

# City of Miami

THEODORE P. GUBA, CPA, CIA, CFE  
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2044

E-Mail: tguba@miamigov.com

July 10, 2015

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

Re: Audit of Bayshore Landing, LLC. for the Period October 1, 2011 through September 30, 2013  
Audit No. 15-004

## Executive Summary

We have completed an audit of records and selected financial transactions of Bayshore Landing, LLC (BL), primarily for the period October 1, 2011 through September 30, 2013. The audit was performed to determine whether BL complied with the applicable sections of its Lease Agreement with the City of Miami (City). During fiscal year 2012 (FY 2012) and FY 2013, BL made percentage rent payments totaling \$834,467 and \$852,708, respectively. Percentage rent payments for FY 2012 and 2013 were based on prior year reported total Gross Receipts of \$7.5 million (FY 2011) and \$7.6 million (FY 2012), respectively.

Overall, we have concluded that procedures and compliance with the Lease were generally adequate and being adhered to with the exception of certain calculations of Gross Receipts and minimum rent payments, reported non-compliance with Florida statutes regarding the application of sales and use tax and allocation of electricity charges, unsafe structural conditions at the Marina that were since corrected, and five (5) wet slips that are not currently being rented. Improvement is needed to ensure that BL's gross revenue, which is the basis for the percentage rent payments, is reported accurately. Also, BL's internal controls need to be enhanced to ensure that minimum rent payments are properly calculated. **As a result of differences in calculations of Gross Receipts and minimum rental payments, BL owed the City \$126,887 in additional rent** (see Schedules 3 and 4 on pages 7 and 8, respectively). Prior to the conclusion of our audit, BL remitted payments totaling \$34,685, leaving a balance due of \$92,202.

In addition, we noted that BL should: comply with state statutes regarding the application of sales and use tax and allocation of electricity charges to boat owners/tenants; and, explore ways and means to rent five (5) wet slips that are currently not being rented.

It should be noted that during the course of the audit, BL entered into an agreement to transfer its rights under the Lease to another party. This transfer closed on May 20, 2015. Consequently, we are in the process of performing an additional audit covering the period from October 1, 2013 through the closing date of the transaction. We also plan to audit certain transactions for periods prior to October 1, 2011 due to BL's differences in calculations of Gross Receipts and incorrect rent payments due to the City noted in this report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the BL management and accounting staff as well as the City's Department of Real Estate and Asset Management 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, City Attorney's Office  
Alice Bravo, Deputy City Manager/Chief of Infrastructure  
Nzeribe Ihekweba, Assistant City Manager/Chief of Operations  
Fernando Casamayor, Assistant City Manager/Chief Financial Officer  
Barnaby Min, Deputy City Attorney, City Attorney's Office  
Robin Jones Jackson, Senior Assistant City Attorney, City Attorney's Office  
Daniel Rotenberg, Director, DREAM (Department of Real Estate and Asset Management)  
Stephen Bogner, Marinas Manager, DREAM  
Mark Burns, Lease Manager, DREAM  
Jose Fernandez, Director, Finance Department  
Miguel Augustin, Controller, Finance Department  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
Ann-Marie Sharpe, Director, Risk Management Department  
Frank Gomez, Property & Casualty Manager, Risk Management Department  
Robert W. Christoph, Bayshore Landing, LLC  
Robert W. Christoph, Jr., Bayshore Landing, LLC  
Bob Toomey, CFO, Bayshore Landing, LLC  
Members of the Audit Advisory Committee  
Audit Documentation File

Audit conducted by: Mala Khilnani, CPA, CISA, Senior Auditor  
Coral Vivolo, Staff Auditor

Audit reviewed by: Lewis Blake, CPA, CIA, Audit Manager  
Munirah Daniel, CPA, Senior Auditor

**AUDIT OF BAYSHORE LANDING, LLC  
OCTOBER 1, 2011 THROUGH SEPTEMBER 30, 2013  
AUDIT NO. 15-004**

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## **SCOPE, OBJECTIVES AND METHODOLOGY**

