

CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL



**AUDIT OF THE LEASE AGREEMENT BETWEEN THE
CITY OF MIAMI AND BAYSHORE LANDING, LLC AND
OTHER RELATED LESSEES/SUBLESSEES**

AUDIT REPORT NO. 09-019

Prepared By

Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Independent Auditor General

ELENA DOBREV, STAFF AUDITOR

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL

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September 30, 2009

Honorable Members of the
City Commission
City of Miami
3500 Pan American Dr.
Coconut Grove, FL 33133-5504

Re: Audit of the Lease Agreement between the City of Miami and Bayshore Landing, LLC and other related lessees/sublessees
Audit No. 09-019

Pursuant to Section 48 of the City of Miami's (City) Charter and Paragraph 16 of the Lease Agreement (Agreement), as amended and assigned, between the City and Bayshore Landing, LLC (BL), the Office of the Independent Auditor General performed an audit of BL. The audit included an examination of BL's financial transactions/records, compliance with the Agreement, compliance with the applicable Codes and Regulations, and selected controls.

The monthly percentage rent paid by BL during the period October 1, 2007 through September 30, 2008 to the City was based on BL's annual gross sales for the period October 1, 2006 through September 30, 2007. This audit verified the accuracy of the annual gross sales for the period October 1, 2006, through September 30, 2007.

Sincerely,

A handwritten signature in black ink that reads 'Victor I. Igwe'. The signature is written in a cursive style with a prominent 'V' and 'I'.

Victor I. Igwe, CPA, CIA
Independent Auditor General
Office of Independent Auditor General

C: The Honorable Mayor Manuel A. Diaz
Pedro G. Hernandez, Chief Administrator/City Manager
Members of the Audit Advisory Committee
Bill Anido, Assistant City Manager
Larry M. Spring, Chief Financial Officer
Peter W. Korinis, Chief Information Officer, Information Technology Department
Julie O. Bru, City Attorney, City Attorney's Office
Michael J. Boudreaux, Director, Budget Department
Madeline Valdes, Acting Director, Public Facilities Department
Diana M. Gomez, CPA, Director, Finance department
Robert W. Christoph, Jr., Bayshore Landing, LLC
Demetrio Constantiny, Account Receivable Supervisor, Finance Department
Michael Clements, Director of Operations, Monty's Restaurant
Priscilla A. Thompson, City Clerk
Audit Documentation File

**AUDIT OF THE LEASE AGREEMENT BETWEEN THE CITY OF MIAMI AND
BAYSHORE LANDING, LLC AND OTHER RELATED LESSEES/SUBLEESSEES
FOR THE PERIOD OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007**

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INTRODUCTION

On July 18, 1985, the City Commission passed and adopted Resolution No. 85-717, which approved the Lease Agreement between the City and Bayshore Properties, Inc. (BP). This Resolution combined two existing Lease Agreements related to the management and operation of the water-front property located at 2550 South Bayshore Drive, Coconut Grove to be used as restaurant, marina and retail stores.

Section 3 of the City Charter requires that any extension and/or modification to an existing lease of water-front properties must first be approved by a majority of the City's voters. On August 13, 1985 the modification and extension of the Lease Agreement were approved by a majority of the voters. The term of the new Lease Agreement (signed on September 20, 1985) is for the period September 30, 1985, through May 31, 2035. The Agreement states that BP shall develop, manage, and promote the property to prospective tenants in such a manner that will encourage public enjoyment, use and participation as to make the project financially feasible to both the City and BP.

The Agreement was amended and assigned to BL, also known as Monty's Restaurant, on August 20, 2004. This amendment modifies the terms and conditions related to the use of the property, construction security bonding, taxes, insurance, pledging of leasehold interest, the assignment and subletting of premises and transfer of stock. In addition, the amendment included new sections relative to waiver/amendment of deed restrictions, payments to the State of Florida for the submerged land, gross sales/gross receipts, late fees, discharge of mechanics liens, safety, Americans with Disabilities Act and condemnation.

As consideration for the lease of this City-owned water-front property, BL is required to make rental payments to the City. The applicable percentages are as follows:

- Eight (8) percent of the annual gross receipts of the restaurant (raw bar) up to \$1 million per lease year,

- Ten (10) percent of the annual gross receipts of the restaurant in excess of \$1 million per lease year.
- Ten (10) percent of the annual gross rents received from the respective retail sub-tenants, licensees, and concessioners,
- Fifteen (15) percent of the annual gross receipts collected from dockage rental and dry storage of boats at the property.

