

# City of Miami

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December 24, 2014

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

Re: New Spanish Concepts, LLC, d/b/a Dolores But You Can Call Me Lolita  
Audit No. 15-001

## **Executive Summary**

We have completed an audit of records and selected financial transactions of New Spanish Concepts, LLC, d/b/a Dolores But You Can Call Me Lolita (NSC), primarily for the period March 1, 2008 through February 28, 2014. The audit was performed to determine whether NSC complied with the applicable sections of its Lease Agreement (Lease) with the City of Miami (City). During the most recent lease years of 2013 and 2014, NSC made minimum rent payments totaling \$115,446 and \$126,520, respectively, and made percentage rent payments totaling \$296,584 and \$265,094, respectively. Percentage rent payments for 2013 and 2014 were based on reported total gross revenues of \$6.9 million and \$6.6 million, respectively.

Overall, we concluded that except for certain controls over rental payments and insurance coverage that required strengthening, procedures and compliance with the Lease were generally adequate and being adhered to. We noted that improvement is needed to ensure that NSC makes accurate rental payments in a timely manner and that it procures adequate insurance coverage. **As a result of these deficiencies, NSC owes the City late fees totaling \$58,737 and must procure insurance coverage that includes an excess "umbrella" policy whose limits shall not be less than a combined single limit of five million dollars (\$5,000,000).** As of the date of this report, NSC has been in discussions with the City's Department of Real Estate Asset Management (DREAM) regarding a possible settlement to pay the \$58,737. DREAM proposes to present an NSC settlement to the City Commission by April 2015.

We wish to express our appreciation for the cooperation and courtesies extended to us by the NSC management and accounting staff as well as all City personnel while conducting the audit.

Sincerely,



Theodore P. Guba, CPA, CIA, CFE  
Independent Auditor General  
Office of the Independent Auditor General

cc: The Honorable Mayor Tomas Regalado  
Daniel Alfonso, City Manager  
Victoria Mendez, City Attorney  
Alice Bravo, Deputy City Manager/Chief of Infrastructure  
Nzeribe Ihekweba, Assistant City Manager/Chief of Operations  
Fernando Casamayor, Assistant City Manager/Chief Financial Officer  
Daniel Rotenberg, Director, DREAM (Department of Real Estate and Asset Management)  
Mark Burns, Lease Manager, DREAM (Department of Real Estate and Asset Management)  
Jose Fernandez, Director, Finance Department  
Ann-Marie Sharpe, Director, Risk Management  
Miguel Augustin, Controller, Finance Department  
Frank Gomez, Property & Casualty Manager, Risk Management  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
Carlos Galan, New Spanish Concepts, LLC  
Joaquin Chamizo, Chief Financial Officer, New Spanish Concepts, LLC  
Members of the Audit Advisory Committee  
Audit Documentation File

Audit conducted by: Lewis Blake, CPA, CIA, Audit Manager  
Mala Khilnani, CPA, CISA, Senior Auditor  
Paulino Garcia, Staff Auditor

Audit reviewed by: Marcus Cabral, CPA, CISA, Senior Auditor

**AUDIT OF NEW SPANISH CONCEPTS  
MARCH 1, 2008 THROUGH FEBRUARY 28, 2014**

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## **SCOPE, OBJECTIVES AND METHODOLOGY**

The scope of the audit was to determine whether or not New Spanish Concepts, LLC (NSC) complied with the rental payment and insurance provisions of its Lease Agreement (Lease) with the City of Miami (City). The audit primarily covered the period March 1, 2008 through February 28, 2014 and focused on the following objectives:

- To determine whether NSC complied with the terms of the Lease to the extent that their rental payments to the City were consistent with: gross revenues periodically reported to the City; sales and use tax returns reported to the State of Florida; and, bank deposits.
- To determine whether NSC rental payments were accurate and remitted in a timely manner.
- To determine whether insurance policies were adequate and in compliance with rental agreement terms.
- To determine whether adequate internal controls were maintained.
- Other audit procedures as deemed necessary.

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 in order 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 conclusions based on our audit objectives. The audit methodology included the following:

- Interviews and inquiries of appropriate personnel.
- Reviews of written policies and procedures in order to gain an understanding of the internal controls.
- Observations of current practices and processing techniques.
- Tests of applicable transactions and records.
- Other audit procedures as deemed necessary.

## **BACKGROUND**

Resolution No. 98-155, adopted by the City Commission (Commission) on February 10, 1998, authorized the City Manager to execute a lease agreement subject to an assignment of the lease to Firehouse IV of Miami, Inc. for the leasing, management and operation of a restaurant situated on property owned by the City located at 1000 South Miami Avenue, Miami, Florida. The property was formerly a City fire station consisting of 15,000 square feet (according to Miami-Dade County public records). The Lease was later assigned to NSC on June 13, 2002. NSC operates the restaurant doing business as "Dolores But You Can Call Me Lolita".