The scope of the audit was to determine Bayshore Landing, LLC's (BL) compliance with the rental payment, insurance and maintenance provisions of its Lease Agreement (Lease) with the City of Miami (City). The audit primarily covered the period October 1, 2011 through September 30, 2013 and focused on the following objectives:

- To determine whether BL rental payments to the City were consistent with: Gross Receipts periodically reported to the City, sales and use tax returns reported to the State of Florida, and bank deposits.
- To determine whether BL rental payments were accurate and remitted to the City in a timely manner.
- To determine whether insurance policies were adequate and in compliance with Lease terms.
- To determine whether BL maintained adequate internal controls.
- To determine whether BL is complying with the maintenance provision of the Lease agreement.
- Other audit procedures as deemed necessary.

It should be noted that we plan to perform an audit of rent payments covering the period from October 1, 2013 through the date of the lease agreement transfer. We also plan to audit certain items for periods prior to October 1, 2011 due to calculation deficiencies noted in this report, related to rent payments to the City.

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**

The City of Miami (City) owns a 6.70 acre waterfront site in Coconut Grove at Dinner Key, consisting of 2.14 upland (dry land) acres and 4.56 submerged acres. On September 30, 1985 the City leased the property to Bayshore Landing, LLC (BL). Based on the commencement date of the Lease, BL is currently in the twenty-ninth year of the fifty year Lease.

In accordance with the terms of the Lease, BL's predecessor redeveloped the waterfront property formerly known as the Kelley and the Miley Property into a full-service marina complex known as "Bayshore Landing Marina". BL provides "wet slips" and "lift slips" (where vessels are moored in and above the water, respectively) to boat owners/customers for a stipulated rental rate. In addition, BL operates a raw bar restaurant "Monty's" which is located on the ground floor of the leased premises. BL also generates revenue from the rental of "retail facilities" (retail and office space).

Based on revenues generated from the Marina, restaurant ("Monty's"), and retail facilities (Mall) BL is required to pay the City the greater of "Percentage Rent" or "Minimum Annual Guaranteed Rent", as outlined in the Lease. During fiscal year 2012 (FY 2012) and FY 2013, BL made percentage rent payments totaling \$834,467 and \$852,708, respectively. Percentage rent payments for FY 2012 and 2013 were based on prior year reported total Gross Receipts of \$7.5 million (FY 2011) and \$7.6 million (FY 2012), respectively.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

**CONCLUSION:** Based on our audit of Bayshore Landing, LLC’s (BL) compliance with its Lease Agreement with the City of Miami (City), we have concluded that procedures were generally adequate and being adhered to with the exception of certain controls over Gross Receipts reporting and minimum rent payments that require strengthening, reported non-compliance with Florida statutes regarding the application of sales and use tax and allocation of electricity charges, two (2) observed unsafe structural conditions at the Marina that were since corrected, and five (5) wet slips that are not currently being rented. Overall, improvement is needed to ensure that BL’s gross revenue, which is the basis for the percentage rent that they are obligated to pay the City, is reported accurately. Also, BL’s internal controls need to be enhanced in order to ensure that minimum rent payments are calculated accurately. **As displayed in Schedule 1 below, as a result of BL’s differences in calculations of Gross Receipts and minimum rental payments, BL owed the City \$126,887 in additional rent.** Prior to the conclusion of our audit, BL remitted payments totaling \$34,685, leaving a balance due of \$92,202.