The amount to be paid each month in any given lease year shall be equal to the annual gross receipts, for the immediately preceding lease year, multiplied by each applicable percentage rate provided in the Lease, and divided by twelve (12). The monthly percentage rent due and payable on the first of each month, during October 1, 2007 through September 30, 2008, as determined by the Public Facilities Department (PFD), was \$72,592.66.

On July 24, 2003, the City Commission passed and adopted Resolution No. 03-857, which authorized the City Manager to accept an amended waiver of deed restrictions from the State of Florida that accurately reflects the area currently being used by BL for dockage purposes. Said Resolution also authorized the City Manager to execute a submerged land lease Agreement with the State of Florida for the additional areas used by BL. Pursuant to Section 3C(1B)(i) of the amended Lease Agreement, BL shall pay to the City for remittances to the State any and all rental fees as provided for in the State Lease in excess of \$2,000 as increased annually based upon increases in the CPI. Furthermore, pursuant to Section 3C(1B)(iii), forty-five (45) days prior to the due date, the Company shall pay to the City for remittance to the State one hundred per cent (100%) of any and all fees due to the State pursuant to the Waiver on Parcels 5 and B2.

On January 20, 2005, the City Manager approved construction plans submitted by BL for renovations to the retail facilities, upstairs restaurant, and various other improvements/alterations to the lease property.

The PFD is responsible for monitoring the Lease Agreement. This report describes the results of BL's and the PFD's compliance with the Lease Agreement.

SCOPE AND OBJECTIVES

This audit was performed pursuant to the authority set forth in Section 48 of the City's charter titled "Office of the Independent Auditor General", and was conducted in accordance with the Fiscal Year 2009 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General (OIAG) performs financial and operational audits to determine the extent of compliance with provisions of contracts, programs, and/or lease Agreements between the City and private companies. The audit focused primarily on whether Bayshore Landing LLC (BL), d/b/a Monty's Restaurant, and the City's Public Facilities Department complied with the contractual provisions of the Agreement between the City and BL. The audit also included examinations of various transactions to determine whether they were processed in accordance with generally accepted accounting principles. The audit covered the period October 1, 2006 through September 30, 2007, and focused on the following broad objectives:

- To determine whether the appropriate insurance coverage was obtained as required by Section 21 (a) through (m) of the Agreement.
- To determine whether BL remitted the correct percentage for each category of rent due to the City.
- To examine the internal control policies and procedures in place at BL and the Public Facilities Department and determine whether they were adequate and effective in administering and overseeing the operation of Monty's Restaurant and compliance with the Lease Agreement.
- To verify whether the rent remitted to the City was properly recorded in the City's accounting system and deposited into the City's treasury.
- To follow-up on prior year's audit findings and recommendations.
- Other procedures as deemed necessary.

METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusion based on our objectives. The audit methodology included the following:

- Interviewed and inquired of appropriate personnel; reviewed and observed applicable written policies and procedures in order to gain an understanding of the internal controls; assessed control risk; and planned substantive testing.
- Performed substantive testing consistent with the audit objectives.
- Examined, on a test basis, applicable transactions and records.
- Determined compliance with all the objectives noted on page 3.
- Performed other audit procedures as deemed necessary.
- Drew conclusions based on the testing, made corresponding recommendations, and obtained the auditee's responses and corrective action plans.

AUDIT CONCLUSION

Based upon various tests performed and the audit findings noted, we conclude that adequate internal controls were not in place to ensure that:

- All rent and other payments due to the City are properly calculated and remitted to the City.
- The terms and conditions relative to the rent of dockage space and sublease arrangements are always documented and/or retained for audit.
- Pre-numbered transient dockage agreements are used in sequential order.
- Transient dockage agreements with duplicate (the same) pre-numbered digits are not used to account for different transactions.
- All pre-numbered transient dockage agreements are fully accounted for without any missing gaps.

Based upon various tests performed and the audit findings noted, we conclude that adequate internal controls were in place to ensure that:

- Monthly rental payments were remitted to the City in a timely manner.
- Sales and Use Taxes were remitted to the State of Florida's Department of Revenue in timely manner.
- Real Estate Taxes were remitted to the Miami Dade County Property Appraiser.
- All required insurance coverages were maintained.

Overall, we conclude that the internal controls policies and procedures in place at the Bayshore Landing, LLC and at the City's Public Facilities Department could be enhanced to address the deficiencies noted above.

SUMMARY OF AUDIT FINDINGS

BAYSHORE LANDING, LLC.

