

**CONCESSION AGREEMENT BETWEEN THE
CITY OF MIAMI BEACH, FLORIDA
AND
SOUTH FLORIDA SENIORS IN ACTION, INC.
FOR THE PURPOSE OF PROVIDING SENIOR CITIZEN ACTIVITIES**

THIS AGREEMENT made the ____ day of _____, 2018, 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 **SOUTH FLORIDA SENIORS IN ACTION, INC.**, a Florida not-for-profit corporation, with offices at 833 6th Street, Miami Beach, Florida, 33139 (hereinafter called "Concessionaire").

WITNESSETH

WHEREAS, the City and Concessionaire have negotiated the following Concession Agreement; and

WHEREAS, said Concession Agreement is for an initial term of one (1) year and seven (7) months, commencing on March 1, 2018, and ending on September 30, 2019.

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

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

SECTION 1. TERM.

- 1.1 It is the intent of the parties hereto that the term of this Agreement, including any renewal terms, is to run concurrent with the term of that certain Lease Agreement between the City of Miami Beach and South Florida Seniors in Action, Inc., dated October 4, 2016 (hereinafter, the "Lease Agreement"). Accordingly, this Concession Agreement shall be for an initial term of one (1) year and seven (7) months, commencing on March 1, 2018 (the "Commencement Date"), and ending on the 30th day of September, 2019. For purposes of this Agreement, and including, without limitation, Subsection 1.2 below, a "contract year" shall be defined as that certain period commencing on the 1st day of March, and ending on the 28th day of February.

SECTION 2. CONCESSION AREA.

The City hereby grants to the Concessionaire the non-exclusive right, during the Term herein, to utilize the following facility and space (hereinafter referred to as the "Concession Area"):

The Concession Area is limited to the area comprised of 2,792 square feet in the public auditorium room within the South Shore Community Center (a.k.a. 6th Street Community Center or the "Building"), located at 833 Sixth Street, Miami Beach, Florida, 33139; and as further delineated in "Exhibit 2" hereto.

SECTION 3. USE(S).

- 3.1 Concessionaire is hereby authorized to use the Concession Area, at its sole expense and responsibility, solely for the purpose of providing activities to senior citizens consistent with the following schedule:

Monday:

2PM – 3PM Flamenco

3PM – 4PM Pre-Ballet

4PM – 5PM Zumba

5PM – 6PM Tai-Chi

Tuesday:

2PM – 4PM Chorus Classes

4PM – 5PM Guitar

5PM – 6PM Teacher Planning Time

Wednesday:

2PM – 4PM Arts & Craft

4PM – 6PM Music & Theater

Thursday:

2PM – 4PM Chorus Classes

4PM – 5PM Zumba

5PM – 6PM Tai-Chi

Friday:

2PM – 4PM Pre-Ballet

4PM – 6PM Dance Studio

Additionally, Concessionaire shall also maintain its not-for-profit status in full force and effect, and in good standing, throughout the Term herein.

- 3.2 City Business Tax Receipts.

Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City, as amended from time to time, for the proposed use(s) contemplated in this Section 3. To the extent required by City law, as same may be amended from time to time, business tax

receipts shall be obtained for each proposed use within a particular Concession Area.

SECTION 4. CONCESSION FEES.

4.1 Base Fee.

Base Fee for the Concession Area shall begin to accrue on March 1, 2018 (the Commencement Date).

- 4.1.1 Throughout the Term herein, the Base Fee for use of the Concession Area shall be One Dollar and Twenty Cents (\$1.20) per year, payable by Concessionaire monthly, commencing on the Commencement Date and, thereafter, on each first day of subsequent months.
- 4.1.2 Concurrent with the payment of the Base Fee, Concessionaire (if applicable) shall also include any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by Federal, State or local law.

4.2 Additional Fee.

In addition to the Base Fee, as set forth in Section 4.1, Concessionaire shall also pay the following Additional Fee as provided below:

4.2.1 Operating Expenses.

Concessionaire shall pay Four Hundred Forty Six Dollars and 49/100 (\$430.33) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include electrical service, water service, sewer service, stormwater costs and janitorial service to the Building (including the Concession Area).