| <b>SCHEDULE 1</b>  |                   |
|--|-------------------|
| <b>Summary of Differences in Calculations of Gross Receipts &amp; Additional Rent Due to the City From Bayshore Landing, LLC for FY 2012 &amp; FY 2013</b> |                   |
| <b>Differences in Calculations of Gross Receipts</b><br>See Schedule 2 (page 6)  | <b>\$ 570,751</b> |
| <b>Additional Rent Owed Due to Differences in Calculations of Gross Receipts</b><br>See Schedule 3 (page 7)  | <b>65,126</b>     |
| <b>Additional Minimum Rent Due</b><br>See Schedule 4 (page 8)  | <b>61,761</b>     |
| <b>Total Additional Rent Owed to City</b>  | <b>126,887</b>    |
| <b>Additional Rent Paid by BL on 1/30/15</b>   | <b>(34,685)</b>   |
| <b>Balance of Additional Rent Due to the City</b>  | <b>\$ 92,202</b>  |

Details of our findings and recommendations follow:

**FINDING 1: DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS RESULTED IN UNDERPAYMENTS OF PERCENTAGE RENT TOTALING \$65,126**

The Lease stipulates that BL must pay the greater of “Minimum Annual Guaranteed Rent” or “Percentage Rent”. The percentage rental rate is based on the following components:

- **Restaurant (“Monty’s”):** 8% of the annual Gross Receipts of the Restaurant up to one million dollars (\$1 million) and ten percent (10%) of the annual Gross Receipts of the Restaurant in excess of \$1 million.
- **Retail Facilities (Mall):** 10% of the annual rents received from the rentals paid by the respective retail subtenants, licensees and concessionaires.
- **Marina:** 15% of the annual Gross Receipts collected from dockage rentals for boats on the property.

The greater of Minimum Annual Guaranteed Rent or Percentage Rent payments are payable monthly “in advance” on first day of each month. The amount of the Percentage Rent payable each month is equal to the aggregate totals of Gross Receipts for the Restaurant, Retail Facilities and Marina for the immediately preceding fiscal year multiplied by the applicable percentage rates (as described above) divided by twelve (12).

We performed a reconciliation of all cash obtained by BL to the Gross Receipts that should have been reported to the City in order to determine whether BL paid the correct amount of Percentage Rent. In doing so, we obtained all bank deposits and made adjustments for accrual (timing) differences with respect to accounts receivable, advance rent, and deposits in transit. In addition, we made adjustments for various items that should be excluded from Gross Receipts including sales and use taxes collected, service charges (gratuities/tips), and other non-revenue items such as security deposits. When performing the reconciliation, we discovered a shortfall between the total reconciled Gross Receipts and the Gross Receipts that BL previously reported to the City. We further discovered that the differences were attributed to credit card fees, electricity utility charges, unsupported security deposit amounts, and advance rent.

With respect to the credit card fees, these amounts represent business expenses to BL and are not allowed to be used to offset Gross Receipts. With respect to the electricity utility charges, we reviewed a BL “Dockage Application and License Agreement” and noted that although boat owners are charged both a dockage fee and an “Electric Charge” for a wet slip’s electricity utility usage at the Marina, the electricity charges were not included as a part of reported Gross Receipts to the City. Rather, BL informed us that they classified the charges as pass-through expenses to tenants.

According to the Lease, Gross Receipts is synonymous with “Gross Sales” and includes **all income** to BL collected or accrued from all business conducted on the Property, “...Including, **but not limited to**, the rental of space, the sale of food and beverage, goods and services, **or from any source whatsoever.**” Therefore, since the “Electric Charges” are another source of income, BL was required to report the revenue obtained from the electricity utility charges as Gross Receipts.

When we compared our reconciled fiscal year 2012 (FY 2012) Gross Receipts collected to the Gross Receipts amount reported to the City, there was a short-fall of \$268,581 (or -3.5%). In addition, when we compared our reconciled FY 2013 Gross Receipts collected to the Gross Receipts amount reported to the City, there was a short-fall of \$302,170 (or -3.5%). (See Schedule 2 on page 6). Based on the weighted-average of Gross Receipts reported to the City and the applicable rental rate percentages for the Restaurant, Retail Facilities and Marina, BL owes the City an additional \$65,126 for the audit period (see Schedule 3 on page 7). We noted that with the exception of the sums due as a result of the differences in calculations, all other monthly rental payments were timely made.