ADDITIONAL RENT DUE TO THE CITY OF MIAMI

Our review of pertinent sales and accounting records disclosed that additional rent and other payments totaling \$7,898.48 are due to the City. The total amount due was paid to the City upon audit inquiry. See Audit Findings and Recommendations on pages 9 through 11.

LACK OF SUPPORTING DOCUMENTATION

Our audit field work determined that the terms and conditions relative to the rent of dockage space and sublease arrangements were not always documented and/or retained. See Audit Findings and Recommendations on pages 12 and 13.

PRE-NUMBERED TRANSIENT DOCKAGE AGREEMENTS WERE NOT USED IN SEQUENTIAL ORDER, UNACCOUNTED MISSING AND DUPLICATE COPIES OF TRANSIENT DOCKAGE AGREEMENTS

Our audit disclosed that the pre-numbered agreements were not used in sequential order. Two (2) duplicate transient dockage agreements with the same pre-numbered digits were used for account for different transactions, and 757 agreements were missing and unaccounted for. See Audit Findings and Recommendations on page 14.

SUB-LESSEES OPERATED WITHOUT THE REQUIRED BUSINESS TAX RECEIPTS AND CERTIFICATE OF USE

Our test of the sub-lease arrangements relative to all 6 businesses located at 2550 South Bayshore Drive to determine whether the proper certificate of use and business tax receipts were obtained, disclosed that 2 (or 33%) of the 6 businesses operated without the required Certificates of Use and Business Tax Receipts for the period October 1, 2006 through September 30, 2007. See Audit Findings and Recommendations on page 15.

PUBLIC FACILITIES DEPARTMENT

MONITORING OF THE AGREEMENT COULD BE ENHANCED

The Public Facilities Department (PFD) is responsible for monitoring the Lease Agreement between the City and Bayshore Landing (BL). As discussed on pages 16 and 17 of this report, we noted that Bayshore Landing was not formally notified of its obligation to reimburse the City the fees that PFD remitted to the State of Florida Department of environmental Protection on behalf of BL. Also, rental payments remitted to the City are not verified for correctness.

AUDIT FINDINGS AND RECOMMENDATIONS

BAYSHORE LANDING, LLC

ADDITIONAL RENT DUE TO THE CITY OF MIAMI

Section 13 (II) of the amended Lease Agreement, provides that the amount to be paid to the City each month shall be equal to the annual gross receipts, for the immediate preceding lease year, multiplied by the applicable percentage rate and divided by twelve (12). Therefore, the monthly percentage rent due to the City during the period October 1, 2007 through September 30, 2008, was based on Bayshore Landing LLC's (BL) annual gross receipts for the period October 1, 2006 through September 30, 2007. Our review of pertinent accounting and sales records disclosed that additional rent and other payments totaling \$7,898.48 (\$2,460.37 + \$1,376.49 + \$4,061.62) are due to the City. Upon audit inquiry, BL promptly remitted the \$7,898.48 due to the City. The additional rent and other payments are itemized below:

MARINA

The original agreement between the City and Grove Marina Market, Ltd. was amended (second amendment) and assigned to Bayshore Landing (BL), also known as, Monty's Restaurant, on August 20, 2004. Section 13, paragraph III (b) of the amended agreement provides that BL shall pay to the City fifteen (15) percent of the annual Gross Receipts collected from dockage rental and dry storage of boats at the Property.

Our audit test of the Sales Tax Reports and related documentation indicated that the marina generated total receipts of \$1,256,783.72 during the audit period. However, the total receipts

reported to the City by BL were \$1,240,381.26. As a result, \$2,460.37 [15% of \$16,402.46 (\$1,256,783.72-1,240,381.26)] is due and payable to the City.

RETAIL SPACE

Section 13, paragraph II (b) of the Agreement as amended provides that BL shall pay to the City ten (10) per cent of the annual rents received from the respective retail subtenants, licensees and concessioners.

Our audit test and review of the “Statements of Operations” for the five (5) subtenants indicated that said subtenants generated total gross receipts of \$362,716.33 during the audit period. However, the total gross receipt reported to the City by BL was \$348,951.52. As a result, \$1,376.49 [10% of \$13,764.94 (\$362,716.33 - \$348,951.52)] is due and payable to the City.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

On July 24, 2003, the City Commission passed and adopted Resolution No. 03-857, which authorized the City Manager to accept an amended waiver of deed restrictions from the State of Florida that accurately reflects the area currently being used by BL for dockage purposes. Said Resolution also authorized the City Manager to execute a submerged land lease Agreement with the State of Florida for the additional areas used by BL. Pursuant to Section 3C(1B)(i) of the amended Lease Agreement, BL shall pay to the City for remittances to the State any and all rental fees as provided for in the State Lease in excess of \$2,000 as increased annually based upon increases in the CPI. Furthermore, pursuant to Section 3C(1B)(iii), forty-five (45) days prior to the due date, the Company shall pay to the City for remittance to the State one hundred per cent (100%) of any and all fees due to the State pursuant to the Waiver on Parcels 5 and B2.

