 16. NOTICES.</b> .....		20
<b>SECTION 17. LAWS.</b> .....		20
17.1	Compliance. ....	20
17.2	Governing Law. ....	21
17.3	Equal Employment Opportunity.....	21
17.4	No Discrimination. ....	21
<b>SECTION 18. MISCELLANEOUS.</b> .....		21
18.1	No Partnership. ....	21
18.2	Modifications. ....	21
18.3	Complete Agreement. ....	21
18.4	Headings. ....	21
18.5	Binding Effect. ....	21
18.6	Clauses. ....	22
18.7	Severability.....	22
18.8	Right of Entry.....	22
18.9	Not a Lease.....	22
18.10	Signage. ....	22
18.11	Conflict of Interest. ....	22
18.12	Reasonableness.....	22
18.13	Procedure for Approvals and/or Consents. ....	23
18.14	No Waiver. ....	23
18.15	No Third Party Beneficiary.....	23
<b>SECTION 19. LIMITATION OF LIABILITY.</b> .....		23
<b>SECTION 20. VENUE.</b> .....		23
<b>SECTION 21. FLORIDA PUBLIC RECORDS LAW.</b> .....		24
<b>SECTION 22. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES.</b> .....		25

**ONE (1) YEAR PILOT AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA AND VAN DAALEN TENNIS, LLC TO PROVIDE  
TENNIS PROGRAMMING AT THE CITY'S NORTH SHORE TENNIS CENTER**

**THIS AGREEMENT** made the \_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date"), between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **VAN DAALEN TENNIS, LLC.**, a Florida limited liability company, having its principal offices at 15051 Royal Oaks Lane, Apt. 1604, North Miami, Florida 33181 (hereinafter called "CONTRACTOR").

**SECTION 1. TERM.**

- 1.1 The term of this Agreement shall be for one year. The Agreement shall be deemed by the parties hereto to have commenced retroactively, as of August 1, 2017 (the "Commencement Date"), and shall terminate on July 31, 2018.
- 1.2 At the conclusion of the one (1) year term in subsection 1.1 above, the Agreement shall continue on a month to month basis (the "Holdover Term"), so as to enable the City to evaluate such factors including but not limited to, CONTRACTOR'S performance hereunder, customer satisfaction, program offerings, revenues generated and expenses incurred; all so that the City may determine, during this month to month Holdover Term, whether it wishes to continue CONTRACTOR'S services under this Agreement, or terminate the Agreement and explore such other options as the City, in its reasonable discretion, may elect. During the Holdover Term, the City, through its City Manager, shall have the option to terminate the Agreement, without cause and for convenience, upon thirty (30) days prior written notice to CONTRACTOR. The term and the Holdover Term may be collectively referred to as the "Term".

**SECTION 2. THE CENTER**

- 2.1 The City owns and operates that certain recreational facility commonly known as the North Shore Tennis Center, located at 501 72 Street, Miami Beach, Florida 33141 (the "Center").
- 2.2 City and CONTRACTOR Responsibilities. The City has employed the CONTRACTOR, and CONTRACTOR agrees, to manage and operate the tennis programs and the Pro Shop at the Center, pursuant to the terms and conditions set forth herein. The City shall continue to be responsible for the following duties at the Center: opening and closing the Center; staffing and operating the front desk; maintaining the reservation software system; maintaining the courts and overall facilities of the Center; collecting all revenues for the Center including, without limitation, all programming fees (including revenue from the Pro Shop), membership fees and court fees; providing court maintenance personnel; and providing facility maintenance personnel. The City will assist the public in scheduling tennis programs and instruction, with a significant assistance from the CONTRACTOR.



### **SECTION 3. USE(S).**

The CONTRACTOR is hereby authorized to conduct the following kind(s) of businesses and provide the following kind(s) of services within the Center, all at its sole cost and expense:

#### **3.1 Public Tennis Facility.**

CONTRACTOR agrees it will use the Center solely for the operation of a first-class tennis programming facility. This use shall include the management and operation (including staffing) of the tennis programs, including the courts, and the Pro Shop (including food and beverage service), but excluding the collection of revenue therefrom. CONTRACTOR'S services in connection with the uses set forth herein shall include those services proposed by CONTRACTOR, as attached and incorporated in Exhibit "A" hereto, and permitted Special Events (as defined in Section 17) related to such public tennis center activities; provided, however, that in the event of a conflict between Exhibit "A" and the terms of this Agreement, the terms of this Agreement shall take precedence. No other use, business, or services shall be conducted by CONTRACTOR at the Center without the prior written consent of the City Manager, or his designee.

CONTRACTOR agrees, acknowledges, covenants and represents to the City that the Center is for the use by the public; that such public use is a prime consideration; and must be balanced accordingly with the services to be provided by the CONTRACTOR, without restricting, or in any way limiting, the public access, nature, or ambiance of the Center. Accordingly, CONTRACTOR agrees, acknowledges, covenants and represents to City that the public's right to use the Center shall not be infringed upon by any activity of CONTRACTOR. This includes, without limitation, the monopolization of courts for lessons during identified "peak times".

CONTRACTOR hereby agrees, acknowledges, covenants, and represents to City that, during the Term of this Agreement, it shall continually provide high-quality, first-class affordable tennis services to the City's residents and visitors; to meet the demands of the City's hotel community for access to high quality, first-class tennis programming within Miami Beach; and to progressively upgrade tennis programming at the Center throughout such Term.

#### **3.2 Prohibited Activities.**

CONTRACTOR will conduct its operations so as to maintain a reasonably quiet and tranquil environment for the adjacent areas, and make no public disturbances.

CONTRACTOR shall not use the Center for any unlawful purpose and shall comply with all laws and permitting requirements now in force or hereafter adopted, applicable to the Center, and/ or uses and businesses conducted on the Center. CONTRACTOR agrees not to use the Center for, or to permit the operation of, any offensive, noisy or dangerous activity, nuisance or anything against public policy. There shall be no living quarters at the Center, nor shall anyone be permitted to live at the Center. Except as may result from acts of force majeure, CONTRACTOR agrees that it will not allow the Center to become unoccupied or vacant. CONTRACTOR will not permit the outside use of any musical instrument or noise-making device at the Center, which would be in violation of the City's Noise Ordinance, as same may be amended from time to time.

3.3 Hurricane Evacuation Plan.

CONTRACTOR agrees to comply with the City's Hurricane Evacuation Plan and will cooperate fully with the instructions given by the City's representative to initiate the plan immediately upon notice of the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management. CONTRACTOR shall, at a minimum, secure the Center and all related materials and assist with the removal and reinstalling of windscreens in accordance with the procedures included in the City's Recreation Division Hurricane Evacuation Plan, as included in Exhibit "B," attached hereto.

3.4 Personnel Background Checks, ID Badge Requirements.

CONTRACTOR shall comply with the requirements of Sections 1012.32 and 1012.465, Florida Statutes, requiring that only those employees who have successfully passed the background screening required by the referenced statutes, and who meet the standards established by the statutes, be allowed access to the Center and/or allowed to perform services under this Agreement. This requirement shall also extend to all CONTRACTOR representatives, agents, independent contractors, sub-contractors, or volunteers (such employees, representatives, agents, independent contractors, sub-contractors, or volunteers of CONTRACTOR shall be collectively referred to herein as "Personnel") performing duties under this Agreement.

The Personnel shall undergo the aforesaid background screening and a drug screening, (collectively referred to herein as "Background Check Process") prior to entering the Center to begin employment and/or deliver services. The Background Check Process will be conducted by the City of Miami Beach Human Resources Department. **The Personnel shall not be permitted to work at the Center until such time as the Background Check Process has been completed and the Personnel are cleared to perform duties under this Agreement.** If any Personnel is away from the job for a period of 45 or more days, the City will require a new Background Check Process.

The CITY and CONTRACTOR agree and acknowledge that the failure of CONTRACTOR to perform any of the duties described in Subsection 3.4 shall constitute a material breach of this Agreement, for which the City reserves the right to terminate immediately and without further liability to the City. CONTRACTOR agrees to indemnify and hold harmless the City, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting in CONTRACTOR's failure to comply with the requirements of this Subsection 3.4, or Sections 1012.32 and 1012.465, Florida Statutes.

CONTRACTOR agrees to require all of its Personnel to notify the CONTRACTOR and the City of any arrest(s) or conviction(s) of any offense within 24 hours of its occurrence. CONTRACTOR further agrees to immediately notify the City upon becoming aware that one of its Personnel, who was previously certified as completing the Background Check Process, is subsequently arrested or convicted of any disqualifying offense. **Failure by CONTRACTOR to notify the City of such arrest or conviction within 24 hours of being put on notice shall constitute a material breach of this Agreement entitling the City to terminate this Agreement immediately, without further liability to the City.**

3.5 Business Tax Receipts.

CONTRACTOR shall obtain, at its sole cost and expense, any and all business tax receipts required by law for the proposed uses contemplated in this Agreement.

Without limiting the generality of the foregoing, securing the requisite business tax receipts, in addition to completing the Background Check Process in accordance with Subsection 3.4 hereof, shall be required and obtained for **each** individual professional tennis instructor providing lessons and/or clinics at the Center.

## **SECTION 4. FEES AND REPORTS**

### **4.1 CONTRACTOR Payment**

The fees to participate in CONTRACTOR'S North Shore Tennis Programs are set forth in Attachment "A" hereto, which is incorporated herein by reference. In consideration of the Services to be provided, City shall pay CONTRACTOR a programming fee equal 70% of the total monthly gross programming revenues collected by the City and a management fee equal to 21% of the total monthly gross programming revenues collected by the City, with the City retaining the remainder of the total monthly gross programming revenues collected. Additionally, the City shall retain 100% of the membership fees and court fees collected.

The CONTRACTOR's annual programming fee and management fee shall not exceed \$500,000 during the term, or a pro-rata thereof, during any Holdover Term. The City shall provide payment to CONTRACTOR by the 15<sup>th</sup> of the Month.

By way of an example, assuming that the gross programming revenues for one month equal \$100,000, the CONTRACTOR'S programming fee and management fee would be calculated as follows:

CONTRACTOR receives a programming fee of 70% of the monthly gross programming revenues, in the amount of \$70,000;

CONTRACTOR will receive a management fee of 21% of the monthly gross programming revenues, in the amount of \$21,000; and

The City will receive the remaining \$9,000 of the total monthly gross programming revenues, plus 100% of all membership fees and court fees collected during the month.

As referred to herein, "gross programming revenues" shall mean all income received (less returns and refunds) by the City from clinics, tennis instruction, camps, tournaments, academy, hospitality packages, food and beverage sales and Pro Shop sales. The gross programming revenues shall not include income received by the City for annual membership fees or hourly court fees.

### **4.2 CONTRACTOR Reports**

The CONTRACTOR shall provide a monthly activity report/revenue report which shall be submitted to the City by the fifth day of the following month. The monthly reports shall include, but not be limited to, the following information:

- (A) a comprehensive break-down of all day play, clinics, tournaments and revenues generated in the prior month by category, and other performance measures as determined by the City Manager or his designee.

- (B) a work plan to adequately address Continuous Quality Improvement goals in the CONTRACTOR's management plan.
- (C) the City reserves the right to add or modify the items required in the monthly report, as the City Manager or his designee deems necessary, in its sole and reasonable discretion, in order to adequately monitor performance of the CONTRACTOR.

#### 4.3 Sales and Use Tax.

Payment of any required Florida State Sales and Use Tax shall be the responsibility of the City.

### **SECTION 5. EMPLOYEES AND INDEPENDENT CONTRACTORS.**

- 5.1 CONTRACTOR agrees that during the Term of this Agreement, Martin Van Daalen shall have active, ongoing direct participation in the day to day tennis programming operation of the Center. In the event that the CONTRACTOR, or otherwise ceases to participate in the day to day tennis programming operation of the Center pursuant to this Agreement, then the City, at its sole option, may terminate this Agreement for cause pursuant to Section 15. In the alternative, should the City not opt to terminate this Agreement as provided therein, the City shall have prior written approval as to any replacement of the Principal subsequently offered by the CONTRACTOR.

In connection with the performance of its responsibilities hereunder, CONTRACTOR may hire Personnel (as defined in Subsection 3.4 herein), who will be the Personnel of the CONTRACTOR and not of the City, and who will be subject to a background Check Process, as set forth in Subsection 3.4 herein, at the expense of the CONTRACTOR. CONTRACTOR shall provide an adequate number of Personnel and man-hours in order to perform the services required under this Agreement. CONTRACTOR shall select the number, function, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such Personnel, in order to ensure an adequate number of Personnel and man-hours.

- 5.1.2 The CONTRACTOR agrees that all personnel for the Center shall be certified Tennis Professionals by USPTA, USTA, USPTR or equivalent. The CONTRACTOR and personnel must demonstrate knowledge and experience in tennis instruction and related activities, as well as, knowledge of the legal requirements that are involved in this type of operation. There must be onsite tennis program management by the CONTRACTOR, at the Tennis Center during operating hours.
- 5.1.3 Independent/Sub-contractors/Third Party Professionals shall not be permitted at the Center. Independent/Sub-contractors/Third Party Professionals include, but are not limited to, a resident/nonresident:
- (A) Who teaches or gives tennis lessons for a fee independent of CONTRACTOR;
  - (B) Who teaches on a court with a ball basket and with more than three balls with one or more players independent of CONTRACTOR; and
  - (C) Who collects money for instruction and/or lesson independent of the City.
- 5.2 CONTRACTOR's Personnel shall wear clean appropriate apparel to include uniforms/name tags, such that Center patrons can easily identify CONTRACTOR and its Personnel. All

Personnel furnished to the City of Miami Beach must be uniformed. Each uniform shall display CONTRACTOR's name and logo, which logo shall be subject to approval by the City. Uniforms must be provided at the CONTRACTOR's expense, and may not be charged to an employee or deducted from an employees' paycheck, therefore reducing the hourly pay rate to less than the living wage rate required under the City's Living Wage Ordinance, as same may be amended from time to time.

All Personnel shall observe all the graces of personal grooming. The CONTRACTOR shall hire Personnel to work in its operation who are neat, clean, qualified and efficient and shall comport themselves in a professional and courteous manner and be in conformity with the City's Customer Service standards, as set forth in the attached Exhibit "C". If the City Manager or his designee deems it appropriate, the CONTRACTOR and its Personnel may be required to attend Customer Service training as conducted by the City. The CONTRACTOR and any Personnel hired by same shall comply with the pre-employment requirements and standards as established by the City of Miami Beach's Human Resources Department. If CONTRACTOR materially fails to comply with these provisions, the City may send notice of default. The CONTRACTOR shall have an experienced Tennis Programming manager overseeing the Center and related operations at all times the Center is open to the general public in the absence of the CONTRACTOR.