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Concessionaire and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Irrespective of the items listed above, amounts due by Concessionaire, associated with Common Facilities Operating Expenses, will be determined based on Concessionaire's pro-rata share. Pro-rata share shall mean the percent which the Concession Area bears to the total square footage of leasable space within the Building, which share is hereby agreed to be six (5.506%) percent. Concessionaire agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Concessionaire's pro-rata share of Operating Expenses shall increase or decrease accordingly.

4.2.2 Property Taxes.

The Property Tax Payment shall be payable by Concessionaire, in accordance with Subsection 7.3 herein.

4.2.3 Insurance.

Intentionally Omitted.

4.3 Interest for Late Payment.

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

4.4 Sales and Use Tax.

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

4.5 Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, by the City Manager or his designee, upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements. Such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

SECTION 6. INSPECTION AND AUDIT.

Concessionaire shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of any contract year and such records shall be open and available to the City Manager or his designee, as deemed necessary by them. Concessionaire shall maintain all such records at its principal office, currently located at

833 6th Street, Miami Beach, Florida, 33139, or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location in Miami Beach, within ten (10) days' written notice from the City.

The City Manager or his designee shall be entitled to audit Concessionaire's records pertaining to its operations as often as they deem reasonably necessary throughout the term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits.

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

SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

- 7.1 Concessionaire agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Concessionaire by reason of this Agreement or by reason of the business or other activities of Concessionaire upon or in connection with the Concession Area. Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

Concessionaire shall also pay for any fees imposed by law for licenses or permits for any business or activities of Concessionaire upon the Concession Area under this Agreement.

- 7.2 Concessionaire's Responsibilities for Utilities (not included within Operating Expenses).

Concessionaire is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Concession Area **NOT** included as an Operating Expense (pursuant to Subsection 4.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for such utility services (as contemplated in this Subsection 7.2) when due, the City may elect, at its sole discretion, to pay same, whereby Concessionaire agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply of any utilities or services to the Concession Area.

7.3 Procedure If Ad Valorem Taxes Assessed.

Notwithstanding Subsection 7.1 above, the parties agree that the operations contemplated herein are for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. However, if said taxes are assessed, Concessionaire shall be solely responsible for prompt and timely payment of same.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

In connection with the performance of its responsibilities hereunder, Concessionaire may hire its own employees and/or independent contractors, who will be employees and/or independent contractors of Concessionaire and not of the City. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such employees and/or independent contractors.

SECTION 9. HOURS OF OPERATION.

The Concession Area shall be open for operation a minimum of five (5) days a week, with normal hours of operation being from Monday through Friday, from 2:00 PM to 6:00 PM. Concessionaire shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

Concessionaire accepts the use of the Concession Area in its "AS IS" "WHERE IS" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area (including all equipment and improvements thereon). Maintenance shall include daily removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operation.

10.1 Improvements.

- 10.1.1 Any improvements to the Concession Area shall be at Concessionaire's sole expense and responsibility; provided, however, that any plans for such improvements shall be submitted to the City Manager or his designee for their prior written approval. All permanent (fixed) improvements to the Concession Area shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by Concessionaire without damage to the Concession Area or the Pavilion Building. Concessionaire will permit no liens to attach to the Concession Area or the Pavilion Building arising from, connected with, or related to the design and construction of any improvements. Moreover, any permitted construction shall be accomplished through

the use of licensed, reputable contractors who are acceptable to the City Manager or his designee. Any and all permits and or licenses required for the installation of improvements shall be the sole expense and responsibility of Concessionaire.

10.1.2 Notwithstanding Subsection 10.1.1 herein, upon termination and/or expiration of this Agreement, and at the City's sole option and discretion, any and all alterations or additions made by Concessionaire to or in the Concession Area shall, upon demand by the City Manager or his designee, be promptly removed by Concessionaire at its sole expense and responsibility, and Concessionaire further hereby agrees, in such event, to restore the Concession Area or the Pavilion Building to its original condition prior to the Commencement Date of this Agreement.

10.1.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this subsection 10.1.3 only, shall also include improvements necessary for Concessionaire's ongoing maintenance and repair of the Concession Area) which do not exceed Five Hundred (\$500.00) Dollars; provided that the work is not structural, and provided further that it is permitted by applicable law.

10.2 Garbage Receptacles.
With respect to litter, garbage and debris removal, the Concessionaire shall provide, at its sole cost and expense, receptacles within the confines of the Concession Area and shall provide a sufficient number of these receptacles for its own use and for the use of the public. Disposal of the contents of said receptacles and removal of litter, garbage and debris within the Concession Area, shall be done on a daily basis, and shall be the sole responsibility of the Concessionaire.