Our audit disclosed that BL was required to remit payment (for Parcels C2) in the amount of \$4,061.62 to the City for remittance to the State of Florida Department of Environmental Protection (DEP). Said payment was due to be remitted to DEP on January 12, 2008. We noted that the City remitted said payment to DEP on behalf of BL and as of September 17, 2009 (audit field work date), BL had not reimbursed the City for the amount paid on its behalf. However, upon audit inquiry, the total amount due was paid to the City on September 29, 2009.

Recommendation

We recommend that BL comply with all terms of the Lease Agreement including remitting the correct percentage rent and other payments due to the City in a timely manner.

Auditee's Response and Action Plan

BL promptly remitted the \$7,898.48 (\$2,460.37 + \$1,376.49 + \$4,061.62). See auditee's written response on pages 18 through 28.

LACK OF SUPPORTING DOCUMENTATION

Our audit field work determined that the terms and conditions of certain contractual agreements were not always documented and/or retained as discussed below:

- As consideration for the lease of the City-owned property, BL is required to pay fifteen (15) percent of the total gross receipts collected from dockage rental to the City. Our audit field work determined that the hardcopy forms and/or the electronic data relative to eight (8 or 14%) of the fifty-nine (59) transient dockage transactions tested, which were processed during the audit period, could not be located for our review. Therefore, the related gross receipts generated from said transactions could not be verified. Upon audit inquiry, we were informed that the terms of the contractual agreements were initially documented in hardcopy forms and were subsequently input into the Dock Master Computer system; however, we were informed that BL lost its electronic data in 2008.
- As consideration for the lease of the City-owned property, BL is required to pay ten (10) percent of the annual rents collected from the respective subtenants (retail facilities). Our test of the sub-lease arrangements relative to all six (6) office/shop spaces located at 2550 S Bayshore Drive disclosed no documentation to evidence the terms of the contractual Agreement for one (1) or 17% of the tenants. Therefore, the related gross receipts generated from that transactions could not be verified. Upon audit inquiry, we were informed that a verbal agreement was reached with the tenant. However, lack of fully executed written contractual agreement may preclude or limit the lessee's and/or City's ability to enforce the terms, the conditions, the responsibilities and obligations of the parties with respect to the services that were to be provided and the payment thereof, in the event of a dispute.

Recommendation

We recommend that BL institutes controls that would require ownership approval prior to deletion of electronic data. In addition, we recommend that BL executes written agreements with all of its tenants and updates these agreements (as necessary) to reflect changes in the economic environment.

Auditee's Response and Action Plan

As noted above, BL indicated that it lost the electronic data relative to the dockage agreement in 2008 and also that a verbal agreement was reached with two tenants.

PRE-NUMBERED TRANSIENT DOCKAGE AGREEMENTS WERE NOT USED IN SEQUENTIAL ORDER, UNACCOUNTED MISSING AND DUPLICATE COPIES OF TRANSIENT DOCKAGE AGREEMENTS

Section 13, paragraph III (b) of the amended agreement provides that BL shall pay to the City fifteen (15) per cent of the dockage revenues collected. Bayshore Landing procedures require a pre-numbered Transient Dockage Agreement to be executed for each vessel that docks at the marina. Said Agreement stipulates the terms, the conditions and the responsibilities of the parties, including arrival/departure dates, make/type/length of vessel, and the daily dockage rate.

As part of our audit procedures of verifying whether the proper dockage revenues were remitted to the City, we requested all “Transient Dockage Agreements” executed during the audit period (October 1, 2006 through September 30, 2007) to verify the reasonableness of the dockage revenue reported to the City. We were provided with copies of 186 transient dockage agreements. However, upon review of said agreements, we determined that the pre-numbered agreements were not used in sequential order. Also, two (2) duplicate transient dockage agreements with the same pre-numbered digits were used for account for different transactions, and 757 agreements were missing and unaccounted for. It appeared that stacks of dockage agreements were not used in numerical/sequential order, and as such, the reasonableness of the dockage revenue paid to the City could not be determined.