## **SECTION 6. HOURS OF OPERATION & COURTS USAGE.**

### **6.1 Center Hours**

The CONTRACTOR shall offer programming at the Centers from 7:30 A.M. to 9:30 P.M. every day of the year, with the exception of closures due to weather conditions or events of force majeure permitting, and certain holiday agreed upon by the CONTRACTOR and the City of which proper signage and notification to patrons must be adhered to.

### **6.2 Change of Hours**

Any change in the hours of operation shall be at the City's sole option and discretion, and any request by CONTRACTOR for an increase or decrease in same shall be subject to the prior written approval of the City Manager or his designee.

### **6.3 Court's Usage.**

6.3.1 The CONTRACTOR acknowledges and agrees to prioritize utilization of courts for public usage by restricting lesson/clinic/programming courts not to exceed five (5) clay courts and one (1) hard court at the Center during peak hours of play (7:30 AM to 11:00 AM and 4:00 PM to 7:00 PM ). Courts are not to be booked or reserved by the professional tennis instructors for lessons more than one (1) day in advance. The term lesson shall mean a unit of instruction on an individual or group basis for which payment is received as outlined in Exhibit "A".

6.3.2 Additional court usage for lessons, programs and clinics during non-peak hours shall be subject to the prior written approval of the City. At no time shall more than 50% of all courts be utilized for lessons, programs and clinics until 10 minutes after any non-peak hour and there are no tennis patrons waiting for a court, without the prior written approval of the City. CONTRACTOR must use due diligence when assigning courts for open play and lessons to include: (a) alternating courts where lessons are taught to avoid overplaying a court or battery of courts and (b) separating open play courts from lesson courts to avoid injury. CONTRACTOR can allow for court

reservations to be made on hour or half hour intervals as appropriate. Reservations for doubles play shall be for up to two (2) hours.

6.4 Public Benefits.

6.4.1 The CONTRACTOR agrees that the City's Parks and Recreation Department programs or co-sponsored programs will have use of two (2) courts at the Center, at no charge to the City, twice per week, for two (2) hours for each court, between the hours of 11:00 a.m. and 5:00 p.m., to be mutually agreed upon by the parties.

6.4.2 CONTRACTOR agrees to provide free instructional lessons to after-school and summer camp participants, to be mutually agreed upon by the parties. Use of courts pursuant to the immediately preceding sentence shall be deemed to be the utilization of courts for public usage.

6.4.3 The CONTRACTOR also agrees to provide fee waivers and/or fee reductions in pricing for programs (i.e. clinics, academies, lessons, camps, etc.) for those City of Miami Beach residents from low socio-economic backgrounds who qualify. The CONTRACTOR agrees to utilize the same criteria for determining eligibility for fee waivers or reductions as being used by the City of Miami Beach Parks and Recreation Department at the time of the request. Fee waivers do not apply to private lessons unless agreed upon by CONTRACTOR.

6.4.4 The CONTRACTOR shall also offer free and/or affordable programming for Miami Beach residents with disabilities (i.e. Wheelchair Tennis) and for Miami Beach Senior residents. The CONTRACTOR will make provisions for summer and specialty camps, which camp programs will include, without limitation, camp programs for people with disabilities and for Seniors based on the established Parks and Recreation Department format.

**SECTION 7. TENNIS FEES, PROGRAMS & RELATED SERVICES TO BE PROVIDED.**

7.1 The CONTRACTOR must comply with the fee schedule for the professional tennis instruction that offers the tennis patron a choice in instructor level and hourly fee commensurate with the instructor's level, as agreed upon and listed in Exhibit "A", (to be provided by the CONTRACTOR) attached hereto. Any change of this said fee and instructor levels shall be approved by the City prior to implementation of fees.

7.2 Fees for lessons and clinics to be offered must be prominently posted at the Center at those location(s) where such fees are normally paid. All fees and charges shall be competitive with those charged by comparable public tennis centers in Miami-Dade and Broward Counties. Initial fees for programs, clinics and lessons are set forth in Exhibit "A" (to be provided by CONTRACTOR) attached hereto.

7.3 **The fees to participate in CONTRACTOR'S tennis programs are set forth in Exhibit "A" hereto, which is incorporated herein by reference. Any changes to the approval fees shall require prior written approval of the City Manager, or his designee.**

7.4 The CONTRACTOR agrees to provide the programs set forth in Exhibit "A". An implementation schedule of said services shall be provided by the CONTRACTOR within thirty (30) days of the Commencement Date. Said schedule and any modifications, additions or deletions to the list are subject to the prior approval of the City.

- 7.5 The CONTRACTOR, subject to the prior written approval of the City, shall be authorized to provide courts, free of charge for the following: practice for professional tennis players and their coaches, during professional tennis demonstrations, promotional events, clinics and lessons being offered to the public at no charge.
- 7.6 The CITY shall utilize a computer software system (i.e. Tennis Director, RecWare, Active Network, etc.) for the purposes of tracking reservations, financials, memberships, etc. The City shall have administrator rights to the CONTRACTOR's computer software system for the purposes of conducting audits. Additionally, on-line reservations will be provided for by the CITY, as well as phone and in-person reservations, all of which must be managed and cross-referenced to avoid overbookings, no-shows, and adherence to prioritization and utilization of courts for public usage by restricting lesson/clinic/programming courts during peak hours.
- 7.7 Any print materials prepared by the CONTRACTOR for use of the Center shall require the written approval of the City Manager or his designee prior to printing. Materials must include the City designation/ logo and appropriate ADA (Americans with Disabilities Act) disclaimer. CONTRACTOR shall submit to the City (for review and approval prior to the initiation of contract activities), a communication plan addressing programming to be scheduled at the Center. All communications shall be directed to the appropriate City staff. City shall assist with marketing materials to include: banners, fliers, postcards and website information.
- 7.8 Management of the Pro-Shop. CONTRACTOR, at its own cost and expense, shall be responsible for purchasing and stocking the Pro-Shop with appropriate tennis products, including but not limited to snacks, strings, racquets, apparel, and beverages. Notwithstanding anything contained in this Section 7, or in the Agreement, CONTRACTOR's food and beverage service shall be subject to and shall not, under any event, conflict with, or otherwise violate, the City's exclusive vending contract with Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company and Coca-Cola North America, a division of the Coca-Cola Company ("Coca-Cola Contract") and the City's exclusive vending contract with Bettoli Trading Corp. ("Bettoli Contract") (collectively referred to herein as "City Vending Contracts"); copies of which are attached hereto and made a part hereof as composite Exhibit D. All monthly income from the Pro-Shop shall be collected by the City and treated as part of the monthly gross programming revenues. The City will not be responsible for the purchasing, inventory, ordering, delivery or security of such products.

## **SECTION 8 ALTERATIONS, MAINTENANCE, REPAIRS & SECURITY**

### **8.1 Building and Facility Alterations.**

CONTRACTOR may not make alterations or additions to the Center. In the event of an emergency to prevent injury to persons or property, CONTRACTOR shall use reasonable efforts to secure the affected area and will immediately notify the City's Parks and Recreation Department to advise of said emergency. At that time the City will assess the situation, further secure the area in question, and determine means and method of repairs.

CONTRACTOR shall not have the right to create or permit the creation of any lien attaching to City's interest in the Center as a result of any such alterations or additions.

### **8.2 Building and Facility Maintenance.**

The City further acknowledges that the CONTRACTOR shall not be required to improve,



repair, restore, refurbish, or otherwise incur any expense in improving or changing the condition of the Center, except for all costs in connection with the fulfillment of this Agreement including, without limitation, costs in connection with the maintenance of the programming equipment.

The City shall maintain all electrical, HVAC, plumbing and foundation and structural systems, roofs, exterior walls, and sports lighting at the Center at its sole cost, and in its sole discretion as to the means, manner and methods used for such maintenance.

The City will maintain the grass and landscaped areas in those portions surrounding the Center and within the Center, as well as the equipment in connection with the upkeep of the tennis courts to include:

- (A) Windscreens
- (B) Clay
- (C) Nets (includes hardware)
- (D) Lines (includes hardware)
- (E) Purchase of start-up Tennis Balls (in the amount not to exceed \$5,000 during the Term)
- (F) Algae and Weeds on courts
- (G) Restrooms (clean and stocked)
- (H) Pro Shop and facility cleanliness
- (I) Litter Control
- (J) Water coolers, ice, water and cups on the courts for patron use.

CONTRACTOR agrees to assist in helping to ensure the Center remains clean and tidy.

City shall have sole discretion as to the means, manner and methods utilized for the aforestated maintenance.

8.3 Courts and Related Facilities Maintenance Standards.

The City shall comply with minimum standards set forth for the underground watering systems, as set forth by the builder of the Center (Welch Tennis). The City shall conduct monthly maintenance inspections by a City approved outside independent certified tennis court builder/manufacture to ensure courts are up to industry standards.

8.4 Equipment.

The CONTRACTOR must purchase and maintain, at its own cost and expense, all materials, labor, and any and all equipment (the "programming equipment") required to operate the tennis programs at the Center. Such programming equipment shall include the following:

- (A) Ball Caddies
- (B) Tennis Balls (after City's start-up contribution of \$5,000 is met)
- (C) Racquets
- (D) String
- (E) Water Cooler
- (F) Stringing Machine
- (G) Ball Machine
- (H) Clothing Racks for Display

In the event any of the CONTRACTOR'S equipment or materials are lost, stolen, or damaged, they shall be replaced or repaired at the sole cost and expense of the



CONTRACTOR, in no more than five (5) days from date of loss, or if not possible, within such time frame, as promptly as reasonably possible, but in no event to exceed fifteen (15) days. The CONTRACTOR shall maintain, in accordance with the manufacturer's specifications and maintenance requirements, all equipment, whether City owned or owned by the CONTRACTOR, herein specified and purchased. All equipment shall be kept clean, fully functional and free of damage.

8.5 Orderly Operation.

The CONTRACTOR shall have a neat and orderly operation at all times and shall be solely responsible for tennis programming. There shall be no living quarters nor shall anyone be permitted to live within the Center.

8.6 No Dangerous Materials.

The CONTRACTOR agrees not to use or permit at the Center 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. Any such substances or materials found within the Center shall be immediately removed.

Notwithstanding any contrary provisions of this Agreement, CONTRACTOR, after the Commencement Date, 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 CONTRACTOR, after the Commencement Date, but during the term of this Agreement, of any hazardous substance, or petroleum products on, under, in or upon the Center as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, CONTRACTOR shall have no liability for any violation arising or damage incurred as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection shall survive the termination or earlier expiration of this Agreement.

8.7 Security.

The CITY shall be provide reasonable security measures that may be required in the City's discretion to protect the Center and any of the equipment, materials and facilities thereon.

8.8 Inspection.

The CONTRACTOR agrees that CONTRACTOR's operations at the Center, including all program equipment thereon may be inspected at any time during hours of operation by the City Manager or his designee, or by any other Municipal, County, State officer, or agency having responsibilities for inspections of such operations. The CONTRACTOR hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the operations by any public agency or official in enforcing its or his duties or any laws or ordinances. Any such interference (which interference, if by the City, must be reasonable) shall not relieve the CONTRACTOR from any obligation hereunder.

**SECTION 9. INSURANCE.**

CONTRACTOR 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 Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for Center operations, products and contractual liability.
- b. Workers Compensation Insurance as required under the Laws of the State of Florida.

The policies of insurance referred to above shall not be subject to cancellation or change 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, CONTRACTOR 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 Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the prior written approval of the City's Risk Manager. Should CONTRACTOR 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 CONTRACTOR to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If CONTRACTOR fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

#### **SECTION 10. FINES AND PENALTIES.**

The City reserves the right to levy fines against the CONTRACTOR when the City determines that CONTRACTOR is not meeting the necessary work requirements. The following table below depicts areas where fines will be levied:

<b><i>Work Activity</i></b>	<b><i>Grace Period</i></b>
Quality of Operations	24 hours
Personnel Shortages	4 hours
Personnel Dress Code	8 hours
Equipment Deficiencies	72 hours
Supplies	8 hours
Program Management	24 hours
Communications	48 hours
Life Safety Maintenance	2 hours

Fines for failures to complete corrective action for any of the work activities listed above are as follows:

- \$100 after failing to complete corrective action after two (2) notifications
- \$200 after failing to complete corrective action after three (3) notifications
- \$500 after failing to complete corrective action after four (4) notifications

If additional time is required to complete corrective action, a written request must be submitted for approval to the City prior to the end of the grace period. The basis for the implementation of fines and penalties includes but is not limited to the following:

- a. Personnel Shortages – Failure to provide a staffing plan that meets the

maintenance coverage requirements of the service area, and/or failure to provide the necessary on-site personnel in accordance to the staffing plan.

- b. Personnel Dress Code – Failure of employees to meet uniform requirements, including wearing clean uniforms.
- c. Equipment Deficiencies – Inability to fully operate; in non-functional condition; in state of disrepair and or visibly damaged; lacking maintenance; and not generally maintained and in clean condition.
- d. Supplies – Failure to provide the supplies necessary for the proper execution of the program or maintenance service specified.
- e. Program Management - Failure to implement a comprehensive management program to respond to City and/ or stakeholder requests for services and maintenance issues covered by the Contract.
- f. Communications – Failure to submit an approved communications plan addressing routine, scheduled, and emergency maintenance and repair activities, and failure to provide timely notifications as previous prescribed.
- g. Safety Regulations – Failure to adhere to OSHA's most recently published Safety and Health Regulations and general Occupational Safety and Health Standards.

#### **SECTION 11. INDEMNITY.**

- 11.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CONTRACTOR shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of CONTRACTOR, its subcontractor(s), agents, servants or employees in the performance of services under this Agreement unless such claim, demand or cause of action arises as a result of the City's gross negligence or willful misconduct.
- 11.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CONTRACTOR shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of CONTRACTOR not included in the paragraph in the subsection above and for which the City, its agents, servants or employees are alleged to be liable.
- 11.3 Subsections 11.1 and 11.2 shall survive the termination or expiration of this Agreement. Subsections 11.1 and 11.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.
- 11.4 Subrogation.  
The terms of insurance policies referred to in Section 9 shall preclude subrogation claims against CONTRACTOR, the City and their respective officers, employees and agents.

11.5 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. fire which renders at least thirty percent (30%) of the cumulative facilities unusable and which is not caused by negligence of CONTRACTOR;
- b. Earthquake; hurricane; flood; act of God; civil commotion occurring at the Center during or in connection with any event; or other matter or condition of like nature; or
- 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.