The term of the Lease is for fifteen (15) years with two (2) five (5) year renewal option periods. Stipulated minimum rent payments for the current renewal option period (March 1, 2013 through February 28, 2018) are \$132,607 or \$11,051 per month. The applicable percentage rent, which is payable every six (6) months on September 30<sup>th</sup> and March 30<sup>th</sup> is currently 7% over a \$3.1 million breakpoint. Semi-annual percentage rent payments are calculated by multiplying the percentage rent rate (e.g., 7%) by the amount of gross sales collected/reported for the preceding six (6) months in excess of 50% of the applicable breakpoint (e.g., \$3.1 million) as follows:

$$\text{Semi-annual Percentage Rent Payment} = \text{Percentage Rent Rate} \times (\text{Semi-annual Gross Sales} - \frac{\text{Applicable Breakpoint}}{2})$$

## **AUDIT FINDINGS AND RECOMMENDATIONS**

**CONCLUSION:** Overall, we concluded that except for certain controls over rental payments and insurance coverage that required strengthening, procedures and compliance with the Lease were generally adequate and being adhered to. We noted that improvement is needed to ensure that NSC makes accurate rental payments in a timely manner and that it procures adequate insurance coverage. **As a result of these deficiencies, NSC owes the City late fees totaling \$58,737 and must procure insurance coverage that includes an excess “umbrella” policy whose limits shall not be less than a combined single limit of five million dollars (\$5,000,000).**

Details of our findings and recommendations follow:

### **FINDING 1: RENTAL PAYMENTS WERE INACCURATE AND UNTIMELY RESULTING IN LATE FEES OF \$58,737**

The Lease stipulates that NSC must pay the “Graded Minimum Annual Rent” (minimum rent) and an “Annual Percentage Rent” (percentage rent). The percentage rent is based on an annual percentage (e.g., 7%) multiplied by the difference between gross sales during the lease year and 50% of the “Breakpoint” stipulated in the Lease. During the period audited (i.e., lease year 11 [March 2008 through February 2009] through lease year 16 [March 2013 through February 2014]), the applicable minimum rent, percentage rent, and breakpoints are listed below in Schedule 1:

#### **SCHEDULE 1**

<b>LEASE YEAR</b>	<b>TIME PERIOD</b>	<b>MINIMUM ANNUAL RENT</b>	<b>ANNUAL PERCENTAGE RENT</b>	<b>BREAKPOINT</b>
11	Mar/08 - Feb/09	\$99,896	6.5%	\$2,600,000
12	Mar/09 - Feb/10	\$99,896	6.5%	\$2,600,000
13	Mar/10 - Feb/11	\$107,896	6.5%	\$2,850,000
14	Mar/11 - Feb/12	\$107,896	6.5%	\$2,850,000
15	Mar/12 - Feb/13	\$107,896	6.5%	\$2,850,000
16	Mar/13 - Feb/14	\$132,607	7.0%	\$3,100,000

The minimum rent payments are due on the first day of each month and percentage rent is due in semi-annual installments on or before the thirtieth (30<sup>th</sup>) day following the close of each six (6) month period. For example, percentage rent that is due March 30, 2013 should be based on the gross sales that were generated and reported by NSC for the months of September 2012 through February 2013. Accordingly, along with its rental payment, the Lease requires NSC to submit a semi-annual statement of its gross sales for the six (6) months.

Finally, the Lease stipulates that a late fee will be due for payments not made in a timely manner. It states that, "in the event any payment due Landlord under this Lease shall not be paid on the due date, Tenant agrees to pay one-half percent (0.5%) of the amount due, for each day that the payment is late, (the Late Fee)..."

### Rent Payments Were Untimely

For 44 months out of the 60 months of lease years beginning March 1, 2008 through February 28, 2014, we noted that NSC submitted rent payment checks that were dated after the due date stipulated in the Lease. The number of days late ranged from 1 to 194 days; and, the average days late for each month during the lease years ranged from 1 to 22 days. As a result, and after applying the .5% late fee stipulated in the Lease, Delores owes the City \$102,255. However, as described below, this late fee amount should be reduced by the amount of rent overpayments totaling \$43,518. (See Schedule 2).

### Rent Payments Were Inaccurate

During the lease years audited, Delores made rent payments totaling \$2.145 million resulting in a total overpayment of \$43,518 due to computational errors. However, this overpayment is offset by the late fees described above totaling \$102,159. As a result, additional rent totaling \$58,737 is due to the City (\$102,255 late fees minus \$43,518 rent overpayments). (See Schedule 2).