Recommendation

We recommend that BL uses the “Transient Dockage Agreements” in sequential order.

Auditee’s Response and Action Plan

BL did not provide a response by September 30, 2009.

SUB-LESSEES OPERATED WITHOUT THE REQUIRED BUSINESS TAX RECEIPTS AND CERTIFICATE OF USE

Chapter 2, Article IV, Section 2-207 (b) (1) of the City Code states that “no new buildings or premises and/or part thereof and no existing building or premises when there has been a change of use in said building or premises, except one- and two-family residences, shall be occupied until a zoning certificate of use shall have been issued by the planning, building and zoning department.” In addition, Chapter 31, Article II, Section 31-26 of the City Code states that “any person doing business with the City of Miami and/or any of its agencies shall obtain a City of Miami local business tax receipt for the type of business they are contracting.”

Our test of the sub-lease arrangements relative to all six (6) businesses located at 2550 South Bayshore Drive to determine whether the proper certificate of use and business tax receipts were obtained, disclosed that two (2 or 33%) of the six (6) businesses operated without the required Certificates of Use and Business Tax Receipts for the period October 1, 2006 through September 30, 2007.

Recommendation

We recommend that BL requests copies of its lessees’ Certificates of Use and Business Tax Receipts and keep said copies on file.

Auditee’s Response and Action Plan

BL did not provide a response by September 30, 2009.

PUBLIC FACILITIES DEPARTMENT

MONITORING OF THE AGREEMENT COULD BE ENHANCED

The Public Facilities Department (PFD) is responsible for monitoring the Lease Agreement between the City and BL. Our audit disclosed that monitoring of the said Agreement by the PFD could be enhanced as described below:

FAILURE TO INVOICE BAYSHORE LANDING

- Section 3C(1B)(i) of the amended Agreement provides that “forty-five (45) days prior to the due date, the Company shall pay to the City for remittance to the State any and all rental fees as provided for in the State Lease in excess of \$2,000 as increased annually based upon increases in the CPI”. Our audit disclosed that BL was required to remit payment (for Parcel C2) in the amount of \$4,061.62 to the City for remittance to the State of Florida Department of Environmental Protection (DEP). The payment due date was January 12, 2008. However, we noted that the City remitted said payment to DEP on behalf of BL on February 4, 2008 (23 days late). Additionally, as of September 17, 2009 (audit field work date), the PFD had not formally notified Bayshore Landing of its obligation. Please see the related audit finding on page 10.

FAILURE TO VERIFY REVENUES REPORTED TO THE CITY FOR CORRECTNESS

- An effective monitoring of the compliance with the terms and provisions of the Agreement between the City and Bayshore Landing, LLC (BL) would require verification of the BL’s revenues through a review of its Statements of Operations, Sales Tax Reports, and related records. Absent such verification of revenues, errors could occur and not be detected in a timely manner. Our audit field work determined

that BL under reported its revenues by \$30,167.4, which resulted in an additional \$3,836.86 of fees due to the City. Our audits should not be a substitute for effective internal control.

Recommendation

We recommend that the PFD enhance its monitoring procedures to ensure that all required payments are correctly remitted to the City by reviewing BL's Statements of Operations, Sales Tax Reports, and related records. The PFD should also ensure that BL is fully aware of the payment terms and provisions set forth in the Agreement.

Auditee's Response and Action Plan

See auditee's written response on page 29.

City of Miami

VICTOR I. SOWB, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone: (305) 416-2040
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E-Mail: ing@ci.miami.fl.us

Date: September 17, 2009
To: Robert Christoph, Jr., Owner
Bayshore Landing, LLC
From: Elena Dobrev, Staff Auditor *ED*
Office of the Independent Auditor General
Subject: Audit of the Lease Agreement between the City of Miami, Bayshore
Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees

Dear Mr. Christoph,

Pursuant to the ongoing audit of the Lease Agreement between the City of Miami, Bayshore Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees for the period October 1, 2006 through September 30, 2007, and selected transactions prior and subsequent to this period, please confirm or clarify our understanding of the following and provide any additional records by September 24, 2009.

ADDITIONAL RENT DUE TO THE CITY OF MIAMI

Additional rent due to the City of Miami – Marina

The original agreement between the City and Grove Marina Market, Ltd. was amended (second amendment) and assigned to Bayshore Landing, LLC (BL), d/b/a Monty's Restaurant, on August

Page 2
Memorandum of Understanding

20, 2004. Section 13, paragraph III (b) of the amended agreement provides that BL shall pay to the City fifteen (15) per cent of the annual Gross Receipts collected from dockage rental and dry storage of boats at the Property.