The parties hereto acknowledge that CONTRACTOR'S obligations and benefits hereunder may be negatively affected by an event of Force Majeure. If an event of Force Majeure occurs during the term of this Agreement, then the City Manager or his designee, in his sole discretion, may extend the term of this Agreement for a reasonable period of time; provided, however, such extension shall take effect only if CONTRACTOR agrees to such extension.

11.6 Labor Dispute.

In the event of a labor dispute which results in a strike, picket or boycott affecting the Center or operation described in this Agreement, CONTRACTOR 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 CONTRACTOR of applicable collective bargaining agreements and there has been a final determination of such fact which is not cured by CONTRACTOR within thirty (30) days.

11.7 Waiver of Loss from Hazards.

The CONTRACTOR hereby expressly waives all claims against the City for loss or damage sustained by the CONTRACTOR resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 14.5 and Labor Dispute in Subsection 14.6 above, and the CONTRACTOR hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

**SECTION 12. DEFAULT AND TERMINATION.**

Subsections 12.1 through 12.2 shall constitute events of default under this Agreement. An event of default by CONTRACTOR 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 12.3. An event of default by City shall entitle CONTRACTOR to exercise any and all remedies described as CONTRACTOR'S remedies under this Agreement, including but not limited to those set forth in Subsection 12.4.

12.1 Bankruptcy.

If either the City or CONTRACTOR 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.

12.2 Default.

In the event that CONTRACTOR or the City fails to perform or observe any of the 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 (except with respect to a monetary 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 a defaulting party cures any default pursuant to this subsection, it shall promptly provide the other party with written notice of same.

12.3 Remedies for CONTRACTOR'S Default.

If any of the events of default, as set forth in this Section, by CONTRACTOR shall occur, the City may, after notice (if required) and the expiration of 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 CONTRACTOR 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 CONTRACTOR. On the date so specified, CONTRACTOR shall then quit and surrender the Center to City pursuant to the provisions of Subsection 12.5. Upon the termination of this Agreement, all rights and interest of CONTRACTOR in and to the Center 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 CONTRACTOR under this Agreement.. In addition to the rights set forth above, 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 CONTRACTOR; 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 CONTRACTOR'S default.

12.4 Remedies for City's Default. If any of the events of default, as set forth in this Section, by the City shall occur, the CONTRACTOR may, after notice (if required) and the expiration of the cure periods, as provided above, at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event

shall CONTRACTOR 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, CONTRACTOR shall quit and surrender the Center to the City pursuant to the provisions of Subsection 12.5.

**12.5 Surrender of Center.**

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, CONTRACTOR shall surrender programming at the Center in the same condition as the Center was prior to the commencement of this Agreement, reasonable wear and tear, and City maintenance and repair obligations, excepted. CONTRACTOR shall remove all its equipment, fixtures, personal property, etc. upon five (5)-business days written notice from the City Manager, or his designee, unless a longer time period is agreed to by the City. The CONTRACTOR'S obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Center after termination of the Agreement without the City's approval shall constitute trespass by the CONTRACTOR, and may be prosecuted as such. In addition, the CONTRACTOR shall pay to the City two hundred dollars (\$200) per day as liquidated damages for such breach of this Agreement.

**12.6 Termination for Convenience.**

During the Term of this Agreement, the City may terminate this Agreement at any time, at its convenience and without cause, upon providing the CONTRACTOR with sixty (60) days written notice. In the event of termination for convenience pursuant to this subsection, CONTRACTOR shall quit and surrender the Centers to City pursuant to the provisions of Subsection 12.5 hereof.

**SECTION 13. ASSIGNMENT.**

Except as otherwise provided in this Section, CONTRACTOR shall not assign; sublease; grant any concession or license; permit the use of by any other person other than CONTRACTOR; or otherwise transfer all or any portion of this Agreement and/or of the Center (all of the foregoing are herein after referred to collectively as "transfers"), without the prior written consent of the City, which consent shall not be unreasonably withheld.

If there is a change in control of CONTRACTOR, then any such change in control shall constitute a "transfer" for purposes of this Agreement and shall be approved by the City Commission prior to consummation of such change in control. "Change in control", for purposes hereof, shall mean a change of the ownership, directly or indirectly, of greater than 10% of the voting or ownership interest or right to profits in such CONTRACTOR, by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise; provided that the foregoing shall not be deemed to include (i) any transfer to other owners of CONTRACTOR or to trusts the beneficiaries of which are any owner(s) of CONTRACTOR or member(s) of their immediate family; or (ii) a change in the ownership of CONTRACTOR through a registered public offering of shares in CONTRACTOR ((i) and (ii) above collectively are referred to herein as the "Transfer Exclusions"). Except for the Transfer Exclusions, any change of the ownership, directly or indirectly, of 10% or less of the voting or ownership interest or right to profits in such CONTRACTOR (a "Minor Change"), by means of one or more transfers, sales, mergers, consolidations, dissolutions or otherwise, shall be subject to the approval of the City Manager, or his designee.

CONTRACTOR shall notify the City of any proposed transfer, and shall notify the City Manager, or his designee, of any proposed Minor Change, prior to consummation of same and the City or the City Manager, as applicable, shall respond within thirty (30) days. In the event that any such transfer

or Minor Change is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer or Minor Change made without complying with this Section shall be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer or Minor Change under any provision of this Section, unless expressly released by the City, CONTRACTOR shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against CONTRACTOR or any transferee of the CONTRACTOR without proceeding in any way against any other person.

#### **SECTION 14. SPECIAL EVENTS.**

14.1 CONTRACTOR'S proposed uses, as defined in Section 3 herein, contemplates the production, promotion or sponsorship by the CONTRACTOR of tennis related special events at the Center. For purpose of this subsection 14.1 only, CONTRACTOR'S "Special Event" shall mean any event in which CONTRACTOR shall dedicate, and close to the general public, 50% or more of the Center's tennis courts. In the event CONTRACTOR does produce, promote or sponsor a Special Event at the Center, other than those provided for in this Agreement; it shall abide by the City's Special Events Permit Requirements and Guidelines. For any use, other than those provided for in this Agreement, a Special Events Permit may be required, and if required, shall be obtained through the City's Office of Arts, Culture and Entertainment. The City Manager's, or his designee's, authorization must be obtained for any such Special Event. The City Administration shall evaluate requests for Special Events Permits on a case by case basis, in accordance with the City's Special Event Permit Requirements and Guidelines.

#### **14.2 City Special Events.**

Notwithstanding Subsection 14.1 above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to utilize the Center for City produced tennis related special events and/or other City-produced special events or productions. In such cases, the City will coordinate with the CONTRACTOR to cooperatively produce such events. The City shall make its best effort to negotiate with CONTRACTOR including utilization of off-site City-owned neighborhood tennis courts, but if unsuccessful the CONTRACTOR shall cease and desist operations during the term of, and in the area of the special event and/or production. If the CONTRACTOR is not required to close, or chooses to remain open without interference to the special event and/or production, CONTRACTOR agrees to cooperate with the City. If the CONTRACTOR is allowed to remain open during special events and/or productions, the CONTRACTOR may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff, approved by the City, that the CONTRACTOR has available for the public on a normal day, 365 days per year. Such equipment or staff shall not be increased or altered during special events and/or productions without the prior written permission of the City Manager, or his designee. To the extent that the normal daily complement of equipment and staff is displaced by the special event and/or production, the CONTRACTOR may reallocate such displaced equipment and staff on a pro-rata basis within the Center not being utilized by the special event or production.



## **SECTION 15. NO IMPROPER USE.**

The CONTRACTOR will not use, nor suffer or permit any person to use in any manner whatsoever, the Center or any facilities herein for any improper, immoral or offensive purpose, or for any 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 CONTRACTOR will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors 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 CONTRACTOR, or any of its subcontractors, employees or agents. In the event of any violation by the CONTRACTOR or if the City or its authorized representative shall deem any conduct on the part of the CONTRACTOR to be objectionable or improper, CONTRACTOR shall be deemed to be in default of this Agreement should CONTRACTOR fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice.

## **SECTION 16. NOTICES.**

All notices, consents, waivers, directions, requests or other instruments of communications provided for under this Agreement, shall be deemed properly given if, and only if, delivered personally or sent by registered or certified U.S. mail, postage pre-paid, as follows:

IF TO THE CITY:

Jimmy L. Morales  
City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

With copies to:

John Rebar, Director  
Parks and Recreation  
2100 Washington Avenue  
Miami Beach, Florida 33139

IF TO CONTRACTOR:

Mr. Martin Van Daalen,  
Van Daalen Tennis, LLC  
15051 Royal Oaks Lane, Apt 1604  
North Miami, Florida 33181

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

## **SECTION 17. LAWS.**

### **17.1 Compliance.**

CONTRACTOR 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.



17.2 Governing Law.

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. In case of any inconsistency between the terms of this Agreement, and any applicable general or special law, said general, special law shall prevail.

17.3 Equal Employment Opportunity .

Neither CONTRACTOR nor any affiliate of CONTRACTOR 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.

17.4 No Discrimination .

In connection with the performance of its services, CONTRACTOR shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, CONTRACTOR shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

**SECTION 18. MISCELLANEOUS .**

18.1 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 CONTRACTOR.

18.2 Modifications.

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. CONTRACTOR acknowledges that no modification to this Agreement shall be binding on 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.

18.3 Complete Agreement.

This Agreement, together with all exhibits attached hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to the matters as contemplated herein.

18.4 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.

18.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their

respective successors and permitted assigns.

18.6 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 or benefits that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

18.7 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 shall not be affected thereby and this Agreement as so modified shall remain in full force and effect.

18.8 Right of Entry.

The City, at the direction of the City Manager, or his designee, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Center for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

18.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the CONTRACTOR. CONTRACTOR is an independent contractor providing management services for the operation of the City's tennis programs and the Pro-Shop at the Center, and is not a lessee; and that the CONTRACTOR'S right to manage and operate the Center for the City shall continue only so long as this Agreement remains in effect.

18.10 Signage.

CONTRACTOR shall provide, at its sole cost and expense, any required signs for its operation on the Center. 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 CONTRACTOR at the Center shall be subject to the prior written approval of the City as to size, shape and placement of same.

18.11 Conflict of Interest.

CONTRACTOR shall perform its services under this Agreement and conduct the professional tennis management and operations contemplated herein, in a manner so as to show no preference for other tennis operations/facilities owned, operated, managed, or otherwise controlled by CONTRACTOR with regard to its responsibilities pursuant to this Agreement.

18.12 Reasonableness.

Notwithstanding anything to the contrary in this Agreement, including but not limited to references to "sole option" or "sole discretion" or words of similar meaning, in each instance in which the approval or consent or other action of the City Commission or the City Manager or his designee is allowed or required in this Agreement, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

18.13 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, CONTRACTOR shall send to the City Manager a written request for approval or consent (the "Approval Request"). The City Manager or his designee shall have up to sixty (60) days from the date of Approval Request to provide written notice to CONTRACTOR approving of, consenting to or disapproving of the request. 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 CONTRACTOR assume that the request is automatically approved and consented to. The Subsection shall not apply to approvals required herein by the Mayor and City Commission.

18.14 No Waiver.

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.

18.15 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subcontractors, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

**SECTION 19. LIMITATION OF LIABILITY.**

The City desires to enter into this Agreement placing the operation and management of the Center 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 \$100,000.00. CONTRACTOR hereby expresses its willingness to enter into this Agreement with a \$100,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$100,000.00, the receipt of which is hereby acknowledged, the City shall not be liable to CONTRACTOR for damages to CONTRACTOR in an amount in excess of \$100,000.00, 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 20. VENUE.**

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 CONTRACTOR HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONTRACTOR MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CENTER.**

## **SECTION 21. FLORIDA PUBLIC RECORDS LAW.**

- (A) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:
  - (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the City;
  - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (C) REQUEST FOR RECORDS; NONCOMPLIANCE.
  - (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
  - (2) Contractor's failure to comply with the City's request for records shall constitute a breach of the Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
  - (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.
- (D) CIVIL ACTION.
  - (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
    - a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and



- b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.
  - (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
  - (3) A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.
- (E) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**
- CITY OF MIAMI BEACH  
ATTENTION: CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

**SECTION 22. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE  
FOOD SERVICE ARTICLES.**

Expanded polystyrene, a petroleum byproduct commonly known as Styrofoam, is neither readily recyclable nor biodegradable and takes hundreds to thousands of years to degrade. Expanded polystyrene is a common pollutant, which fragments into smaller, non-biodegradable pieces that are harmful to marine life, other wildlife, and the environment. The City's goals are to reduce the use of expanded polystyrene and encourage the use of reusable, recyclable, or compostable alternatives.

*Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*Expanded polystyrene food service articles* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

CONTRACTOR agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Center. A violation of this section shall be deemed a default under the terms of this Agreement. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the CONTRACTOR.

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.

**CITY OF MIAMI BEACH**  
a municipal corporation of the  
State of Florida

By: \_\_\_\_\_

Print Name: Philip Levine

Print Title: Mayor

Date: \_\_\_\_\_

ATTEST:

7/8/30/17  
Rafael E. Granado, City Clerk

STATE OF FLORIDA )  
COUNTY OF \_\_\_\_\_ ) SS:



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Jessie Sans  
City Attorney

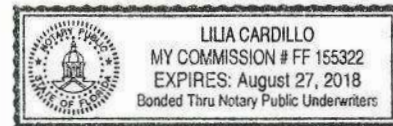
8/18/17  
Date

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, the foregoing instrument was acknowledged before me by Philip Levine, as Mayor of the City of Miami Beach, a municipal corporation of the State of Florida, who ☒ is personally known to me or ☐ who has produced a valid driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 30 day of August, 2017.

Lilia Cardillo  
Notary Public, State of Florida

My Commission Expires:



VAN DAALEN TENNIS, LLC.  
a Florida limited liability company

By: 

Print Name: Martin van DAALEN.

Print Title: Director of Programming

Date: 08/22/17

ATTEST:

By: 


PAUL DEMONTE ATHLETIC MANAGER

Name and Title

STATE OF FLORIDA            )  
  SS:  
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, the foregoing instrument was acknowledged before me by M VAN DAALEN, as Dir. of Program of VAN DAALEN TENNIS, LLC., a Florida limited liability company, who     is personally known to me or who ✓ has produced a valid V534-563-56-0260 driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 22<sup>nd</sup> day of August, 2017.

