

City of Miami

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



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August 18, 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, 2013 through May 20, 2015
Audit No. 15-015

Executive Summary

We have completed an audit of records and selected financial transactions of Bayshore Landing, LLC (BL), primarily for the period October 1, 2013 through September 30, 2014. The audit was performed because BL entered into an agreement to transfer its rights under its Lease Agreement (Lease) with the City of Miami (City) to another party. Hence, City management engaged the Office of the Independent Auditor General (OIAG) to provide reasonable assurance that there were no additional rental payments due to the City during the period October 1, 2014 through the transfer closing date of May 20, 2015.

In accordance with provisions of the Lease, BL's percentage rental payments to the City during FY 2015 are based on BL's Gross Receipts/Revenues for FY 2014. Therefore, our audit procedures included an examination of BL's reported FY 2014 Gross Receipts/Revenues totaling \$9.6 million, which were the basis of BL's percentage rent payments totaling \$639,178 that were made to the City during FY 2015.

Overall, we have concluded that **as a result of differences in calculations of Gross Receipts, \$35,255 in additional rent is due to the City for FY 2015** (See Schedule 2 on page 6). However, since BL closed on the transfer of its leasehold interests on May 20, 2015, **BL's prorated portion of this amount is \$22,461 while \$12,794 is due from the new lessee** for the remainder of FY 2015, or through September 30, 2015.

We 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
Barnaby Min, Deputy City Attorney, City Attorney's Office
Robin Jones Jackson, Senior Assistant City Attorney, City Attorney's Office
Nzeribe Ihekweba, Assistant City Manager/Chief of Operations
Alberto N. Parjus, Assistant City Manager
Fernando Casamayor, Assistant City Manager/Chief Financial Officer
Daniel Rotenberg, Director, DREAM (Department of Real Estate and Asset Management)
Stephen Bogner, Marinas Manager, 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
Miguel Augustin, Controller, Finance Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance 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

Audit reviewed by: Lewis Blake, CPA, CIA, Audit Manager

**AUDIT OF BAYSHORE LANDING, LLC
OCTOBER 1, 2013 THROUGH MAY 20, 2015
AUDIT NO. 15-015**

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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 provisions of its Lease Agreement (Lease) with the City of Miami (City). The audit primarily covered the period October 1, 2013 through September 30, 2014 and focused on the following objectives:

- To determine whether BL reported the accurate amount of Gross Receipts/Revenue for the lease year ended September 2014 (Oct 13-Sept 14), which were the basis of percentage rental payments made to the City during FY 2015 (through the transfer closing date of May 20, 2015).
- Other audit procedures as deemed necessary.

It should be noted that we 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 29th year of the 50 year Lease. BL transferred its rights and leasehold interests to another party on May 20, 2015.

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 the period October 1, 2014 through the closing date of May 20, 2015, BL made percentage rent payments to the City totaling \$639,178 which were based on FY 2014 Gross Receipts totaling \$9.6 million.

AUDIT FINDINGS AND RECOMMENDATIONS

CONCLUSION: Overall, we have concluded that **as a result of differences in calculations of Gross Receipts, \$35,255 in additional rent is due to the City for FY 2015** (See Schedule 2 on page 6). However, since BL closed on the transfer of its leasehold interests on May 20, 2015, **BL's prorated portion of this amount is \$22,461 while \$12,794 is due from the new lessee** for the remainder of FY 2015.

Details of our findings and recommendations follow:

FINDING 1: DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS RESULTED IN UNDERPAYMENTS OF PERCENTAGE RENT TOTALING \$35,255

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 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.

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 2014 (FY 2014) Gross Receipts collected to the Gross Receipts amount reported to the City, there was a short-fall of \$308,647 (or -3.2%) (See Schedule 1 on page 5). Based on the weighted-average of Gross Receipts reported to the City and the applicable rental rate percentages for the Restaurant, Mall and Marina, **\$35,255 in additional rent is due to the City for FY 2015** (See Schedule 2 on page 6). However, since BL closed on the transfer of its leasehold interests on May 20, 2015, **BL’s prorated portion of this amount is \$22,461 while \$12,794 is due from the new lessee** for the remainder of FY 2015, or through September 30, 2015. (See Schedule 3 on page 6).