Our review of the State of Florida's Department of Revenues "Sales Tax Reports" and related documentation indicated that the Marina generated and reported to the State of Florida's Department of Revenues a total gross receipt of \$1,256,783.72 during the audit period. However, the total receipts reported to the City by BL were \$1,240,381.26. As a result, \$2,460.37 [1.5% of \$16,402.46 (\$1,256,783.72-1,240,381.26)] is due and payable to the City.

I agree I disagree Please initial:

Explanation: _____

Month	a	b	c	d	e	f	g	h
	Gross Receipts per Sales Tax Report	Gross Receipts from Retail Space	Gross Receipts from Marina	Reimbursements for Electricity	Adjustment	Taxable Receipts from Marina	Gross Receipts as Previously Reported to the City	Amount Over/Under Reported to the City
October	128,990.82	27,862.50	101,087.72	2,186.00	0.00	98,799.79	98,025.79	775.00
November	102,332.39	20,191.80	113,860.69	5,548.00	1,377.66	106,935.03	109,011.90	2,076.87
December	44,936.21	30,143.90	118,790.11	7,314.00	0.00	111,376.11	89,472.54	21,903.57
January	145,708.23	30,018.90	110,289.33	7,509.00	0.00	108,783.33	107,118.53	1,664.80
February	132,628.80	30,366.02	123,242.87	8,542.00	0.00	113,700.87	116,149.27	2,448.40
March	150,367.02	22,276.50	117,090.12	9,768.00	0.00	107,322.12	110,806.12	3,484.00
April	143,572.98	30,293.90	113,279.08	2,112.00	0.00	104,967.08	107,053.08	2,086.00
May	144,306.23	30,150.90	114,349.33	9,392.00	0.00	104,957.33	103,182.33	1,775.00
June	130,309.48	21,724.37	107,585.11	5,232.00	0.00	98,623.11	101,746.88	3,123.77
July	148,184.83	20,362.31	117,572.32	10,998.00	0.00	106,384.32	98,251.14	8,133.18
August	137,378.02	30,223.73	107,284.89	8,742.00	0.00	98,542.89	95,243.33	3,299.56
September	134,089.24	30,322.79	104,366.61	5,943.00	0.00	94,423.61	96,206.86	1,783.25
	1,719,114.86	352,710.48	1,256,783.72	98,237.00	1,377.66	1,256,783.72	1,240,381.26	16,402.46
						Percentage per Agreement		0.13
						Amount Due to City		2,460.37

Please confirm our understanding by signing on the space provided below and returning this memorandum to us. In the event that you disagree with the item listed above, please provide your explanation and attach all supporting documents. In order for us to meet our audit deadline, a response by September 24, 2009 would be greatly appreciated.

Page 3
Memorandum of Understanding

If you have any questions, please feel to contact me at 305-416-1796 or by e-mail at edobrev@miamigov.com.

Thank you for your attention in this matter.



Mr. Robert Christoph, Jr., Owner

9-29-09

Date

CC: Victor I. Igwe, CPA, CIA, Auditor General
Audit Documentation File

OFFICE OF INDEPENDENT AUDITOR GENERAL / 444 S.W. 2nd Avenue, Suite 711/Miami, FL 33130-1010

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



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Date: September 17, 2009

To: Robert Christoph, Jr., Owner
Bayshore Landing, LLC

From: Elena Dobrev, Staff Auditor *ED*
Office of the Independent Auditor General

Subject: Audit of the Lease Agreement between the City of Miami, Bayshore Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees

Dear Mr. Christoph,

Pursuant to the ongoing audit of the Lease Agreement between the City of Miami, Bayshore Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees for the period October 1, 2006 through September 30, 2007, and selected transactions prior and subsequent to this period, please confirm or clarify our understanding of the following and provide any additional records by September 24, 2009.

ADDITIONAL RENT DUE TO THE CITY OF MIAMI

Additional rent due to the City of Miami – Retail Space

The original agreement between the City and Grove Marina Market, Ltd. was amended (second amendment) and assigned to Bayshore Landing, LLC (BL), d/b/a Monty's Restaurant, on August

20, 2004. Section 13, paragraph II(b) of the amended agreement provides that BL shall pay to the City ten (10) per cent of the annual rents received from the respective retail subtenants, licensees and concessioners.