SCHEDULE 2					
SUMMARY OF RENT/LATE FEE PAYMENT SHORTAGES DUE TO THE CITY					
MARCH 2008 THROUGH FEBRUARY 2014					
Lease Year	RENT DUE	RENT PAID	UNDERPAID (OVERPAID)	0.5% LATE FEES	TOTAL DUE
2008-2009	\$ 190,455	\$ 106,888	\$ 83,567	\$ -	\$ 83,567
2009-2010	325,764	286,888	38,876	90,675	129,551
2010-2011	375,954	507,090	(131,135)	5,050	(126,085)
2011-2012	408,199	425,587	(17,388)	3,961	(13,427)
2012-2013	394,645	412,030	(17,385)	914	(16,471)
2013-2014	406,983	407,037	(54)	1,655	1,601
<b>Sub-Totals</b>	<b>\$ 2,102,001</b>	<b>\$ 2,145,520</b>	<b>\$ (43,518)</b>	<b>\$ 102,255</b>	<b>\$ 58,737</b>

### **RECOMMENDATION 1.1: NEW SPANISH CONCEPTS, LLC**

We recommend that NSC enhance its internal control procedures to ensure that all rental payments to the City are timely and accurate; and, pay the \$58,737 owed to the City in late fees (which includes \$102,255 in late fees less \$43,518 in rent overpayments). The City's Finance Department (FD) should send an invoice to NSC requiring payment of the \$58,737 as described above.

- **NSC Response:** NSC accepted the disparity in the audit findings and is currently working with DREAM regarding a settlement or an exchange equal in value to the amount owed of \$58,737.
- **Implementation Date:** Not Applicable

### **RECOMMENDATION 1.2: DEPARTMENT OF REAL ESTATE ASSET MANAGEMENT**

We recommend that DREAM continue to pursue a settlement to collect or to receive a benefit or exchange to the City equal to the \$58,737 owed to the City.

- **DREAM Response:** As of the date of this report, NSC has been in discussions with the DREAM regarding a possible settlement to pay the \$58,737. DREAM proposes to present an NSC settlement to the City Commission by April 2015.
- **Implementation Date:** April 2015

### **RECOMMENDATION 1.3: DEPARTMENT OF REAL ESTATE ASSET MANAGEMENT**

We observed that DREAM prepares detailed abstracts of percentage leases and uses them, along with a "Monthly Percentage Rent" spreadsheet, to monitor rent payment rates and receipts. However, we recommend DREAM supplement such methods by creating a "tickler" system to notify lessees (via e-mail prior to due dates) of required due dates by submitting monthly rent statements. In addition, if payments are not timely received or accurately made, DREAM should immediately notify lessees of arrearages/shortages including late fees on the subsequent monthly statement.

- **DREAM Response:** We will explore software programs to manage the rental contracts that can provide monthly notices based on input. There are a number of products available that are widely used and would be beneficial to the City.
- **Implementation Date:** Pending budget approval

### **FINDING 2: INSURANCE COVERAGE WAS NOT IN COMPLIANCE WITH LEASE TERMS**

In accordance with the terms of the Lease, NSC must procure insurance coverage which includes an excess "umbrella" policy with limits that shall not be less than the combined single limit of five million dollars (\$5,000,000).

In addition, the Lease stipulates that:

“...on or before the lease date and not less than thirty (30) days prior to the expiration date of any policy required to be carried..., the Tenant shall deliver to the Landlord the applicable respective policies and insurance company certificates evidencing all policies of insurance and renewals required to be furnished. Receipt of any documentation of insurance by the Landlord or by any of its representatives which indicates less coverage than required does not constitute a waiver of the Tenant’s obligation to fulfill the insurance requirements herein.”

Based on our review of the “Certificate of Liability Insurance” (COLI) for “Dolores But You Can Call Me Lolita Restaurant & Lounge” dated July 1, 2014, we noted that the ‘Umbrella Liability’ coverage is not in agreement with the terms established in the Lease. The ‘Umbrella Liability’ coverage as shown on the COLI is for \$1,000,000; however, the coverage should be for \$5,000,000.

It appears that although the DREAM and Risk Management Department (RM) were provided with the COLI, they did not adequately review the document to ensure that the necessary insurance coverage was obtained.

**RECOMMENDATION 2.1: DEPARTMENT OF REAL ESTATE ASSET MANAGEMENT AND RISK MANAGEMENT**

In order to ensure that adequate insurance coverage is maintained, we recommend that DREAM and RM implement controls that include written review and approval of Certificates of Liability Insurance.

- **DREAM Response:** We will meet with RM to discuss the implementation of the recommended controls.
- **Implementation Date:** Thirty (30) days
- **RM Response:** NSC has obtained the required insurance coverage. We will meet with DREAM to discuss the implementation of the recommended controls.
- **Implementation Date:** Thirty (30) days

**RECOMMENDATION 2.2: NEW SPANISH CONCEPTS**

We recommend that NSC enhance its internal control procedures to ensure that adequate insurance coverage is provided to the City in accordance with the terms of the Lease.

- **NSC Response:** NSC agreed with the finding and has obtained the required insurance coverage.
- **Implementation Date:** Already implemented