  
\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:

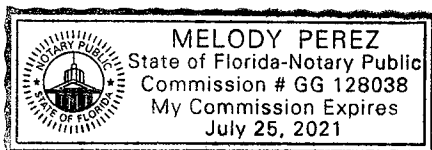


Exhibit "A" to

VAN DAALEN TENNIS, LLC.  
ONE (1) YEAR PILOT AGREEMENT TO PROVIDE  
PROGRAMMING AT THE CITY'S NORTH SHORE  
TENNIS CENTER



## Instructional Fees

Private Lessons (1-2 students, to be determined by Director, \$20 court fee included)

\$85.00 (per hr)	-	Director of tennis
\$80.00 (per hr)	-	Head Professional
\$75.00 (per hr)	-	Academy instructor
\$65.00 (per hr)	-	Assistant instructor
\$60.00 (per hr)	-	Recreational instructor

Adult Programs (up to 6 students per court)

\$25.00 (1.5 hr clinic)	-	Advanced group
\$25.00 (1.5 hr clinic)	-	Beginner group

Junior programs

\$70.00 (2.5 hr clinic)	-	Academy after school program (4:30 – 7)
\$150.00 (monthly)	-	Academy tournament coaching fee
\$40 (1.5 hr clinic)	-	Academy after school program (5:30 – 7)
\$20 (per hr)	-	Recreational group

Junior Camps


\$400 (week, full day)	-	recreational
\$200 (week, half day)	-	recreational
\$700 (week, tourn)	-	Tournament players

Cooperate Clinics (3-4 students, 1.5 hrs)

\$160 (per group)	-	Elite training
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Exhibit "B" to

VAN DAALEN TENNIS, LLC.  
ONE (1) YEAR PILOT AGREEMENT TO PROVIDE  
PROGRAMMING AT THE CITY'S NORTH SHORE  
TENNIS CENTER

 PARKS & RECREATION DEPARTMENT RECREATION DIVISION	<b>DATE ISSUED:</b> 11/28/2007	<b>Page:</b> 1 <b>Of:</b> 3	<b>SECTION:</b>
	<b>SUBJECT:</b> EMPLOYEE'S HURRICANE PROCEDURES		

**POLICY:** The Parks and Recreation Department requires the following procedures in case of a hurricane watch or a hurricane

**PROCEDURES:**

**I. HURRICANE WATCH PROCEDURES**

**A. All Staff**

1. If a Hurricane Watch is issued while you are on duty, stay at your facility and call your immediate supervisor for instruction.
2. All employees must make sure that the Department and the immediate supervisor have at least two (2) telephone numbers where the employee can be reached.
3. If you are not on duty, and a Hurricane Watch is issued, call your immediate supervisor for instructions.
4. You may be called to your facility to follow hurricane procedures and may be assigned to assist anywhere help is needed.

**B. All Supervisors**

1. All supervisors are to report to Division office at 21<sup>st</sup> Street Recreation.
2. Each supervisor will instruct their staff at each facility to carry out safety procedures.

**C. All Tennis Center Managers**

1. All Tennis Center Managers are to report to your Tennis Center.
2. Notify your immediate supervisor that you are on duty.
3. Follow safety procedures.

**D. All Pool Managers**


1. All Pool Managers are to report to your pools.
2. Notify your immediate supervisors that you are on duty.
3. Follow safety procedures.

*All personnel are not to leave their site until permission is given by your supervisor.*

**II. PROCEDURE TO SECURE FACILITIES**

**A. Tennis Centers**

1. Tennis Personnel must report to work immediately, if off duty.
2. Clip wires and take down windscreens. Roll up tightly by sections and store all nets.
3. Remove all maintenance equipment i.e. brooms, rakes, etc. and store in a safe place.
4. Tie down benches to posts.
5. Store all trash cans in locker rooms.
6. Remove all seats i.e. bleachers, chairs, etc. and store as instructed.
7. Secure all loose objects, computers, and all miscellaneous items in the pro-shop.
8. Turn off all power at the main panel box.

 PARKS & RECREATION DEPARTMENT RECREATION DIVISION	<b>DATE ISSUED:</b> 11/28/2007	<b>Page:</b> 2 <b>Of:</b> 3	<b>SECTION:</b>
	<b>SUBJECT:</b> EMPLOYEE'S HURRICANE PROCEDURES		

*Do not leave the facility until fully secured.*

**B. Playgrounds and Youth Centers**

1. Remove everything on the first floor that can be damaged by water.
2. Remove all objects away from window.
3. Turn off power at the main panel switch.
4. Bring in all trashcans and store in a safe place.
5. Tie all benches and swings securely.
6. Be sure that all sports equipment is stored in a safe place.
7. Cover and unplug all electrical equipment with plastic (i.e. computers, printers, copy machine, TV's, etc.)

*Do not leave the facility until fully secured.*

**C. Swimming Pools**

1. Take down all canvas on deck; sun shelters, umbrellas, etc., roll up and store in safe place.
2. Clear the decks and store all movable items in the deck storage room.
3. Lower the water in the pool about two (2) feet (youth center lower three (3) feet).
4. Stack things off the floor that can be damaged by water.
5. Lock all windows and doors.
6. Shut off electricity to pumps, chlorinator, etc.
7. Turn off power at main switch.

**III. POST HURRICANE PROCEDURES**

**A. All Staff**


1. All staff is to call City Hall Employee Hotline (604-City) and their immediate supervisor (if possible) as soon as possible, and wait for further instructions.
2. All staff will be assigned work locations to begin cleanup of all storm damage so that normal services to the public can be resumed as soon as possible.
3. All staff must report to work when notified by their supervisor unless unforeseen circumstances prohibit otherwise.

**B. All Supervisors**

1. All Supervisors are to report to City Hall (I don't know about this one...we usually report to our sites) as soon as possible.
2. Coordinate the damage assessment and clean up procedures.
3. Immediately upon reporting back to work a damage report must be turned in to the Recreation Assistant Director.
4. Assign staff to each facility.

**C. All Tennis Center Managers**

1. All Tennis Center Managers are to report to their Tennis Centers as soon as possible.
2. Prepare a written damage report of their facility.
3. Assign staff to cleanup procedures.

 PARKS & RECREATION DEPARTMENT RECREATION DIVISION	DATE ISSUED: 11/28/2007	Page: 3 Of: 3	SECTION:
	SUBJECT: EMPLOYEE'S HURRICANE PROCEDURES		

D. All Pool Managers

1. All Pool Managers are to reports to their Pool as soon as possible.
2. Prepare a written damage report of their facility.
3. Assign staff to cleanup procedure.

Exhibit "C" to

VAN DAALEN TENNIS, LLC.  
ONE (1) YEAR PILOT AGREEMENT TO PROVIDE  
PROGRAMMING AT THE CITY'S NORTH SHORE  
TENNIS CENTER



# MIAMI BEACH SERVICE EXCELLENCE

"Serving our public with dignity and respect, our customers have a right to expect..."

## TELEPHONE



- Telephone will be covered at all customer-contact points during normal business hours answering within the third ring.
- Phone messages received will be responded to (if requested) in a timely manner, two business days, even if just to acknowledge receipt. An estimate of time to resolve the problem will be given if applicable.
- Calls coming from external sources will be answered with a consistent greeting such as "Good morning, City of Miami Beach, John Smith, may I help you?"
- Employee will take responsibility for providing a solution and/or options to the customer's request.
- Request permission from the caller before transferring a call. Provide the caller with the name and number of the person being transferred to, and stay on the line to announce the caller to the person receiving the transfer. If the transfer cannot be accomplished (busy, no answer or the person is unavailable), the employee will reconnect with the caller and ask if they want to leave a message.
- Voice mail messages will include employee's full name, working hours, and an optional phone number for customers to call. When employee is away from the office for an extended period of time, the voice mail message will communicate such absence and offer an option for the caller.
- Thank the customer for calling and ask if further assistance is needed prior to concluding the call.

## WRITTEN CORRESPONDENCE



- Correspondence start with a greeting.
- Email signatures will include the name, title, department, division, and contact number.
- Activate the E-mail Out-of-Office Assistant when away from the office for an extended period of time.
- Acknowledge E-mails and faxes that require a response within two business days.
- Respond to letters within 10 business days.
- Correct spelling and grammar will be used, including accurate name and address.
- Provide complete, accurate, and precise information regarding their inquiries.
- Fax cover sheets will be legible and include name, telephone number, and the name and fax number of the receiver.

## PERSONAL CONTACT



- Respond to customers in a courteous manner. The customer is not always right, but always deserves to be treated with respect.
- Provide accurate and understandable solutions/options to customer requests or direct the customer to the appropriate person who may have knowledge in the subject matter.
- Average or maximum wait time without an appointment should be no longer than 30 minutes or scheduled for a mutually convenient time.
- Counter will be staffed during business hours.
- Employees will dress in attire that is professional, tasteful, appropriate and consistent with individual departmental policies.

## MONITORING OUR PROGRESS



- Our customer service team will oversee all customer service standards.
- If we do not meet our standards, we will implement an action plan to improve our service.
- We will listen and do all we can to resolve issues.
- For questions and/or concerns, call 305.604.CITY (2489).

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.



Exhibit "D" to

VAN DAALEN TENNIS, LLC.  
ONE (1) YEAR PILOT AGREEMENT TO PROVIDE  
PROGRAMMING AT THE CITY'S NORTH SHORE  
TENNIS CENTER



**AMENDMENT NO. 1  
TO CONCESSION AGREEMENT BY AND BETWEEN CITY OF MIAMI  
BEACH, FLORIDA AND BETTOLI TRADING CORP. FOR OPERATION  
OF SNACK MACHINE CONCESSIONS AT VARIOUS LOCATIONS ON  
CITY OF MIAMI BEACH PROPERTIES PURSUANT TO REQUEST FOR  
PROPOSALS #44-10/11**

**THIS AMENDMENT NO. 1**, (Amendment) to the Concession Agreement (Agreement) for operation of snack machines by Bettoli Trading Corp. dated, May 3, 2012, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and Bettoli Trading Corp. a Florida corporation, with offices at 6095 NW 167 street, Suite D, Miami, Florida 33015 (Concessionaire), is entered into retroactively as of the 1<sup>st</sup> day of November, 2016 (Effective Date).

**RECITALS**

**WHEREAS**, the City and Concessionaire are parties to an Agreement, dated May 3, 2012, for the operation of snack machine concessions at various locations on City of Miami Beach properties; and

**WHEREAS**, the Concession Agreement has an initial term of five (5) years, commencing on May 1, 2012 and ending on April 30, 2017, which may be extended, at the City's sole discretion, for five (5) additional periods of one (1) year each; and

**WHEREAS**, on June 8, 2016, the Neighborhoods/Community Affairs Committee (NCAC) recommended in favor of implementing the Miami-Dade County Public Schools (MDCPS) standards in all snack vending machines; and

**WHEREAS**, at the October 19, 2016 City Commission meeting, the Mayor and City Commission directed the Administration to implement the MDCPS standards for one hundred percent (100%) of the snack selections in the vending machines located in parks and youth centers; to implement the MDCPS standards for fifty percent (50%) of the snack selections in the vending machines located in other City structures, such as garages and office buildings; and to revisit the item again in 6 months; and

**WHEREAS**, on October 19, 2016 the Mayor and City Commission adopted Resolution 2016-29609 approving Amendment No. 1 to Concession Agreement, modifying the scope of the Concession Agreement to require the implementation of the MDCPS healthy snacks standards as approved by the Mayor and City Commission, and reducing the annual Minimum Guaranty payment which Concessionaire pays under the Concession Agreement from \$12,731 to \$11,000 annually; and

**WHEREAS**, City Manager, as referenced in the Agreement shall include City Manger's designee, as may be designated, in writing, by the City Manager from time to time.

**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 agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The Agreement is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

- (a) Exhibit 2.0 to the Agreement is deleted in its entirety and replaced with the attached Exhibit 2.0.
- (b) Exhibit 3.2.5.1 to the Agreement is deleted in its entirety and replaced with the attached Exhibit 3.2.5.1.
- (c) Exhibit 3.2.1.6.2 to the Agreement is hereby added to the Agreement.
- (d) Subsection 3.2.1.6.2 of the Agreement is hereby deleted in its entirety and replaced as follows:

3.2.1.6.2 Miami-Dade County Public Schools Standards.

From time to time, with 30 days notice, the City Manager, in the City Manager's sole discretion, may require that all or a portion of the products sold from any of the vending machines described in the amended Exhibit 2.0 meet the Miami-Dade County Public Schools (MDCPS) Wellness Policy Standards (MDCPS Standards), attached hereto as Exhibit 3.2.1.6.2. A current list of the City approved products meeting the MDCPS Standards is attached hereto as Exhibit 3.2.5.1. Any change to the approved product list, including any change in the nutritional information, shall require the prior written approval of the City Manager. The City Manager reserves the right to reasonably decline any particular snack or food option, at any time; and upon the Concessionaire receiving written notice, Concessionaire must remove declined food or food item within five (5) days from any or all food and snack vending machines, as directed by the City Manager.

- (e) Subsection 4.2 of the Agreement is hereby modified to read as follows:

4.2 Minimum Guarantee (MG).

In consideration of the City executing this Agreement and granting the rights provided in this Agreement, commencing May 1, 2012, and thereafter on May 1st of each year during the Term of this Agreement, the Concessionaire shall pay to the City a Minimum Guaranteed (MG) Annual Concession Fee of Twelve Thousand Dollars (\$12,000), plus applicable Sales and Use Taxes (as provided in Section 4.6 herein); said MG shall be subject to the annual increases in Subsections 4.2.1. and 4.2.2 below. Effective November 1, 2016, the MG shall be reduced to Eleven Thousand Dollars (\$11,000), plus applicable Sales and Use Taxes (Amended MG). The past due annual MG payment for the current Contract Year, due May 1, 2016, shall be prorated for the portion of the Contract Year covering May 1, 2016 to October 31, 2016. Correspondingly, the Amended MG payment shall be prorated for the portion of the Contract Year covering from November 1, 2016 to April 30, 2017. The Amended MG payment shall continue to be due May 1st of each Contract Year during the Term and subject to the annual increases in Subsection 4.2.1.

- (f) Subsection 4.2.2 of the Agreement is hereby deleted in its entirety

(g) Subsection 4.2.3 of the Agreement is hereby deleted in its entirety

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

**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: [Signature]  
Rafael E. Granado, City Clerk

[Signature]  
Philip Levine, Mayor

June 6, 2017  
Date

FOR CONCESSIONAIRE:

BETTOLI TRADING CORP.