RECOMMENDATION 1.1: (BAYSHORE LANDING, LLC)

We recommend that BL immediately remit to the City \$22,461 which is BL’s prorated portion of the additional percentage rent of \$35,255 due to the City.

- **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) make arrangements with the new lessee to pay the City \$12,794 which is the lessee’s prorated portion of the additional percentage rent of \$35,255 due to the City.

- **DREAM Response:** DREAM will contact the new lessee to arrange for payment of the additional percentage rent of \$12,794.
- **Implementation Date:** Immediately

SCHEDULE 1

DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS

RECONCILIATION OF BANK DEPOSITS TO GROSS RECEIPTS	FY 2014		
	Prepared By OIAG	Prepared By BL	Difference
BANK DEPOSITS (CASH):			
Total Adjusted Bank Deposits (CASH)	\$ 11,050,132	\$ 11,050,132	
ACCRUAL ADJUSTMENTS:			
Net Adjustments for changes in Accounts Receivable, Advance Rent, and Deposits-in-Transit:	(78,686)	6,605	\$ 85,291
GROSS REVENUE ADJUSTMENTS:			
Less: Sales & Use Taxes Collected	(845,383)	(844,097)	1,286
Less: Service Charges (Tips)			
Less: FICA	(165,923)	(165,923)	0
** Credit Card Proc. Fees	0	(140,348)	(140,348)
Add: Credit Card Fees (Amex Rest.)	46,087	46,087	0
** Electricity Utility Charges	0	(243,275)	(243,275)
Less: Deposits (Non-Revenue Items)	(112,021)	(120,414)	(8,393)
Total Reconciled Gross Revenue	9,894,206	9,588,767	
Gross Revenue Reported to City	9,585,559	9,585,559	
Differences In Calculations of Gross Receipts	\$ (308,647)	\$ (3,208)	\$ (305,439)
** 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 2

CALCULATION OF ADDITIONAL RENT OWED THE CITY OF MIAMI BY BAYSHORE LANDING, LLC (BL) DUE TO DIFFERENCES IN CALCULATIONS OF GROSS RECEIPTS				
Difference Between Reconciled FY 2014 Gross Sales (Receipts) and Gross Sales Reported to the City				\$ 308,647
	% Gross Receipts	Prorated Differences of Gross Receipts	Applicable Rent %	Additional Rent Owed City for FY 2015
Raw Bar	78.2%	\$ (241,353)	10%	\$ (24,135)
Mall Revenue	8.3%	(25,621)	10%	(2,562)
Marina Docakge	13.5%	(41,673)	15%	(6,251)
	100.0%	\$ (308,647)		\$ (32,948)
			7% Sales Tax	(2,306)
	FY 2015 Additional % Rent due to City by BL			\$ 35,255

SCHEDULE 3

PRORATED ADDITIONAL RENT DUE FROM BAYSHORE LANDING, LLC FY 2015		
Additional Rent Due	\$35,255	\$ 35,255
Divided by:	12 months	
Add'l Rent Due Monthly	\$2,937.92	
Multiplied by: (Oct. 14 thru Apr. 15)	7 months	
Add'l Rent Due (1st seven months)		\$ 20,565
	\$2,937.92	
Divided by: (31 days in May 15)	31 days	
Add'l Rent Due Daily (for May 15)	\$94.77	
Multiplied by: (May 1 thru May 20)	20 days	
Add'l Rent Due (from May 1 thru the Closing Date of May 20th)		\$ 1,895
Add'l Rent Due (from Oct. 2014 thru the Closing Date of May 20, 2015)		\$ 22,461
Difference due from new lessee		\$ 12,794