### **RECOMMENDATION 1.1: (BAYSHORE LANDING, LLC)**

We recommend that BL enhance its internal controls procedures so as to ensure that all “Monthly Gross Revenue Reports” and percentage rent payments to the City are accurately calculated consistent with the Lease and timely remitted to the City. In addition, we recommend that BL immediately remit the additional percentage rent of \$65,126 due to the City. Prior to the conclusion of our fieldwork, BL submitted two checks totaling \$34,685 as payment for what they calculated as unaudited rent underpayments to the City, leaving a balance due to the City totaling \$30,441.

- **BL Response:** (**Note:** BL disagreed with our finding that additional percentage rent is due to the City—see Audit Rejoinder below).
- **Implementation Date:** Not applicable

**AUDIT REJOINDER:** This audit employed different methodologies and procedures from prior audits, which resulted in differences in calculations of Gross Receipts pertaining to utility charges and credit card fees. Although audit procedures used in prior years did not result in these same disclosures, this does not preclude the City from enforcing the terms of the Lease pursuant to our audit findings. Therefore, we take the position that the additional percentage rent is due to the City based on the differences in calculations of Gross Receipts. Consequently, we will continue and complete our audits for periods prior to and subsequent to this audit. We will also refer this matter to the City Attorney and City Manager for final resolution.

### **RECOMMENDATION 1.2: (DEPARTMENT OF REAL ESTATE AND ASSET MANAGEMENT)**

We recommend that the Department of Real Estate and Asset Management (DREAM) review the Monthly Gross Revenue Reports submitted by BL, along with supporting documentation, to ensure the correct amount of Gross Receipts and corresponding rental payments are being calculated, reported, and remitted to the City in a timely manner.

- **DREAM Response:** DREAM does and will continue to review the Revenue Reports and ensure that they are sent in accordance with the lease. Additionally, DREAM is currently in the process of purchasing, and subsequently utilizing YARDI, a real estate computer program that will implement and monitor lease payments, timely and correct reporting, and recurring and non-recurring lease events and provisions.
- **Implementation Date:** Immediately

### **RECOMMENDATION 1.3: (FINANCE DEPARTMENT)**

We recommend that the Finance Department (FD) bill BL for the additional rent due of \$30,441 (\$65,126 less \$34,685 previously remitted by BL).

- **FD Response:** We will bill BL for the additional rent due.
- **Implementation Date:** Immediately

**SCHEDULE 2  
DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS**

| RECONCILIATION<br>OF BANK DEPOSITS<br>TO GROSS REVENUE   | FY 2012             |                   |                     | FY 2013             |                   |                     |
|--|---------------------|-------------------|---------------------|---------------------|-------------------|---------------------|
|  | Prepared By<br>OIAG | Prepared By<br>BL | Difference          | Prepared By<br>OIAG | Prepared By<br>BL | Difference          |
| <b>BANK DEPOSITS (CASH):</b>   |                     |                   |                     |                     |                   |                     |
| Total Adjusted Bank Deposits (CASH)  | \$ 8,634,326        | \$ 8,634,326      |                     | \$ 9,879,109        | \$ 9,879,109      |                     |
| <b>ACCRUAL ADJUSTMENTS:</b>  |                     |                   |                     |                     |                   |                     |
| Net Adjustments for changes in<br>Accounts Receivable, Advance Rent,<br>and Deposits-in-Transit: | 169,208             | 172,596           | \$ 3,388            | (37,709)            | (25,060)          | \$ 12,649           |
| <b>GROSS REVENUE ADJUSTMENTS:</b>  |                     |                   |                     |                     |                   |                     |
| Less: Sales & Use Taxes Collected  | (710,872)           | (710,284)         | 588                 | (782,498)           | (754,918)         | 27,580              |
| Less: Service Charges (Tips)   |                     |                   |                     |                     |                   |                     |
| Less: FICA   | (128,858)           | (128,858)         | 0                   | (149,541)           | (149,541)         | 0                   |
| ** Credit Card Proc. Fees  | 0                   | (108,415)         | (108,415)           | 0                   | (125,970)         | (125,970)           |
| Add: Credit Card Fees (Amex Rest.)   | 37,182              | 35,615            | (1,567)             | 44,850              | 44,850            | (0)                 |
| ** Electricity Utility Charges   | 0                   | (165,294)         | (165,294)           | 0                   | (216,901)         | (216,901)           |
| Less: Deposits (Non-Revenue Items)   | (84,169)            | (104,207)         | (20,038)            | (80,856)            | (118,105)         | (37,249)            |
| <b>Total Reconciled Gross Revenue</b>  | <b>7,916,817</b>    | <b>7,625,479</b>  |                     | <b>8,873,355</b>    | <b>8,533,463</b>  |                     |
| <b>Gross Revenue Reported to City</b>  | <b>7,648,236</b>    | <b>7,648,236</b>  |                     | <b>8,571,186</b>    | <b>8,571,186</b>  |                     |
| <b>Differences In<br/>Calculations of Gross Receipts</b>   | <b>\$ (268,581)</b> | <b>\$ 22,757</b>  | <b>\$ (291,338)</b> | <b>\$ (302,170)</b> | <b>\$ 37,723</b>  | <b>\$ (339,892)</b> |