10.3 Maintenance/Repair.
Concessionaire shall maintain, at its sole expense and responsibility, all equipment, fixtures, and furnishings (EFF) required to operate the concession. In the event any EFF is lost, stolen, or damaged, it shall be replaced or repaired at the sole expense of Concessionaire.

10.3.1 Concessionaire shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Concession Area which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the structural exterior of the Building, and the exterior structural electrical and plumbing (not interior electrical and/or plumbing surrounding any sink within the Concession Area).

- 10.3.2 All damage or injury of any kind to the Concession Area, and/or to its respective fixtures, glass, appurtenances, and EFF, except damage caused by the willful misconduct or gross negligence of the City, shall be the sole obligation of Concessionaire, and shall be repaired, restored or replaced promptly by Concessionaire, at its sole expense and to the satisfaction of the City Manager or his designee.
- 10.3.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 10.3.4 If Concessionaire fails to make any repairs, restorations and/or replacements, the same may be made by the City, at the expense of Concessionaire, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Concessionaire within ten (10) days after rendition of a bill or statement thereof.
- 10.3.5 It shall be Concessionaire's obligation to insure that any renovations, repairs and/or improvements made by Concessionaire to the Concession Area comply with all applicable permitting, building codes and life safety codes of governmental authorities having jurisdiction.
- 10.4 No Dangerous Materials.
Concessionaire agrees not to use or permit in the Concession Area 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 Concession Area shall be immediately removed.
- Concessionaire shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Area as those terms are defined by applicable Federal and State Statutes, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this subsection 10.4 shall survive the termination or earlier expiration of this Agreement.
- 10.5 Security.
Concessionaire shall be responsible for and provide such reasonable security measures as may be required to protect the Concession Area and any EFF thereon. Under no circumstances shall the City be responsible for

any stolen or damaged EFE, nor shall the City be responsible for any stolen or damaged personal property of Concessionaire's employees, contractors, patrons, guests, invitees, and/or other third parties.

10.6

Inspection.

Concessionaire agrees that the Concession Area and operation may be inspected at any time during hours of operation by the City Manager or his designee, or by any other Municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspections of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operation by any public agency or official in enforcing their duties or any laws or ordinances. Any such interference shall not relieve Concessionaire from any obligation hereunder.

SECTION 11. INSURANCE.

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

- a. Comprehensive General Liability in the minimum amount of One Million (\$1,000,000.00) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products and contractual liability.
- b. Workers Compensation Insurance shall be required in accordance with the laws of the State of Florida.
- c. All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all improvements installed in the Concession Area by or on behalf of Concessionaire and including without limitation all of Concessionaire's personal property in the Concession Area (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Concessionaire under the provisions of this Agreement).

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide the City with a Certificate of Insurance for each such policy. **ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED.** All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its

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

SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its 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 Concessionaire, its subconcessionaire(s), agents, servants or employees in the performance of services under this Agreement.
- 12.2 In addition, and in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its 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 Concessionaire not included in Subsection 12.1 herein and for which the City, its agents, servants or employees are alleged to be liable.
- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.
- 12.4 Subrogation.
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees and agents.
- 12.5 Force Majeure.
Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire, as applicable, The City or Concessionaire, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of Landlord or Tenant, as applicable. The foregoing shall not apply to any payments of money due under this Agreement.

12.6

Waiver of Loss from Hazards.

Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4 and Section 14. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5.

13.1

Bankruptcy.

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

13.2

Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of Fifty (\$50.00) Dollars per day for such late payment, in addition to interest at the highest rate allowable by law (currently 12% per annum). If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, 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; and may begin procedures to collect the Performance Bond required in Section 14 herein.

13.3

Non-Monetary Default.

In the event that Concessionaire or the City fails to 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 is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

13.4 City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after 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 the City for damages resulting from such defaults, including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 14 herein. In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

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

13.5 If an event of default, as set forth in this Section, by the City shall occur, Concessionaire 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 Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.7.

13.6 Termination for Convenience.

13.6.1 **Notwithstanding the provisions of this Section 13, this Agreement may be terminated by either party, without cause and for convenience at any time during the Term (including any renewal term), upon the furnishing thirty (30) days written notice to the other party.**

13.6.2 In the event of termination by the City pursuant to this subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations).