ATTEST:

By: [Signature]  
Secretary

[Signature]  
President

Valerio Bettoli  
Print Name

Maurizio Bettoli  
Print Name

04/26/17  
Date



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

[Signature] 4/25/17  
City Attorney Date

## EXHIBIT 2.0

<b>Machines</b>	<b>Number of approved Snack Machines</b>	<b>Number of Approved Ice Cream Machines</b>	<b>Number of Approved Combo Machines</b>	<b>% MDCPS Approved Healthy Snacks by location</b>
17th St. garage Snack	1	1	0	50%
City Hall Parking Garage	1	0	0	50%
City Hall lobby	1	1	0	50%
City Hall 3rd floor	1	0	0	50%
13th street Garage	1	0	0	50%
Miami Beach Police Roll Call	2	1	0	50%
Miami Beach Police Lobby	1	0	0	50%
South Shore Comm. Ctr.	1	0	0	50%
North Shore YC Snack	2	1	0	100%
North Shore Tennis Snack	1	0	0	50%
Scott Rakow YC 3080	2	1	0	100%
Scott Rakow YC 3136	1	0	0	100%
Flamingo Park Snack	1	1	0	50%

\* Please note, % MDCPS approved Healthy Snacks apply to Snack Machines not Ice Cream Machines

### EXHIBIT 3.2.5.1

#### Approved Healthy food items and prices

Brand	Item	Price	MDCPS
Popchips	Sea Salt	\$1.75	*
Popchips	Barbecue	\$1.75	*
Popchips	Sea Salt & Vinegar	\$1.75	*
Popchips	Sour Cream and Onion	\$1.75	*
Popchips	Cheddar & Sour Cream	\$1.75	*
Popcorner	White Cheddar	\$1.25	*
'Non GMO coming soon \$1-50	Kettle	\$1.25	*
'Non GMO coming soon \$1-50	Sweet Spicy Chili	\$1.25	*
'Non GMO coming soon \$1-50	Jalapeno	\$1.25	*
'Non GMO coming soon \$1-50	Sea Salt	\$1.25	*
Indiana Popcorn	Kettlecorn	\$1.25	*
Snyder's Pretzel	Old Tyme	\$1.00	*
Kar's Nuts	Mango Pineapple mix	\$1.25	*
Rice Krispies	Whole Grain Treat	\$1.50	*
Cheez it	Whole Grain Cheddar	\$1.00	*
Gold Fish	Whole Grain Cheddar	\$1.00	*
General mills	Cocoa Puff Bar	\$1.25	*
Nature's Valley	Oat & Honey	\$1.25	*
Nature's Valley	Trail mix chewy	\$1.25	*
Frito Lay's	Reduced Fat Doritos Nacho	\$1.00	*
Frito Lay's	Old Tyme	\$1.00	*
Frito Lay's	Reduced Fat Doritos Sweet Spicy Chili	\$1.00	*
Frito Lay's	Reduced Fat Cheetos Puff	\$1.00	*
Frito Lay's	Reduced Fat Cheetos Hot Puff	\$1.00	*
Frito Lay's	Baked Cheetos	\$1.00	*
Frito Lay's	Baked Cheetos Hot	\$1.00	*
Frito Lay's	Baked lays Sour Cream & Onion	\$1.00	*
Frito Lay's	Baked Lays BBQ	\$1.00	*
Frito Lay's	Baked Ruffles Cheddar Sour Cream	\$1.00	*
Frito Lay's	Fantastix Chili	\$1.00	*
Frito Lay's	Fantastix Hot	\$1.00	*

\* Please note only the items above meet the MDCPS standard

#### Other Food Item Prices

Chips and Crackers	\$0.80	
Candy/Chocolate Pastries	\$1.00	
Milk 8oz	\$1.00	
Milk 16oz	\$2.25	
Ice Cream	\$1.25	
Ice Cream Large	\$1.75	
Refrigerated Food Items Small	\$1.50	
Refrigerated Food Items Large	\$3.50	

NEW  
EXHIBIT 3.2.1.6.2

Miami-Dade County Public Schools Wellness Policy Standards

OPERATIONS 8510/page 8, 9, and 10 of 10

**Rule on Food and Beverages Sold on Campus and in Vending Machines District-Wide**

The District is committed to providing an environment in which all students and staff can make healthy food choices for lifelong health. As such, the following Rule on Food and Beverages Sold on Campus and in Vending Machines District-Wide will be implemented for all sites, for all food sales beginning one (1) hour before the start of the school day and up until one (1) hour after dismissal of the final class of the day. This rule shall be applicable to all food and beverages sold in vending machines twenty-four (24) hours a day.

**A. Beverages**

All beverages must be non-carbonated and have no added caffeine.

1. Elementary School
  - a. Plain water.
  - b. Up to eight (8) ounce servings of milk and 100% juice.
    - 1) Fat-free or low-fat regular and flavored milk and nutritionally equivalent (per USDA) milk alternatives with up to 150 calories/eight (8) ounces.
    - 2) 100% juice with no added sweeteners, up to 120 calories/eight (8) ounces, and with at least ten percent (10%) of the recommended daily value of three (3) or more vitamins and minerals.
2. Middle School

Same as elementary school, except juice and milk may be sold in twelve (12) ounce servings.
3. High School
  - a. Plain water.
  - b. No- or low-calorie beverages with up to ten (10) calories/eight (8) ounces.
  - c. Up to twelve (12) ounce servings of milk, 100% juice and certain other drinks.
    - 1) Fat-free or low-fat regular and flavored milk and nutritionally equivalent (per USDA) milk alternatives with up to 150 calories/eight (8) ounces.
    - 2) 100% juice with no added sweeteners, up to 120 calories/eight (8) ounces, and with at least ten percent (10%) of the recommended daily value of three (3) or more vitamins and minerals.



- 3) Other drinks with no more than forty (40) calories/eight (8) ounces.

OPERATIONS 8510/page 8, 9, and 10 of 10

- d. At least twenty-five percent (25%) of non-milk beverages must be water and no more than twenty-five percent (25%) of beverages may be no- or low-calories options.

B. Food and Snacks

All food and snacks sold in school must meet the following:

1. No more than thirty-five percent (35%) of total calories from fat.
2. No more than ten percent (10%) of total calories from saturated fat.
3. No more than thirty-five percent (35%) added sugar by weight.
4. No added trans fat.
5. Be a “whole grain-rich” product;
6. Be a fruit, vegetable, dairy, protein food; or
7. Be a combination food that contains at least  $\frac{1}{4}$  cup of fruit and/or vegetable.

\*Appendix A has been edited for formatting purposes and the end of the Appendix A after Section B.7. was intentionally removed as it is not applicable

Execution Version

*The Coca-Cola Company*COCA-COLA PLAZA  
ATLANTA, GEORGIA

March 16, 2017

City of Miami Beach  
Attention: Ms. Gisela Torres  
1700 Convention Center Drive, Fourth Floor  
Miami Beach, Florida 33139

Re: Sale of the Assets of Coca-Cola Refreshments USA, Inc. to Coca-Cola Beverages Florida, LLC

Dear Ms. Torres:

Reference is hereby made to that certain agreement (the "Agreement"), dated March 14, 2012, by and among the City of Miami Beach, Florida (the "City"), Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company ("CCR") and The Coca-Cola Company, acting by and through Coca-Cola North America, attached hereto as Exhibit A.

As you know from our prior communications, CCR has transferred certain of its assets to Coca-Cola Beverages Florida, LLC ("CCBF"). In connection with such transfer, CCR formally requests the City's consent to: (i) assign all of CCR's right, title and interest in and to the Agreement to CCBF, including those rights noted in the Agreement as non-assignable by CCR, as of February 25, 2017 (the "Assignment Effective Date") and (ii) CCBF's assumption of all of CCR's obligations and liabilities under the Agreement from and after the Assignment Effective Date (collectively, the "Assignment"). CCBF hereby accepts the Assignment and further assumes and agrees to perform all of the duties and obligations of the Bottler under the Agreement, subject to the Agreement's terms, from and after the Assignment Effective Date.

By consenting to the Assignment, the City acknowledges and agrees that the Agreement shall remain in full force and effect after completion of the Assignment and that there is no default or breach by any party under the Agreement in connection with, or as a result of, the Assignment, and the City agrees to release CCR from all liabilities and obligations under the Agreement arising after the completion of the Assignment.

From and after the Assignment Effective Date, all references to the Bottler or "CCR" under the Agreement shall be construed to refer to CCBF. The address for notices to Sponsor, as set forth in Section 10 of Attachment A to the Agreement shall be as follows:

Coca-Cola Beverages Florida, LLC  
10117 Princess Palm Avenue, Suite 400  
Tampa, Florida 33610  
Attention: Thomas Benford, Executive Vice President  
thenford@cocacolaflorida.com

Classified - Confidential

B

With a copy to:  
Deborah Pond, Vice President and General Counsel  
dpond@cocacolaflorida.com  
at the address above

We would greatly appreciate that you indicate your consent by countersigning in the space below.

*[Signature page follows]*

Classified - Confidential

8

Sincerely,

**THE COCA-COLA COMPANY, ACTING BY AND  
THROUGH COCA-COLA NORTH AMERICA**

By: J.A.M. Douglas, Jr.  
Name: J.A.M. Douglas, Jr.  
Title: President, Coca-Cola North America  
Date: March 16, 2017

**COCA-COLA REFRESHMENTS USA, INC. D/B/A  
FLORIDA COCA-COLA BOTTLING COMPANY**

By: J.A.M. Douglas, Jr.  
Name: J.A.M. Douglas, Jr.  
Title: President, Coca-Cola North America  
Date: March 16, 2017

**COCA-COLA BEVERAGES FLORIDA, LLC**

By: Deborah Pond  
Name: DEBORAH POND  
Title: VICE PRESIDENT & GENERAL COUNSEL  
Date: 3.17.17

**ACCEPTED, ACKNOWLEDGED AND AGREED**

**CITY OF MIAMI BEACH, FLORIDA**

By: [Signature]  
Name:  
Title:  
Date: 3/28/17

**ATTEST:**

7/3/28/17  
Rafael E. Granado, City Clerk

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

24 Apr 17 3-23-17  
City Attorney RAY Date



Signature Page to City of Miami Beach Consent Letter

B

March 14, 2012

Mayor Matti Herrera Bower  
Mayor of City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33138

Dear Mayor:

This letter confirms the agreement made by and among the City of Miami Beach, Florida ("City"), Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company ("Bottler") and Coca-Cola North America, a division of The Coca-Cola Company ("Company", and collectively with Bottler, "Sponsor"), which sets forth certain exclusive rights granted to Bottler by City, as set forth in the Term Sheet and Exhibits attached thereto, all of which are attached hereto as Attachment A.

1. Term Sheet and Definitive Agreement

The Term Sheet and Exhibits attached thereto are hereby incorporated herein in their entirety. This letter and the Term Sheet, together with any other attachments referenced in either, will constitute a legally binding agreement (the "Agreement") when this letter is signed by all parties in the spaces provided below. All capitalized terms not defined in this letter shall have the meanings assigned to them in the Term Sheet. This letter shall prevail in the event of any conflict between the provisions of this letter and the Term Sheet.

2. Advertising Rights

(a) City agrees that Bottler's advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facilities and all Equipment (as such term is defined herein) dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(b) City further agrees that all Products will be dispensed in Sponsor's Equipment and that no other trademarked, equipment, coolers or containers will be permitted.

3. Product Rights

(a) City shall purchase or shall cause its Concessionaires to purchase, all Products, (and cups, lids and carbon dioxide, if applicable) directly from Bottler.

(b) City hereby grants to Bottler the exclusive Beverage rights at the Facilities, except as may be otherwise provided for in this Agreement and Exhibits.

(c) If City contracts a concessionaire, City will cause concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with concessionaire, if any. If no agreement exists between concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. City acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to City or concessionaire if concessionaire has an existing agreement with Bottler.

#### 4. Equipment and Service

(a) Bottler Equipment and Service: During the Term, Bottler will loan to City, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage vending equipment reasonably required and as mutually agreed upon to dispense Products at the Facilities ("Bottler Equipment"). In addition, Bottler will provide at no charge regular mechanical repair reasonably needed for Bottler Equipment, as further outlined in Exhibit 7 to the Term Sheet. Prior to Bottler's installation of Bottler's Equipment at a particular Facility, the City shall provide Bottler with written confirmation that it has conducted an inspection of the electrical service at such Facility and that, based on such inspection, the City finds that the electrical service at the Facility is proper and adequate for installation of Bottler's Equipment. Notwithstanding the preceding, if at any time following Bottler's installation of Bottler's Equipment at a Facility, Bottler's Equipment is damaged as the direct result of defective electrical service at the Facility, then the City will reimburse Bottler for the cost of repair or replacement, as the case may be, of Bottler's Equipment, pursuant to the filing of a claim with the City's self-insurance fund. Notwithstanding the preceding, the City shall not be responsible nor liable to Bottler under this subsection for any damages to Bottler's Equipment which is not caused as a direct result of defective electrical service at a Facility (including, without limitation, any damage to Bottler's Equipment which is caused due to the negligence or misconduct of Bottler's employees, contractors, and/or agents, or from any other cause or act other than faulty electrical service).

(b) Fountain Equipment and Service: During the Term, Company will loan to City, pursuant to the terms of Company's equipment placement agreement, at no cost, that Fountain Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense a quality fountain Beverages at the Facilities ("Fountain Equipment")(collectively, Bottler Equipment and Fountain Equipment are called "Equipment"). No ice makers or water filters will be provided. All Fountain Equipment provided by Company will at all times remain the property of Company and is subject Company's equipment agreement, but no lease payment will be charged. To the extent that Fountain Equipment loaned from Company under this Agreement is located at Facilities that are owned, controlled or managed by a concessionaire of City or other persons not party to this Agreement, City will include provisions in its agreements with such concessionaires that recognize that the Fountain Equipment is owned by Company and that obligates the concessionaires to honor the terms and conditions such equipment agreement.

Company (or Bottler) will provide at no charge regular mechanical repair reasonably needed for Fountain Equipment. Any removal, remodel, relocation or reinstallation of dispensing equipment, flavor changes, summerize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions, service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO<sub>2</sub> or fountain syrup container was empty), or calls that are not the result of mechanical failure (collectively "Special Service Calls"), are not considered regular service and will not be provided free of charge. Charges for Special Service Calls will be charged at Company's (or Bottler's) then current rate and will be invoiced on a semi-annual basis. Charges will include labor, travel time, parts, and administrative costs.

#### 5. Competitive Products Prohibited.

(a) City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised, or promoted in any manner at the Facilities, or in association with City, the Facilities or the City trademarks, during the Term, except as outlined in this Agreement.

(b) City agrees that City will not grant any rights, or enter into any contractual or other relationship, whereby City, the Facilities, and/or the City trademarks will be, or have the potential to be, associated in any manner, with any Competitive Products, except as outlined in this Agreement and the Term Sheet.



(c) ~~If City learns of any Competitive Products being marketed, advertised, or promoted in any manner which implies an association with City, Facilities or City trademarks (hereinafter referred to as "Ambush Marketing"), City will promptly notify Bottler in writing of the Ambush Marketing; and also will promptly use its efforts, and cooperate in good faith with Bottler, to prevent or stop such Ambush Marketing in order to protect the exclusive associational rights granted to Bottler under this Agreement.~~

(d) Special Promotional Events Exception. See Exhibit 8.