\*\* The above reconciling items for "Credit Card Proc. Fees" and "Electricity Utility Charges" were plugged into the reconciliation by BL to explain the difference in Gross Revenue reported to the City; however, these items are not allowable as reductions to Gross Revenue and should have been reported to the City.

**SCHEDULE 3**

| <b>CALCULATION OF ADDITIONAL RENT OWED THE CITY OF MIAMI BY BAYSHORE LANDING, LLC DUE TO DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS</b> |                         |   |                          |   |
|--|-------------------------|---|--------------------------|---|
| <b>Difference Between Reconciled FY 2012 Gross Receipts and Gross Receipts Reported to the City</b>  |                         |   |                          | <b>\$ (268,581)</b>                         |
|  | <b>% Gross Receipts</b> | <b>Prorated Differences of Gross Receipts</b> | <b>Applicable Rent %</b> | <b>Additonal Rent Owed City for FY 2012</b> |
| Raw Bar  | 77.2%                   | \$ 207,245                                    | 10%                      | \$ 20,724                                   |
| Mall Revenue   | 9.0%                    | 24,192  | 10%                      | 2,419                                       |
| Marina Docakge   | 13.8%                   | 37,144  | 15%                      | 5,572                                       |
|  | 100.0%                  | \$ 268,581                                    |                          | \$ 28,715                                   |
|  |                         |   | 7% Sales Tax             | 2,010                                       |
| <b>Sub-Total: FY 2012 % Rent Due</b>   |                         |   |                          | <b>\$ 30,725</b>                            |
| <b>Difference Between Reconciled FY 2013 Gross Receipts and Gross Receipts Reported to the City</b>  |                         |   |                          | <b>\$ (302,170)</b>                         |
|  | <b>% Gross Receipts</b> | <b>Prorated Differences of Gross Receipts</b> | <b>Applicable Rent %</b> | <b>Additonal Rent Owed City for FY 2012</b> |
| Raw Bar  | 78.9%                   | \$ 238,397                                    | 10%                      | \$ 23,840                                   |
| Mall Revenue   | 8.3%                    | 25,108  | 10%                      | 2,511                                       |
| Marina Docakge   | 12.8%                   | 38,665  | 15%                      | 5,800                                       |
|  | 100.0%                  | \$ 302,170                                    |                          | \$ 32,150                                   |
|  |                         |   | 7% Sales Tax             | 2,251                                       |
| <b>Sub-Total: FY 2013 % Rent Due</b>   |                         |   |                          | <b>34,401</b>                               |
| <b>Grand Total: Additional Rent Owed to City by BL</b>   |                         |   |                          | <b>\$ 65,126</b>                            |

**FINDING 2: MINIMUM RENT DUE EXCEEDED ACTUAL RENT PAID RESULTING IN \$61,761 DUE TO THE CITY**

The Lease stipulates that Bayshore Landing, LLC (BL) must pay the greater of “Minimum Annual Guaranteed Rent” (Minimum Rent) or “Percentage Rent”. The Minimum Rent amount is the average of the immediately preceding three (3) years rental payments to the City.