Our review of the "Statements of Operations" for the five (5) subtenants indicated that said subtenants generated total gross receipts of \$362,716.33 during the audit period. However, the total gross receipt reported to the City by BL was \$348,951.52. As a result, \$1,376.49 [10% of \$13,764.94 (\$362,716.33 - \$348,951.52)] is due and payable to the City.

I agree I disagree Please initial:

Explanation: _____

Period	a Gross Receipts per Statement of Operations	b Gross Receipts as Previously Reported to the City	c=a-b Amounts Over/(Under) Reported to the City
October-06	27,862.90	26,715.82	(1,147.08)
November-06	28,391.90	27,244.82	(1,147.08)
December-06	30,145.90	28,998.82	(1,147.08)
January-07	30,018.90	28,871.82	(1,147.08)
February-07	30,366.02	29,218.94	(1,147.08)
March-07	32,376.90	31,429.82	(1,147.08)
April-07	30,293.90	29,146.82	(1,147.08)
May-07	30,156.90	29,009.82	(1,147.08)
June-07	31,724.37	30,577.29	(1,147.08)
July-07	30,562.31	29,415.25	(1,147.06)
August-07	30,293.73	29,146.65	(1,147.08)
September-07	30,322.73	29,175.65	(1,147.08)
	362,716.46	348,951.52	(13,764.94)
		Percentage per Agreement	0.10
		Amount due to City	1,376.49

Page 3
Memorandum of Understanding

Please confirm our understanding by signing on the space provided below and returning this memorandum to us. In the event that you disagree with the item listed above, please provide your explanation and attach all supporting documents. In order for us to meet our audit deadline, a response by September 24, 2009 would be greatly appreciated.

If you have any questions, please feel to contact me at 305-416-1796 or by e-mail at edobrev@miamigov.com.

Thank you for your attention in this matter.


Mr. Robert Christoph, Jr., Owner

9-29-2009
Date

CC: Victor I. Igwe, CPA, CIA, Auditor General
Audit Documentation File

OFFICE OF INDEPENDENT AUDITOR GENERAL / 444 S.W. 2nd Avenue, Suite 711/Wleml, FL 33136-1810

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone: (305) 416-2040
Telecopier: (305) 416-2046
E-Mail: ia@ci.miami.fl.us

Date: September 17, 2009

To: Robert Christoph, Jr., Owner
Bayshore Landing, LLC

From: Elena Dobrev, Staff Auditor *ed*
Office of the Independent Auditor General

Subject: Audit of the Lease Agreement between the City of Miami, Bayshore
Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees

Dear Mr. Christoph,

Pursuant to the ongoing audit of the Lease Agreement between the City of Miami, Bayshore Management/Bayshore Landing, LLC, and Other Related Lessees/Sub Lessees for the period October 1, 2006 through September 30, 2007, and selected transactions prior and subsequent to this period, please confirm or clarify our understanding of the following and provide any additional records by September 24, 2009.

ADDITIONAL RENT DUE TO THE CITY OF MIAMI

Additional rent due to the City of Miami – State of Florida Department of Environmental Protection

Section 3C(1B)(i) of the Agreement as amended provides that "forty-five (45) days prior to the due date, the Company shall pay to the City for remittance to the State any and all rental fees as provided for in the State Lease in excess of \$2,000 as increased annually based upon increases in the CPI." Our audit disclosed that BL was required to remit payment (for Parcels C2) in the amount of \$4,061.62 to the City for remittance to the State of Florida Department of Environmental Protection (DEP). Said payment was due to be remitted to DEP on January 12, 2008. We noted that the City remitted said payment to DEP on behalf of BL. However, as of September 17, 2009 (audit field work date), BL had not reimbursed the City for the amount paid on its behalf.

I agree I disagree Please initial:

Explanation: _____

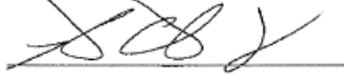
a	b	c=a*b	d	e=c-d	f	g=e-f	h=g	i	j=g-(i-f)
Total Revenue	%	Total Before Discount	Discount	Total Before Prior Payments	Prior Payments	Amount Billed	Amount Due from the City	Threshold*	Amount Due from BL
146,754.42	0.05	8,805.27	2,641.53	6,163.69	2,055.05	4,108.64	4,108.64	2,102.07	4,061.62

Please confirm our understanding by signing on the space provided below and returning this memorandum to us. In the event that you disagree with the item listed above, please provide your explanation and attach all supporting documents. In order for us to meet our audit deadline, a response by September 24, 2009 would be greatly appreciated.