(e) The City will provide Bottler with no less than thirty (30) calendar days prior written notice of each event which it intends to designate as a Special Promotional Event.

(f) The private, personal consumption of Competitive Products by athletes, coaching staff, musicians, actors, comedians, or other entertainment personalities appearing and performing at the Facility is allowed and will not be considered a Special Promotional Event. City shall use efforts to ensure such consumption is limited to private areas and may not be permitted in any area of the Facility to which the public or any member of the print or electronic media has legal access.

(g) Product availability at Facilities for private events. A private event at a Facility shall mean the use of a Facility, either through the rental of the Facility or through the issuance of a City-approved Special Event Permit, by a person(s) or business entity (ies) (i.e. such as a corporation) which is not open or accessible to the general public either free or via a purchased ticket. For example purposes only, private events may include, but not be limited, to the following: weddings, bar mitzvah/bat mitzvah and corporate events. Product availability and exclusivity at private events shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the user of the Facility for private events, provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations.

(h) Product availability at Facilities as it relates to charitable events (including, events produced by not-for-profit entities with valid tax exemption from the IRS) at Facilities or at City-Permitted Special Events (e.g., Relay for Life, Aids Walk, American Cancer Society), shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the charitable organization using the Facility provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations and that Bottler had opportunity to supply Products for the charitable event and declined.

6. Consideration.

(a) Pricing. Pricing (including price increases) will be implemented as outlined in the Term Sheet.

(b) Credit Card Readers and Funding. Bottler and City will mutually agree to install credit card readers in select Beverage dispensers, which are identified as high traffic locations. Bottler will pay for the credit card readers in an aggregate amount of not to exceed Ten Thousand Dollars (\$10,000). This funding will be earned over the Term of the Agreement. City shall have no responsibility to fund any overage for payment of the credit card readers should they exceed Ten Thousand Dollars (\$10,000). Bottler shall be responsible for all maintenance and repair of the credit card readers. Upon termination or expiration of the Agreement, City shall return all credit card readers to Bottler.

7. Trademarks; Approvals.

(a) City acknowledges that The Coca-Cola Company is the owner of all right and title in the trademarks "Coca-Cola", "Diet Coke", "Sprite", "DASANI", "Minute Maid", "POWERADE", "Fanta" "~~vitamin~~water" "Full Throttle", "NOS" and other trademarks of The Coca-Cola Company, and it acquires no rights whatsoever in these trademarks

by virtue of this Agreement. City agrees to submit all proposed uses of The Coca-Cola Company marks to Sponsor for approval prior to use, but such approval shall not be unreasonably withheld.

(b) Bottler acknowledges that City is the owner of all right and title in the service mark "MiamiBeach" and that Bottler acquires no rights whatsoever in the service mark by virtue of this Agreement. Bottler shall have the right to use the City's service mark during the Term in connection with its marketing activities at the Facilities. Bottler agrees to submit all proposed uses of City's service marks to City for approval prior to use, but such approval shall not be unreasonably withheld.

#### 8. Termination

(a) Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement, and the City fails to cure such breach within thirty (30) days following written notice of same from Bottler then, at its option, Bottler may terminate this Agreement and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, prorated through the date of termination.

(b) City represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. In the event of expiration or revocation of such authority, and if the City fails to cure such breach within thirty (30) days following revocation of full right and authority, then at its option, Bottler may terminate this Agreement, and City shall (i) return any Equipment; and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, pro-rated through the date of termination.

(c) If Bottler breaches any of its material obligations under this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from the City, then City may terminate this Agreement and Bottler shall remove all Equipment from the Facilities, and the City shall be entitled to retain the earned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any; other upfront funding deemed earned over the Term, if any, prorated through the date of termination; and any fees or payments due for the Agreement year in which the termination occurs, such as commission fees, if any.

(d) Notwithstanding the above, nothing in this section shall operate to restrict any other remedies that either party may have against the other in the event of a material breach by a defaulting party.

#### 9. Insurance

The Bottler acknowledges that the City is self-insured, as provided in **Attachment B** to this Agreement.

Bottler shall, at its sole cost and expense, obtain, provide and maintain, during the Term, the following types and amounts of insurance, which shall be maintained with insurers licensed to sell insurance in the State of Florida and have a B+ VI or higher rating in the latest edition of AM Best's Insurance Guide:

- 1) Commercial General Liability. A policy including, but not limited to, commercial general liability, including bodily injury, personal injury, property damage, in the amount of \$1,000,000 per occurrence. Coverage shall be provided on an occurrence basis.

~~2) Workers' Compensation per the statutory limits of the State of Florida and Employer's Liability Insurance.~~

3) Automobile Liability - \$1,000,000 combined single limit for all owned/non-owned/hired automobiles.

Said policies of insurance shall be primary for Sponsor/Bottler's negligence only to and contributing with any other insurance maintained by Bottler or City, and all shall name City of Miami Beach, Florida as an additional insured on the commercial general liability and automobile liability policies. Sponsor shall provide thirty (30) days written notice to City prior to policy cancellation.

Bottler shall file and maintain certificates of the above insurance policies with the City's Risk Management Department showing said policies to be in full force and effect at all times during the Term.

10. Notices

Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. A copy of the notice must be sent by fax when the notice is sent by mail or courier. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

(A) **Notice to Sponsor.**

Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company  
3350 Pembroke Road  
Hollywood, Florida 33021  
Attention: V.P. Market Unit, South Florida  
Fax: 954-986-3173  
Ticket Addressee: V.P. Market Unit, South Florida  
Fax: 954-986-3173

With a copy to: Coca-Cola Refreshments USA, Inc.  
2500 Windy Ridge Pkwy  
Atlanta, Georgia 30339  
Attention: General Counsel

(B) **Notice to City.**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33138  
Attention: Hilda Fernandez  
Fax: 305-673-7782

11. Governing Law

This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to its conflict of law rules.

12. Compliance with Law

Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

13. Retention of Rights

No party shall obtain, by this Agreement, any right, title or interest in the trademarks of the other, nor shall this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks, service marks or copyrights of the other, except as may be expressly provided and authorized herein.

14. Jury Waiver

EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

15. Entire Agreement

This Agreement and its exhibits contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties; provided, however, that Bottler may assign this Agreement in connection with its reorganization or the sale of all or substantially all of its assets. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

The Coca-Cola Company, acting by and through  
its Coca-Cola North America Division

By: Susanne Geldart

Print Name: Susanne Geldart

Title: Sr. VP, Southeast Region Sales  
3/26/12

City of Miami Beach

By: Matti H. Bower

Print Name: Matti H. Bower

Title: Mayor  
3/16/12

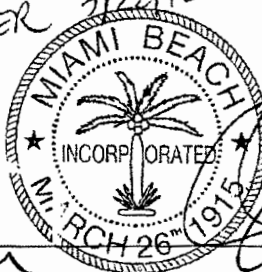
Coca-Cola Refreshments USA, Inc. d/b/a Florida  
Coca-Cola Bottling Company

By: Sally Forsyth

Print Name: SALLY FORSYTH

Title: REGION CONTROLLER  
3/22/12

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION



[Signature]  
City Attorney

3-15-12  
Date

[Signature]  
ATTEST

Attachment A

TERM SHEET

**EXCLUSIVE NON-ALCOHOLIC BEVERAGE AGREEMENT**

**CITY OF MIAMI BEACH AND COCA-COLA REFRESHMENTS USA, INC.  
and COCA-COLA NORTH AMERICA, A DIVISION OF THE COCA-COLA  
COMPANY**

**1. DEFINITIONS:**

Bottler: Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company

Company: Coca-Cola North America, a division of The Coca-Cola Company

Sponsor: Collectively, "Bottler" and "Company"

City: City of Miami Beach

Agreement: Exclusive Non-Alcoholic Beverage Agreement

Facilities: Includes the following Miami Beach property, including any land, building, structures and/or other facilities thereon: Miami Beach Golf Club; the Normandy Shores Golf Club; The Fillmore Miami Beach at the Jackie Gleason Theater (upon the expiration of the current management agreement); the Miami Beach Convention Center; all currently existing City of Miami Beach owned parks and recreational facilities; all currently existing City of Miami Beach owned public parking garages which are either directly operated by the City, through its Parking System, or by a third party who, pursuant to a management or concession agreement with the City, is contractually authorized to operate and manage such garage on behalf of the City; all currently existing public beachfront concessions which are either directly operated by the City or by a third party who, pursuant to a concession or management agreement with the City, is contractually authorized to operate and manage such concession on behalf of the City; and any additional future Facilities or expansion of existing or future Facilities, including but not limited to, the concession facilities at 21<sup>st</sup> and 46<sup>th</sup> street and at South Pointe Park and the Miami Beach Convention Center facility expansion, except as may be otherwise be excluded in the Agreement.

Beverage: all non-alcoholic beverages of any kind including but

	<p>not limited to coffee products; tea products; concentrated energy drinks, including those in small servings; protein-enhanced dairy beverages; frozen drinks (e.g. ICEE) and smoothies made from concentrate; and the pre-mix and/or post-mix syrups used to prepare fountain Beverages. "Beverage" or "Beverages" shall not include dairy products except as noted above (e.g. milk, yogurt, ice cream), water drawn from the public water supply, or unbranded juice squeezed fresh at the Facilities.</p> <p><u>Products:</u> Beverage products purchased directly from Bottler, or with written Bottler approval from, or Bottler's authorized distributor, or sold through vending machines owned and stocked exclusively by Bottler.</p> <p><u>Competitive Products:</u> Beverages which are not Products.</p>
<b>2. AGREEMENT TERM:</b>	The Term shall begin January 1, 2012 and will continue until December 31, 2021 (the "Term"). When used in this Term Sheet, the term "Agreement Year" means each consecutive twelve-month period during the Term, beginning with the first day of the Term.
<b>3. EFFECTIVE DATE:</b>	January 1, 2012
<b>4. EXPIRATION DATE:</b>	December 31, 2021 as to all Facilities
<b>5. SPONSORSHIP FEE:</b>	<p>\$3,725,000 for the Term of the Agreement.</p> <ul style="list-style-type: none"> <li>• First installment of \$800,000 (includes sponsorship fee for Agreement Year One and signing bonus) will be paid within sixty (60) days of execution of the Agreement by all parties. The portion pertaining to the signing bonus (\$475,000) will be deemed earned over the Term and the portion pertaining to the sponsorship fee for the Agreement Year One (\$325,000) shall be deemed earned evenly on a monthly basis during the first Agreement Year.</li> <li>• \$325,000 due each Agreement Year thereafter during the Term of the Agreement, due upon the anniversary date of the Agreement and will be deemed earned over the Agreement Year. (Subject to purchase of a minimum of 22,500 cases of bottles/cans per year.)</li> </ul>
<b>6. COMMISSIONS:</b>	Commissions to be paid quarterly in arrears by Bottler to City based upon cash collected less taxes and as per the Commission Rate Structure according to Bottler's sales records. (Exhibit 1)
<b>7. COMMUNITY: SUPPORT/</b>	Bottler will provide City with a total of \$17,500 in cash for the



<b>COMPLIMENTARY PRODUCT:</b>	<p>purchase of equipment or other products (mutually agreed upon)</p> <p>Bottler shall provide City, upon City's request, with up to 450 standard physical cases of complimentary Product (12 ounce CSD cans and/or DASANI 12 ounce bottles) per Agreement year for a Product bank to be used by the City. If City does not request complimentary Product by the end of each year, any remaining complimentary Product shall be retained by Bottler with no further obligation to Account. Bottler will provide complimentary Product donation report upon Account's request.</p>
<b>8. ADVERTISING &amp; SPONSORSHIP:</b>	<p>Bottler has the exclusive right to advertise Products (i) at the Facilities and (ii) in connection with the Facilities. No permanent or temporary advertising, signage or trademark visibility for Competitive Products are permitted anywhere at the Facilities, except as permitted pursuant to the Agreement. Advertising rights are further delineated in <b>Exhibit 2</b>. Bottler has the exclusive right to advertise the Products as the "Official" or "Exclusive" soft drink, sports drink, dairy-based protein drink, water, tea, energy drink, and/or juice or juice drink, etc. of the Facilities, of the City of Miami Beach and of South Beach. Bottler will be the exclusive advertiser of Products associated with the Facilities.</p>
<b>9. PRODUCT RIGHTS:</b>	<p>Bottler has the exclusive right to sell or distribute Products at the Facilities. No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, except as may otherwise be provided for in this Agreement.</p>
<b>10. EXCEPTIONS:</b>	<p>Except for those Facilities specifically enumerated in Section 1., "Facilities" shall NOT include any City of Miami Beach property (including any City-owned land, buildings, structures, and/or other facilities thereon) which—as of the Effective Date—is used, occupied, controlled, and/or managed and operated by a third party (or parties) pursuant to any of the following agreements between the City and such third party(ies): (i) lease agreement; (ii) concession agreement; (iii) operation and management agreement; (iv) development agreement; (v) easement agreement; (vi) license and/or use agreement; (vii) revocable permit; and/or (viii) any other written instrument between the City and such third party(ies) which establishes a contractual right on behalf of such third party(ies) for the use and/or occupancy of City property. This shall include, but not be limited to, any City property occupied by a tenant through a lease or rental agreement (including, without limitation, leases or rental agreements for office,</p>

retail, and/or commercial uses(s) in City-owned buildings); any City property managed and operated, and/or otherwise used, by a third party(ies) pursuant to a management agreement or concession agreement; private upland owner beachfront concessions which are issued a permit by the City (and which are neither operated directly by the City, nor by a third party on behalf of and pursuant to a contract with the City); sidewalk cafes which are issued a permit to operated pursuant to the City's Sidewalk Café Ordinance, as may be amended from time to time; "public-private" projects developed and constructed pursuant to a Development Agreement (pursuant to the requirements of the Florida Local Government Development Agreement Act under Chapter 163, Florida Statutes); any hotel or retail development related to the expansion of the Miami Beach Convention Center that is not managed as part of the Convention Center operations (e.g. adjacent commercial retail, hotel, etc.); public bus shelter advertising managed by a third party under contract with the City; and advertising permitted pursuant to the City's current agreement for the public bike-share concession. Notwithstanding the preceding, the City will: i) make reasonable good faith efforts to meet with the bike-share concessionaire and negotiate an amendment to the existing bike-share concession agreement, which must also be subject to agreement by the bike-share concessionaire, to prohibit the bike-share concessionaire from advertising Competitive Products; ii) if City renews the bike-share concession agreement with the bike-share concessionaire, then, as a condition to such renewal, the City Manager will recommend that such renewal be conditioned that such renewal include a term prohibiting the bike-share concessionaire from advertising Competitive Products; and iii) no advertising of Competitive Products shall be permitted on bike-share station kiosks during the Term should the City, after the Effective Date, approve advertising for placement on bike-share kiosks. Should the City enter into any new bike-share agreements during the Term, no advertising of Competitive Products shall be permitted on the bicycles used for that bike-share agreement(s).