Accordingly, we recalculated the Minimum Rent due to the City for fiscal year (FY) 2012 and FY 2013 and compared the Minimum Rent due to the amounts actually paid by BL during those years. Based on our analysis, we noted that BL underpaid the City in FY 2012 and FY 2013 resulting in additional rent due to the City totaling \$61,761 (see Schedule 3 below for the details of our calculations and analysis).

#### SCHEDULE 4

#### CALCULATION OF ADDITIONAL MINIMUM RENT OWED TO THE CITY BY BAYSHORE LANDING, LLC FOR FY 2012 & FY 2013

| FY 2012 Minimum Rent Calculation:  |              | Additional Rent Owed To City |
|--|--------------|------------------------------|
| Actual Rent Paid by BL (FY 09 thru FY 11)                                  | \$ 2,509,933 |                              |
| Minimum Rent Due (3-year Average)  | 836,644      |                              |
| Minimum Rent Paid To City  | 779,876      |                              |
| <b>Additional Minimum Rent Owed for FY 12</b>                              |              | <b>\$ 56,768</b>             |
| FY 2013 Minimum Rent Calculation:  |              | Additional Rent Owed To City |
| Actual Rent Paid by BL (FY 10 thru FY 12)                                  | \$ 2,405,747 |                              |
| Minimum Rent Due (3-year Average)  | 801,916      |                              |
| Minimum Rent Paid To City  | 796,923      |                              |
| <b>Additional Minimum Rent Owed for FY 13</b>                              |              | <b>\$ 4,993</b>              |
| <b>TOTAL ADDITIONAL MINIMUM RENT DUE TO CITY FOR FY 2012 &amp; FY 2013</b> |              | <b>\$ 61,761</b>             |

#### **RECOMMENDATION 2.1: (BAYSHORE LANDING, LLC)**

We recommend that Bayshore Landing, LLC (BL) enhance its internal controls procedures so as to ensure that correct rental payments are calculated in accordance with Lease provisions. In addition, we recommend that BL immediately remit the additional rent of \$61,761 due to the City for underpayment of Minimum Rent in FYs 2012 and 2013.

- **BL Response:** (Note: BL disagreed with our finding that additional rent is due to the City - see Audit Rejoinder below).
- **Implementation Date:** Not applicable

**AUDIT REJOINDER:** This audit employed different methodologies and procedures from prior audits. Although audit procedures used in prior years did not result in these same disclosures, this does not preclude the City from enforcing the terms of the lease pursuant to our audit findings. Therefore, we take the position that the additional minimum rent is due to the City, in accordance with the terms of the lease. Consequently, we will continue and complete our audits for periods prior to and subsequent to this audit. We will also refer this matter to the City Attorney and City Manager for final resolution.

**RECOMMENDATION 2.2: (DEPARTMENT REAL ESTATE AND ASSET MANAGEMENT)**

We recommend that the Department of Real Estate and Asset Management (DREAM) enhance its internal controls procedures so as to ensure that correct rental payments are calculated in accordance with Lease provisions. The procedures should include recalculating the rent due, comparing recalculated amounts to rental payments remitted by BL, and implementing a mechanism to ensure BL is immediately billed for any shortages in payments remitted to the City.