If you have any questions, please feel to contact me at 305-416-1796 or by e-mail at edobrev@miamigov.com.

Page 3
Memorandum of Understanding

Thank you for your attention in this matter.



Mr. Robert Christoph, Jr., Owner

9/29/09

Date

CC: Victor I. Igwe, CPA, CIA, Auditor General
Audit Documentation File

OFFICE OF INDEPENDENT AUDITOR GENERAL / 444 S.W. 2nd Avenue, Suite 711/Miami, FL 33130-1910

CHECK NO. 00012676

VENDOR: 00009 CITY OF MIAMI BAYSHORE LANDING, LLC

INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
091709-MARIN	09/17/09	2,469.37	2,469.37		
091709-REPAI	09/17/09	1,376.49	1,376.49		

12676

WACHOVIA

BAYSHORE LANDING, LLC
 300 ALTON ROAD, SUITE 303
 MIAMI BEACH, FL 33139

ES:443/670 CHECK NO. 00012676 CHECK DATE 09/29/09

CHECK AMOUNT \$*****3,836.86

Three Thousand Eight Hundred Thirty Six Dollars and 86/100

CITY OF MIAMI
 FINANCE DEPARTMENT
 444 S.W. 2nd AVENUE
 MIAMI, FL 33130

BY: *[Signature]*
 TO THE ORDER OF: BAYSHORE LANDING, LLC

BAYSHORE LANDING, LLC						CHECK NO. 12677
00012677						00009 CITY OF MIAMI
INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT	
092309-PARCE	09/22/09	4,061.62	4,061.62			

NOT-NEGOTIABLE

BAYSHORE LANDING, LLC
 300 ALTON ROAD, SUITE 303
 MAIA BEACH, FL 33139

WACHSIA
 63-643/670

CHECK NO. 00012677 CHECK DATE 09/29/09

CHECK AMOUNT
 \$*****4,061.62

Four Thousand Sixty One Dollars and 62/100

PAY TO THE ORDER OF:

CITY OF MIAMI
 FINANCE DEPARTMENT
 444 S.W. 2nd AVENUE
 MIAMI, FL 33139

BAYSHORE LANDING, LLC
NOT-NEGOTIABLE
ANTI-FRAUD SIGNATURE

PHOTO INK COPY CHECK TO BANK

Asset Management Division
 444 SW 2nd Avenue, 3rd Floor
 Miami, Florida 33131
 Telephone (305) 416-1426 Fax (305) 416-2156
 E-Mail: JMarsie-Hazen@ci.miami.fl.us

CITY OF MIAMI, FLORIDA
INTER-OFFICE MEMORANDUM

TO: Elena Dobrev, Staff Auditor
Office of Independent Auditor General

DATE: September 28, 2009

SUBJECT: Response to Audit of the
Lease with Bayshore Landing, LLC.

FROM: Madeline Valdes, Acting Director
Public Facilities Dept.

REFERENCES:
ENCLOSURES:

We are providing our responses to your department's audit findings of Bayshore Landing for the period October 1, 2006 through September 30, 2007 below.

Failure to Verify Reported Revenues

We agree with your finding that Bayshore Landing (BL) underreported revenues. We also agree that the Department of Public Facilities (DPF) did not verify the accuracy of the various revenues reported by BL.

Under Paragraph 15 of the Lease, BL is only required to submit monthly and annual "Gross Receipts or Sales" to DPF. Moreover, there is no mention in said Lease that BL is required to submit Statements of Operations reports nor Sales Tax Reports to DPF. Although the submission of these reports are not required in the Agreement, DPF shall request that BL submit annual Statements of Operations and Sales Tax Reports before the Auditor General conducts its annual audit to assist DPF in its annual review and determine whether BL has reported such revenues accurately.

Failure to Invoice Bayshore Landing

We agree that DPF did not invoice BL for payment of rental fees required by the State of Florida Department of Environmental Protection (DEP). DEP had informed us that there was a discrepancy in billing and payment from BL for submerged land fees to DEP. We were waiting for DEP to complete its reconciliation and determine whether a credit would be due to BL before billing BL the excess of \$2,000 as increased by CPI. In the future, DPF will invoice BL as required in Section 3C(1B)(i) of the Amended Agreement for BL's share of fees in a timely manner, and follow-up with a letter to DEP requesting immediate resolve of any discrepancy in billing and/or payments of state fees paid to DEP by either BL or the City of Miami.

c: Victor I. Igwe, CPA, CIA
Auditor General

MV/PKJMHAudit Response

REC'D SEP 29 2009