Further, for the following locations which are under a pre-existing concession and/or use agreement (i.e. in effect prior to the Effective Date of the Agreement) with a Competitive Products supplier, those Facilities will come under this Agreement after such Competitive Products agreement is terminated or expires, or until such time as the concession or use agreement with the City for those Facilities is terminated, expires or is subject to any renewal provisions. The current

list of such facilities, and their expiration dates, are as follows:

- 1) 21<sup>st</sup> Street/46<sup>th</sup> Street Beachfront Concession/Tim Wilcox, Inc. – 11/30/2012
- 2) South Pointe Park Concession/Blissberry – 11/30/2012
- 3) Normandy Isle Pool Concession Stand/E. Gomez – 11/09/2011

City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised or promoted at the Facilities, or in association with City, except, and as further explained, in Exhibit 8:

- Third party exhibitor set ups at Facilities or during City-Permitted Special Events in accordance with the City's Special Event Permit Guidelines, as same may be amended from time to time.
- Charitable events at Facilities or at City-Permitted Special Events where Competitive Product are donated to the charitable event;
- Availability at City-Permitted Special Events only within Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time).
- Up to four (4) sponsorship events at the Miami Beach Golf Club, and up to four (4) sponsorship events at the Normandy Shores Golf Club each Agreement year;
- up to three (3) sponsorship events at the Miami Beach Convention Center each Agreement Year (the number limitation for the sponsorship events at the Miami Beach Convention Center is subject to a review after three (3) Agreement Years);
- a mutually agreed upon number of sponsorship events at the Fillmore Miami Beach at the Jackie Gleason Theater (upon expiration of the existing management agreement); and
- up to four (4) City-issued Special Event Permits for a "City Approved Major Sponsorship Public Event", each Agreement Year, which includes an event sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the sponsorship event; an event conducted on a national or regional multi-market basis; and/or an event where a competitor is the presenting, title or other primary sponsor of the event. The number limitation for City-Issued Special Events is subject to a review after three (3) Agreement Years.

	<p>Whenever possible, City will make reasonable good faith efforts to encourage third party users of the Golf Courses and Convention Center, and Special Event organizers, to use Bottler's Products for their non-alcoholic beverage needs. Since third party organizers who apply for Special Event Permits will be permitted to sell only Bottler's Products, City will amend City's Special Events Permit Application and City will provide Sponsor contact information through the City's Special Events Permit Application process.</p>
<b>11. MARKETING PROGAM:</b>	<p>Bottler agrees to provide Account with annual in-kind marketing support fund with an approximate retail value of Two Hundred Thousand Five Hundred Dollars (\$200,500) as further delineated in <b>Exhibit 3</b>.</p>
<b>12. RECYCLING PARTNER:</b>	<p>Bottler shall be designated the official "Recycling Partner" of Account. In consideration of this designation, Bottler shall provide, at their cost, the services/products delineated in <b>Exhibit 4</b>, with a minimum total value of \$15,000, and up to \$25,000 over the entire Term</p>
<b>13. VENDING PROGRAM/OTHER EQUIPMENT</b>	<p>City agrees that Bottler shall place a minimum of sixty-five (65) Product vending machines in mutually agreed upon locations at the Facilities, and Bottler will loan to City at no cost, Beverage dispensing equipment as reasonably required and as mutually agreed upon to dispense Products at the Facilities, and in accordance with <b>Exhibit 5</b>.</p>
<b>14. CITY SUPPORT:</b>	<p>In consideration of the partnership, City grants to Bottler: Twenty-six (26) rounds of golf each Agreement Year (max of eight during peak season; no more than twelve at Miami Beach Golf Course; benefit does not roll over); a minimum of four (4) free tickets to at least six (6) ticketed events at Facilities each Agreement Year, subject to availability (e.g. Art Basel Miami Beach, Auto Show, South Beach Comedy Festival at the Fillmore, etc.). Additional tickets will be provided as available. Benefit does not roll over.</p>
<b>15. PRICING:</b>	<p><b>Bottle/Can Pricing:</b> City is entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in <b>Exhibit 6</b>; prices shall remain in effect until July 31, 2012. Thereafter, such prices will be subject to an annual increase of no more than four percent (4%) over the previous Agreement Year's price.</p> <p><b>Fountain Products or Georgia Coffee Pricing:</b> Bottler will sell fountain Products to City at the National Account prices, as</p>

	<p>announced by the Bottler in January of each year. Georgia Coffee pricing shall be provided quarterly based on commodity markets.</p> <p>Purchasing: All Product shall be purchased directly from Bottler, except for those Products that Bottler identifies can be purchased from an authorized Coca-Cola distributor.</p>
<b>16. TERMINATION:</b>	<p>If City breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from Bottler, then, Bottler may terminate this Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination).</p> <p>If Bottler breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from City, then, City may terminate this Agreement, and Bottler shall (i) remove any Equipment, and (ii) pay to City the earned portion of any pre-paid Sponsorship Fees or other fees or payments due for the Agreement year in which the termination occurs (pro-rated through the date of termination).</p> <p>City shall not be in default in the event of any claim filed in relation to City's restriction on Competitive Product sampling; provided, however, the Bottler shall have the following remedies: 1) ability to renegotiate financial terms, as appropriate, within a specified time (e.g. 90 days); or, 2) failing to negotiate terms acceptable to both parties within specified time, Bottler may terminate the Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination). Nothing in this section shall operate to restrict either party's other remedies in the event of a material breach by the other.</p>
<b>17. MAINTENANCE &amp; SERVICE:</b>	<p>Bottler agrees to provide reasonable service and maintenance for the equipment during the Term. City shall allow Bottler to enter its premises for the purpose of inspection or performance of such maintenance and repair, or necessary replacement or return of the equipment. Bottler and City will establish a mutually agreed upon refund bank and customer service program, as delineated in <b>Exhibit 7</b>.</p>
<b>18. REPORTS/AUDITING:</b>	<p>Bottler will provide an annual business review report within 90</p>



	days following each Agreement Year during the Term; Commission reports will be provided monthly. The format of such reports shall be mutually agreed upon. City has the right to audit/inspect account statements with reasonable prior notice to Bottler and during normal business hours. If City requests an audit, City agrees to pay for such audit. Account records must be retained for a minimum of two (2) Agreement Years after the payment of the annual Sponsorship Fee is paid, in addition to the current Agreement Year of the Term, and for two (2) Agreement Years following expiration or termination of the Agreement.
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Exhibit 1 to Term Sheet

COMMISSIONS

Workplace Facilities (City Hall, Police Station, and other City Facilities):

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.25	30%
20 oz. PET Minute Maid®	\$1.25	30%
20 oz. PET DASANI®	\$1.25	30%
300 ml PET DASANI®	\$0.75	30%
20 oz. PET POWERADE®	\$1.50	30%
20 oz. PET vitaminwater®	\$1.75	15%
16 oz. cans Energy Beverages	\$2.00	30%
16.5 oz. PET FUZE ®	\$2.00	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.50	15%

All other public locations (such as South Beach):

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.50	30%
20 oz. PET Minute Maid®	\$1.50	30%
20 oz. PET DASANI®	\$1.50	30%
300 ml PET DASANI®	\$1.00	30%
20 oz. PET POWERADE®	\$1.75	30%
20 oz. PET vitaminwater®	\$2.00	15%
16 oz. cans Energy Beverages	\$2.25	30%
16.5 oz. PET FUZE®	\$2.25	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.75	15%

In Agreement Years Four and Seven, the Vend Prices will increase by twenty-five cents for each Product listed above. For example, in Agreement Year Four, 300ml. DASANI will increase to \$1.00 Vend Price and then in Agreement Year Seven, 300ml. DASANI will increase an additional twenty-five cents to \$1.25. The Commission Rates will not change during the Term of this Agreement. There are two vend rates (one for workplace and one for public locations) that will be outlined in the final formal agreement between the parties, but note that commission rates will remain the same.

Commissions are paid based upon cash collected after deducting taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any. Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates as necessary to reflect changes in its costs, including cost of goods, upon prior written notice and approval by City. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the City, and shall become immediate property of City.

ADVERTISING RIGHTS

(Except as otherwise noted, the following rights may not be transferred or assigned by Bottler)

1. Recognition of Bottler as the "Official Non-Alcoholic Beverage Sponsor" of City. Official status will include Official Status Recognition for City across all non-alcoholic beverage categories i.e. "Coca-Cola Official Soft Drink of Miami Beach" and Official Status Recognition for South Beach across all non alcoholic beverage categories (i.e. "POWERADE Official Sports Drink for South Beach")
2. Official Sponsor Status (for Products) of all City-produced citywide Special Events, whether now existing or as may exist in the future (i.e. including, without limitation, and for example purposes only Sleepless Nights); Bottler to have highest sponsorship level and benefits available other than presenting or title sponsorship. In addition, Bottler will be recognized as the "Title Sponsor" of City's "Fire on the 4<sup>th</sup> Annual Independence Day Celebration" each Agreement Year during the Term.
3. Recognition of Bottler as the "Official Recycling Partner" for the City of Miami Beach & South Beach
4. Joint Bottler/City Logo placement on City and City-related websites (e.g. Miami Beach Convention Center, Miami Beach Golf Club, Normandy Shores Golf Club, Miami Beach Culture web site (MBCulture.com); and any other City websites, whether now existing or as may exist in the future, to such extent as permitted by any federal or state regulations on .gov domains. City will use reasonable commercial efforts to include joint Bottler/City Logo on all printed convention and tourism materials, as appropriate and available.
5. Waiver of any Special Event Permit and/or Permit Application Fees for Bottler's use of certain Account Facilities for up to two (2) mutually agreed upon events per Agreement Year, based on availability. For purposes of the Special Event Permit and/or Permit Application Fee waiver, these Facilities shall include public beachfront areas and Parks and Recreation facilities where Special Events are permitted. All other fees and costs of production, including but not limited to, taxes, security, sanitation, etc., shall be the responsibility of Bottler. Right may not be transferred or assigned.
6. Waiver of any rental or use fees for Bottler's use of certain City Facilities for up to (two) 2 mutually agreed upon events per Agreement Year, based on availability. For purposes of the rental or use fee waiver, these Facilities shall include the use of meeting room space or ballroom space at the Miami Beach Convention Center. All other fees and costs of production, including but not limited to taxes, security, audio/visual, decoration, etc., shall be the responsibility of the Bottler. Right may not be transferred or assigned.
7. Unlimited, royalty-free Product sampling at City produced and/or sponsored events; Royalty-free Product sampling permits per Agreement Year, as follows: 48 permits each Agreement Year, but permits will be limited to not more than six (6) permits in any one month period. Right may not be transferred or assigned. If Sponsor does not use all 48 permits by the end of each Agreement Year, any remaining permits will not roll-over to the following Agreement Year, but will be forfeited.
8. Mutual agreement on the development and use of a joint logo between Bottler and Account.
9. Right to use mutually agreed upon joint logo on any point-of-sale, marketing materials, and/or signage that may be mutually agreed upon.
10. Royalty-free advertisement in City's magazine (i.e. MB Magazine); minimum of a quarter page each issue; larger ad size as may be available. Right may be transferred or assigned.
11. Royalty-free prominent advertisement in any Special Promotional Event programs or collaterals produced for City-produced citywide Special Promotional Events (i.e. including, without limitation, July 4<sup>th</sup> and Sleepless Nights). City shall use best efforts to provide a full page ad.

12. The right to brand City's public beach concession-area(s) with approved Bottler and City joint branding graphics (e.g. concession stands, storage shed, umbrellas, etc.), subject to proposed branding meeting all necessary administrative and regulatory approvals. Implementation of any approved branding shall be at the Bottler's expense. All trademark usage must be pre-approved prior to usage. The erection of any other signage other than vending machine display shall be subject to approval by the City.
13. One Royalty-free joint City/Bottler message PSA advertising panel at the 5<sup>th</sup> and Alton bus shelter; production/installation costs paid by Bottler. Minimum of full use of one PSA ad panel for the entire term of the Agreement.
14. Minimum of one (1) Royalty-free advertising panel at the 5<sup>th</sup> and Alton bus shelter, on a space availability (remnant) basis; production/installation costs paid by Bottler. Right may be transferred or assigned.
15. Minimum of one (1) one-month Royalty-free electronic joint City/Bottler message PSA run on Atlantic Broadband and Welcome Channel; Additional months based on ongoing availability;
16. Minimum of one (1) unlimited run on MBTV of City/Bottler message PSA;
17. Royalty-free POF ticket ad based on space availability; production costs paid by Bottler. Right may be transferred or assigned.

The parties agree to perform such additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales.

MARKETING PROGRAM

Bottler shall provide City for approval with the proposed annual marketing plan for promotion of the partnership no later than ninety (90) days prior to the beginning of each Agreement Year, except for the first Agreement Year when the marketing plan shall be provided to the City within ninety (90) days after execution of Agreement. The annual value of the marketing plan shall be no less than \$200,500, as determined in good faith by Bottler and based on generally accepted marketing values. Some examples of activation may include the following; however, actual marketing programs will depend on availability of these programs.

- Inclusion of the City in the My Coke Rewards program, or other customer reward program offered by Bottler, through an annual promotional program (e.g. sweepstakes); estimated value \$100,000, or equivalent value. Activation based on availability
- Truck-back promotions program - value: \$24,000/year based on availability
- Box Topper program or other similar high-visibility promotional program; value: \$25,000/year
- Neck Ringer program: a Neck Ringer program shall be available with a minimum distribution of neck ringers
- Touring Program: Bottler will bring the Open Happiness Tour, or such other promotional touring program offered by Bottler, to the City based on availability.
- Bottler to develop and implement at least five (5) strategic marketing partnerships with the Account and the Bottler's other sponsorship partners during the Term of the Agreement. Such strategic marketing partnerships may include, but are not limited to, cross promotion, product, tickets, etc., with other brands or products currently under a sponsorship or other promotional/marketing agreement with the Bottler.
- LeBron James Event/celebrity event; value: \$45,000 based on availability, or equivalent value

City acknowledges the intent of the Bottler to develop a joint marketing logo incorporating the Bottler's mark and the City's mark. Bottler shall obtain approval from the City, in writing, of the joint logo for use in promotion of the Agreement, including, but not limited to, its use in all commercial, marketing, media advertisements, web sites and promotional products.