- **DREAM Response:** DREAM does and will continue to recalculate the rent amounts paid in accordance with the lease. Additionally, DREAM is currently in the process of purchasing, and subsequently utilizing YARDI, a real estate computer program that will implement and monitor lease payments, recurring and non-recurring lease events and provisions.
- **Implementation Date:** Immediately

**RECOMMENDATION 2.3: (FINANCE DEPARTMENT)**

The City's Finance Department (FD) should bill BL for the additional rent due in the amount of \$61,761 for BL's underpayment of Minimum Rent due to the City for FYs 2012 and 2013.

- **FD Response:** We will bill BL for the additional rent due.
- **Implementation Date:** Immediately

**FINDING 3: NON-COMPLIANCE WITH FLORIDA STATUTES REGARDING ELECTICITY CHARGES**

**Non-Compliance with Florida Sales & Use Tax** - Florida statutes require sales taxes to be remitted on the total rent paid for the right to use or occupy commercial real property, unless the rent is specifically exempt. Payments for separately stated services that are required under the lease or license are part of the taxable total rent paid.

We noted that electricity service to BL wet slip renters and upland (retail facilities) tenants is a "separately stated" item defined in BL license and lease agreements. In addition, wet slip renters are charged electricity service based on BL rate sheets rather than by actual usage via the meter or some other allocation method. However, we noted that when a wet slip renter's total rent is computed, the applicable sales tax for the electricity charge is not computed and therefore not

included in total rent. As a result, BL is not remitting the required sales tax on electricity it charges its owners/tenants, which is not in compliance with Florida statutes.

**Non-Compliance with Florida Administrative Code §25-6.049** - The Florida Administrative Code requires that any fees or charges collected by a customer of record (i.e. BL) for electricity billed to the customer's account by the utility, whether based on the use of sub-metering or any other allocation method, shall be determined in a manner which reimburses the customer of record for no more than the customer's (BL's) actual cost of electricity.

However, we noted that BL reportedly bills wet slip renters and upland tenant's amounts that may exceed actual costs of electricity, which is not in compliance with the Florida Administrative Code.

### **RECOMMENDATION 3.1: (BAYSHORE LANDING, LLC)**

BL should take steps to ensure that sales and use taxes are computed correctly in accordance with Florida statutes and are paid (and properly remitted to the State of Florida) on electricity service it charges vessel owners/upland tenants.

- **BL Response:** (Note: BL disagrees with certain of our findings regarding sales and use tax payments on electricity charges – see Audit Rejoinder below)
- **Implementation Date:** Not applicable

**AUDIT REJOINDER:** The lease requires BL to “comply with all laws, ordinances, regulations...pertaining to the property and operations thereon”. We will also refer this matter to the City Attorney and City Manager for final resolution.

### **RECOMMENDATION 3.2: (BAYSHORE LANDING, LLC)**

In order to comply with Section 28 of the lease agreement between BL and the City, BL should take steps to ensure that the provisions of the Florida Administrative Code are adhered to when billing electricity charges to vessel owners/upland tenants.

- **BL Response:** BL has modified its dock slip agreements to address this issue. BL promptly paid rent to the City with respect to any over payment of utility charges made by dock users.
- **Implementation Date:** Implemented

## **FINDING 4: MARINA REPAIRS AND MAINTENANCE ISSUES**

Paragraph 25 of the lease agreement (Lease) between the City of Miami (City) and Bayshore Landing, LLC (BL) stipulates that BL shall

“...at its sole cost and expense, maintain the grounds and the interior and exterior of the buildings. The company further agrees to maintain the buildings and property in a condition of proper cleanliness, orderliness and state of attractive appearance at all times. If the buildings and property are not kept reasonably clean and attractive in appearance, the

company shall be so advised. Corrective action shall be taken by the Company within seven (7) days' time. In the event such action is not taken, the City shall have the right to make repairs or cause the Property to be cleaned and the company shall then be required to reimburse the City within thirty (30) days for said cost and charges.”

We inspected the marina during site visits on October 28<sup>th</sup>, November 17<sup>th</sup> and December 23<sup>rd</sup>, 2014.