13.7 Surrender of Concession Area.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area in the same condition as the Concession Area was prior to the Commencement Date of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its personal property, upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

SECTION 14. PERFORMANCE BOND OR ALTERNATE SECURITY.

Intentionally Omitted.

SECTION 15. ASSIGNMENT.

Intentionally Omitted.

SECTION 16. SPECIAL EVENTS / CITY USE(S) OF CONCESSION AREA.

16.1 Concessionaire's proposed use(s), as defined in Section 3 herein, do not contemplate the production, promotion or sponsorship by Concessionaire of special events in any portion of the Concession Area. If Concessionaire desires to use all and/or part of the Concession Area for any purpose not contemplated in Section 3, or in addition to the days and hours delineated in Section 9 herein, Concessionaire agrees it shall abide by the City's rules and regulations for the rental of City owned facilities, as same may be amended from time to time. For any use, other than those provided for in this Agreement, a facilities rental agreement may be required and shall be obtained through the City's Department of Parks & Recreation.

16.2 City Use(s) of Concession Area.

Notwithstanding Subsection 16.1 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 displace the Concessionaire for City and/or Miami-Dade County events and/or activities (any such City use of the Concession Area is hereinafter referred to as a City Use or City Uses). Additionally, a City Use and/or City Uses may also require additional time for load-in and load-out of the event. In such cases, the City may require that the Concessionaire cease operations during the term of, and/or in the area of, the City Use(s). If the Concessionaire is not required to close, or the City Manager or his designee determines that Concessionaire may remain open in such a manner as prescribed by the City that will not interfere with the City Use(s).

16.3 Notwithstanding anything to the contrary, if City Use(s) occur in all or any portion of any Concession Area, Concessionaire shall not be liable for any charge, fee or other expense, governmental or otherwise, in connection with such City Use(s).

SECTION 17. NO IMPROPER USE.

Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area 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. Concessionaire 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 Concessionaire, Subconcessionaire, or any employee or agent regarding the Concession. In the event of any violation by Concessionaire or if the City or its authorized representative shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City shall have the right to suspend the operation of the concession should the Concessionaire 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, such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operation during the suspension until the violation has been corrected to the satisfaction of the City.

SECTION 18. PRICE SCHEDULES.

Intentionally Omitted.

SECTION 19. NOTICES.

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

Sixto Acea, President
South Florida Seniors in Action, Inc.
833 6th Street
Miami Beach, Florida 33139

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

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

With copy to:

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

Concessionaire 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 20. LAWS.

20.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations subject to the provisions of Subsection 10.4 herein).

20.2 Equal Employment Opportunity.

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

20.3 No Discrimination.

Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Area. All services offered shall be made available to the public.

- 20.3.1 Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", Concessionaire, by executing this Agreement, certifies that it does not discriminate in its

membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

SECTION 21. MISCELLANEOUS.

21.1 No Partnership.

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

21.2 Modifications.

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

21.3 Complete Agreement.

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

21.4 Headings.

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

21.5 Binding Effect.

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

21.6 Clauses.

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

21.7 Severability.

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

- 21.8 Right of Entry.
The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.
- 21.9 Not a Lease.
It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that it is a concessionaire and not a lessee; that Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.
- 21.10 Signage.
Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire shall be subject to the prior approval of the City as to size, shape and placement of same.
- 21.11 Conflict of Interest.
Concessionaire shall perform its services under this Agreement and conduct the concession operation contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Agreement.
- 21.12 No Waiver.
- 21.12.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 21.12.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.
- 21.12.3 The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and

not as rent, unless such breach be expressly waived in writing by the City.

21.13 No Third Party Beneficiary.

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

SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the management and operation of the Concession Area 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 Ten Thousand (\$10,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a Ten Thousand (\$10,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of Ten Thousand (\$10,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of Ten Thousand (\$10,000.00) Dollars, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 23. VENUE.

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

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

Attest:

CITY OF MIAMI BEACH, FLORIDA

Rafael Granado, CITY CLERK

Dan Gelber, MAYOR

Attest:

**SOUTH FLORIDA SENIORS
IN ACTION, INC.**

Signature/Secretary

Sixto Acea, President

Print Name

CORPORATE SEAL
(affix seal here)

EXHIBIT 2

Concession Area