A party's use of the other party's marks in promotions, on products and signage, shall be first approved by the other party in writing, and all uses of a party's marks shall be acknowledged as that party's intellectual property and include appropriate trademark notices.

The parties agree to perform those additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales. City agrees to provide Bottler with reasonable marketing assets inventory (e.g., to be used with a My Coke Rewards national consumer sweepstakes, or other such similar sweepstakes) for mutually agreed upon promotions each year during the Term to promote Bottler Products and City.

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**Exhibit 4 to Term Sheet**

**RECYCLING PARTNERSHIP**

Bottler shall be designated the official "Recycling Partner" of City.

Bottler shall provide, at its cost, the following services/products (value of \$15,000-\$25,000):

- Assess, consult and offer a Recycling Program Plan for bottle/can recycling initiatives
- Propose messaging strategy for the City's bottle/can recycling initiatives (within 90 days after execution of Agreement)
- Provide Temporary recycling bins for special events (minimum of 30) to City at Bottler's cost;
- Provide Recycling bins for placement in Facilities or agreed upon public areas (minimum of 15) to City at Bottler's cost; design subject to review and approval of City;
- Place reverse vending machines (crushers) in vending banks in the Facilities; minimum of five (5) crushers placed during the first five Agreement Years of the Term, at Bottler's cost.
- Use of Recycling Educational Vehicle (REV,) or other Education Recycling material, at City events; scheduled at least one time every 18 months during the Term.

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Exhibit 5 to Term Sheet

VENDING PROGRAM

Bottler shall place, at their cost, all vending machines in agreed upon locations pursuant to the following:

- 1) Bottler shall provide to City within 90 days after execution of Agreement the proposed equipment plan for the Agreement Term; to include the machine allocation plan by type (e.g. interactive vending machines, glass front etc.) and location; equipment replacement schedule; and vend front replacement and schedule for existing vending machines that need the vend front replaced. All equipment shall be UL energy star rated.
- 2) Bottler shall install vending machines within 180 days after the proposed equipment plan has been approved by all parties. Both parties agree that the installation of vending machines shall be completed within 180 days after the proposed equipment plan has been approved by all parties. Agreement execution. The already approved beach thematic vend fronts will be used unless other mutually agreed upon vend fronts have been selected and approved, and if beach thematic vend fronts are available. The vend fronts shall include advertising panels for use by the City, as approved by Bottler, provided that the vending machines are equipped with advertising panel(s). Bottler shall pay all costs for the production and installation of the City vend front advertising panels. A minimum of two (2) and a maximum of four (4) City vend panel ads shall be produced/installed each Agreement Year.
- 3) Bottler shall provide within 90 days after execution of Agreement the proposed credit card reader installation plan and schedule. All credit card reader installation shall be completed within Agreement Year One.
- 4) City shall provide all electrical power necessary to operate the vending machines, and City shall pay up to \$200 for the cost of any electrical modifications or connections necessary to accommodate any new vending machine placement, upon mutual agreement of the proposed location for the placement of the vending machine.
- 5) All vending machines remain the property of the Bottler.
- 6) Bottler shall provide a product list to the City to be included in the vending program. Any changes to the Product list shall be provided to the Account prior to Product placement in a vending machine. Bottler shall work with the City's Parks and Recreation Department to identify the appropriate vending products for inclusion in vending machines located in any City park. The City's Park and Recreation Department shall provide approval, in writing, of the Products to be sold in the vending machines placed in City parks.
- 7) Bottler shall maintain vending machines reasonably well-stocked with Products.

**Exhibit 6 to Term Sheet**

**INITIAL PRICE SCHEDULE\***

<b><u>Package</u></b>	<b><u>Price per case</u></b>
20 oz. CSD	\$17.85
12 oz. CSD	\$9.46
15.2 oz. MMJTG	\$23.36
12 oz. DASANI®	\$8.88
1 liter CSD	\$16.29
20 oz. DASANI®	\$10.82
20 oz. vitaminwater®	\$27.00
8 oz. CSD	\$16.00
20 oz. NESTEA®/ Minute Maid® Refreshment	\$17.85
20 oz. POWERADE®	\$19.00
16 oz. Monster®	\$34.00
2 liter CSD	\$12.35
16.9 Honest Tea®	\$12.60
500 ml Gold Peak®	\$13.99
8 oz. aluminum bottle	\$16.48

<b><u>Post-Mix</u></b>	<b><u>Price per gallon</u></b>
5 gallon BIB CSD and NCB	\$12.24
2.5 gallon BIB CSD and NCB	\$12.78
5 gallon BIB Unsweet NESTEA®	\$11.82
2.5 gallon BIB Unsweet NESTEA®	\$12.40
5 gallon BIB Premium NCB	\$12.75
2.5 gallon BIB Premium NCB	\$13.30
5 gallon BIB Frozen Dispensed	\$13.88
2.5 gallon BIB Frozen Dispensed	\$14.26

<b><u>Cups</u></b>	
24 ounce	\$52.89 per 1,200

<b><u>Lids</u></b>	
24 ounce	\$34.55 per 2,000

<b><u>CO2</u></b>	
20 lb. cylinder	\$25.00 per cylinder (plus \$75.00 deposit)

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees, and recycling fees.

**Georgia 64 Oz Brew: Price per Case and package size:** (Prices effective for the period: 1/1/2012-3/31/2012) (All coffee is priced FOB to Distributor, prices do not include any distributor markup.)

<b>Product</b>	<b>Package (Frac)</b>	<b>Small Filters</b>	<b>Large Filters</b>
Dark Roast	100, 2.75 oz	\$110.38	\$110.38
Light Roast	128, 2.25 oz	\$117.87	\$117.87
Decaf	75, 2.00 oz	\$67.95	\$67.95
Organic	75, 2.75 oz	\$110.10	\$110.10



MAINTENANCE & SERVICE

During the Term, Bottler will loan to Account, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage equipment reasonably required and as mutually agreed upon to dispense Beverages at the Facilities.

Bottler agrees that all equipment shall be new or in "like new" condition and that it shall operate and manage the equipment, services and facilities offered in a first-class manner. Bottler shall provide City with the Maintenance Plan and Schedule for all Bottler equipment within 90 days of execution of Agreement, to include the Bottler's plan and schedule for servicing the City.

Bottler shall provide throughout the Term of this Agreement, at Bottler's expense, all repairs, replacements and technical services necessary to maintain and preserve the Bottler's equipment in a decent, safe, healthy and sanitary condition satisfactory to City and in compliance with applicable laws.

Bottler warrants that it shall correct all mechanical problems with vending machines no later than four (4) business days after notice and no later than twenty-four (24) hours after notice for all other dispensing equipment.

Acts of vandalism to Bottler's equipment will be reported to Bottler immediately and addressed within four (4) business days. If the vending machine is repairable, the vending machine will be repaired within four (4) business days. If the vending machine is not repairable, vending machine will be condemned and swapped within seven (7) business days.

Bottler is the only party allowed to make repairs on Bottler-owned equipment.

All vending machines shall display a "service hotline" sticker to expedite calls. A toll free ("1-800") number shall be provided and a 24-four hour per day, seven days a week continuously operating telephone answering service shall be provided.

A reimbursement fund in the amount adequate to handle all necessary refunds between service calls shall be made available to City at designated location(s) mutually agreed upon by City and Bottler. Each person requesting a refund shall complete a form which shall be maintained by the City and provided to the Bottler as required. The reimbursement fund shall be checked by the Bottler no less than once a month and replenished as needed. Information on refunds shall be provided on each machine.

## Exhibit 8

The term "Special Promotional Events" ("Event") shall mean and is limited to the following: concerts; theatrical or comedic performances; conventions; trade shows; religious events; athletic events; or other special events occurring at a Facility that meet the following requirements: (i) they are sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the subject Event (including, without limitation, a concert or theatrical production company, or a trade show or convention production company, but NOT including in any instance the City or its affiliates or agents); (ii) they are conducted on a national or regional multi-market basis; (iii) they are NCAA collegiate championship athletic events; and, (iv) the event sponsorship agreement referred to in subsection (i) above requires on-site temporary signage for Competitive Products.

The term "Special Promotional Events Exceptions" shall refer to those exceptions granted under the Agreement, for each Agreement year, to permit the following fifteen (15) Special Promotional Events at the following Facilities: (i) four (4) events at the Miami Beach Golf Club; (ii) four (4) events at the Normandy Shores Golf Club (The Miami Beach Golf Club and Normandy Shores Golf Club may also be referred to collectively herein as "Golf Courses"); (iii) three (3) events at the Miami Beach Convention Center ("Convention Center"); and (iv) four (4) City Approved major Sponsorship Public Special Events (as defined below); provided, however, that the number limitation for City Approved Major Sponsorship Public Special Events shall be revisited and reviewed by the parties, in good faith, at the conclusion of the third Agreement Year.

- a. **Golf Courses and Convention Center/Special Promotional Events Exception.** In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed at each of the Golf Courses during up to four (4) Special Promotional Events, and during up to three (3) Special Promotional Events at the Convention Center ; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) Competitive Products may be distributed at no cost, but no Competitive Products will be sold or otherwise made available during the Event(except as permitted in this exception); (iii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events , religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; (iv) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event; and (v) at no time will the Competitive Products make any statements, or use any temporary signage, that uses the trademarks/service marks of the City of Miami Beach, South Beach, Golf Courses or the Convention Center, nor in any way associate these Competitive Products with the City of Miami Beach, "South Beach," the Golf Courses, or the Convention Center. The Special Promotional Events at the Golf Clubs and the Convention Center must occur over a period of no more than twenty-four (24) hours. The twenty-four hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforestated time limitation. The Convention Center may use the three one day

(one day = twenty-four hours) in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of twenty-four hours multiplied by the total number of Special Promotional Events permitted, as provided for herein. For example purposes only, the Miami Beach Convention Center are provided three Special Promotional Event Exceptions per Agreement Year. As such, the three Special Promotional Events may occur in the Miami Beach Convention Center for a total of 72 hours in an Agreement year (24 hours x 3 events = 72 hours/year).

- b. City Approved Major Sponsorship Public Special Events/Special Promotional Events Exception. In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed during up to four (4) Special Promotional Events for City Approved Major Sponsorship Public Special Events. The term "City Approved Major Sponsorship Public Special Event" shall refer to a City-approved public event (i.e. where public access is allowed either via no cost or via pre-purchased ticket) held on City property, and permitted pursuant to the City's approved Special Event Permit process, as same may be amended from time to time during the Term of this Agreement (for example purposes only, this may include, but not be limited to events such as Super Bowl Pepsi Jam and Red Bull Illume); and may also include an event sponsored by a manufacturer, distributor or marketer of Competitive Products pursuant to a sponsorship agreement with the owner, operator or promoter of the event; an event conducted on a national or regional multi-market basis; and/or an event where a Competitive Product is the naming, presenting, title, brought to you by, or other primary sponsor of the Event. Temporary signage for Competitive Products at City Approved Major Sponsorship Public Events may be displayed as an Event "naming sponsor", Event "presented by" sponsor, Event "brought to you by" sponsor, or as a sponsor represented as a "Gold" or "Platinum" (or such other equivalent) sponsor of the Event; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events, religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; and (iii) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event. At no time will the Competitive Products make any statements or use any temporary signage that uses the trademarks/service marks of the City of Miami Beach, "South Beach," or the Facilities, or in any way associate these Competitive Products with the City of Miami Beach Facilities. Notwithstanding the above, Competitive Products may be distributed, sampled or made available during a City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception. Such distribution, sampling or availability shall occur ONLY within the approved site plan for the event. However, should concession service (sales) for any non-alcoholic beverage other than Products be required or necessary for the event, and there are no existing concessions at the location of the City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception, the City Manager shall submit a letter to Sponsor requesting that Sponsor grant a waiver to permit such sale at the Event; outlining the details of the exception and the business reasons for the request and such request shall require Sponsor's prior written approval. Sponsor reserves the right to not approve the limited waiver for this purpose. Sponsor will notify the City Manager of whether the request for waiver will be approved within twenty (20) business days of Sponsor receiving the City Manager's letter. -

The Special Promotional Event Exception for a City Approved Major Sponsorship Public Special Event must occur over a period of no more than seventy-two (72) hours. The seventy-two hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforesaid time limitation. The seventy-two hours may be used in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of seventy-two hours multiplied by the total number of Special Promotional Events Exceptions, as provided for herein. As such, the four Special Promotional Events may occur on public property for a total of 288 hours in an Agreement year (72 hours x 4 events = 288 hours/year).

- c. Other permitted Exceptions. Exhibitors at Conventions or trade shows, or third party exhibitor set ups at Facilities shall have the right to serve Competitive Products within their booth provided that same is limited to the duration of the corresponding event and, provided further, that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach and/or the Facilities, and their respective trademarks. For example purposes only, a Cadillac booth at the Auto Show in the Convention Center would be allowed to give away bottled water with the Cadillac Logo. Notwithstanding, Sponsor's Products would continue to be the only Products allowed to be sold, distributed or sampled at the Facility's concession operations.
- d. Competitive Beverages may also be permitted to be distributed, at no cost, at third party events that are not affiliated with the City, but where the City has permitted the event through the issuance of a City of Miami Beach Special Events Permit, subject to the City's notification to Sponsor prior to the event; and, provided further, that the third party event operator is not a manufacturer, distributor or seller of a Competitive Product; that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach or the Facilities, and their respective trademarks; that no Competitive Products will be sold during such event; and that the distribution of the Competitive Product is limited to Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time through the Term of this Agreement). For example purposes only, a third party event contemplated under this paragraph might include, but not be limited to, a walkathon or marathon where one of the event sponsors might request to be permitted to distribute free bottled water to the event participants. Notwithstanding the above, Sponsor shall have first right of refusal to provide donated Beverages through a sponsorship agreement to the non-profit events, permitted by the City through the issuance of a City of Miami Beach Special Events Permit, known as the White Party, Winter Party and Miami Beach Pride (based on the level of non-alcoholic Beverages provided for the White Party, Winter Party and Miami Beach Pride events in 2012.) for the sale of these Beverages by these three (3) events as part of their annual charity fundraisers. If Sponsor elects to participate, Sponsor will notify the organizer six (6) months prior to start date of White Party, Winter Party and Miami Beach Pride events. If at any time during the Term the Sponsor cannot or does not provide donated non-alcoholic Beverages through a sponsorship agreement to these three (3) non-profit events for this purpose, these three (3) events shall be permitted to secure Competitive Products for use and sale consistent with the use and sale of non-alcoholic Beverages in the 2012 White Party, Winter Party and Miami Beach Pride events.

Per Section 9 of Term Sheet, No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, unless otherwise expressly spelled out in the Agreement.