During our inspections we noted the following conditions:

- The North Pier 3 slab was undergoing repair work due to a collapsed pier (see Photo #1 below). At the time of our visits, the pier undergoing repair was closed to public access due to a collapsed pier, as were the two slips on either side of the pier undergoing repairs (slips 516 & T2A—see Diagram on the next page). BL applied for a permit with the County's Department of Environmental Resource Management (DERM) on August 11, 2014. However, its issuance was delayed due to a required City Building permit. BL experienced a delay due to City procedures which require the same engineer to sign off and seal both the structural plans and calculations. BL had mistakenly used two different engineers to submit signed and sealed calculations and structural plans to the City's Building Department. One engineer signed and sealed the calculations and another engineer signed and sealed the structural plans. It should be noted that the pier has been repaired.

**Photo #1 – Collapsed Pier (North Pier 3)**





**Photo # 2 – Unsafe Structure Violation**



Finally, our review of marina operations disclosed the following issues:

- Five (5) slips are not rentable (Slips 408, 409, 410, 411 & 412 - see Diagram on page 12) due to their configuration (see Photo #3 below and Photo #4 next page). According to the Marina's General Manager (GM), the physical configuration of the Marina and the location of the slips makes it difficult for boats to ingress and egress the slips (Note: The GM stated that each linear foot of a boat requires two linear feet for ingress/egress). The GM stated that if the slips were reconfigured North-South rather than East-West, three slips with lifts could be created. For that to occur, Slips 500, 501 and 502 would have to be eliminated (and a corresponding portion of the pier removed, and the income lost) in order to facilitate ingress/egress. Alternatively, an 80 foot vessel that currently uses Slip 407 (see the vessel in Photo #4) could be relocated so that all five slips (without lifts) could be rented by smaller vessels. Each vessel would be approximately 25 feet in length for a total of 125 chargeable feet. Ultimately, we were informed that such a reconfiguration would not be advisable due to greater demand for slips with lifts and/or slips that can accommodate larger boats that are at least 50 feet in length.

**Photo # 3 – Unusable spaces (facing North)**



**Photo # 4 –Unusable spaces (facing North-west)**



**RECOMMENDATION 4.1: (BAYSHORE LANDING, LLC)**

BL has been proactive in maintaining the Marina, and has been responsive in correcting structural conditions as needed, as described above. Going forward, we recommend that BL continue to conduct and document periodic inspections of the property, and continue to be responsive to the capital needs of the Marina. Such inspections and repairs will be increasingly important in keeping the Marina in a competitive and profitable condition going forward.

The Marina’s operators should develop a phased financial plan for capital repairs/improvements, to sustain and improve the business going forward, and rehabilitate existing marina facilities.

To maximize revenue for both the City and BL, reconfiguration or the addition of more personal dry/lift slips should be considered. The Marina has been proactive in sourcing new areas of revenue, including the implementation of new technology in the form of personal dry/lift slips that increase revenue, especially in the area where wet slips are currently at market. The new personal dry slips do increase revenue in locations where market rents for the wet slips appear fully rented and optimized.

- **BL Response:** (Note: BL disagrees with our findings and recommendations under “Marina Repairs and Maintenance” - see Audit Rejoinder below).
- **Implementation Date:** Not applicable

**AUDIT REJOINDER:** We performed an inspection of the property pursuant to the terms of the lease and take the position that the recommendations have merit, considering the long-term nature of the lease.

**RECOMMENDATION 4.2: (DEPARTMENT OF REAL ESTATE AND ASSET MANAGEMENT)**

We recommend that the Department of Real Estate and Asset Management (DREAM) establish procedures to inspect the property on a regular basis. We recommend that DREAM continue to work with BL and take steps to ensure that BL maintains and improves the Marina, as required by the lease.

- **DREAM Response:** DREAM currently inspects properties annually, at minimum, on an ongoing basis. With the additional deterioration that comes with age, natural wear and tear from saltwater and sea-side conditions, DREAM will increase inspections to 2 (two) times per year at a minimum.
- **Implementation Date:** Immediately