

# City of Miami

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INDEPENDENT AUDITOR GENERAL



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October 16, 2018

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

Re: Audit of Grove Harbour Marina for the period January 1, 2013 through December 31, 2017  
Report No. 19-01

## Executive Summary

We have completed an audit of records and selected financial transactions of Grove Harbour Marina (GHM), primarily for the period January 1, 2013 through December 31, 2017. The audit was performed to determine whether GHM complied with the applicable sections of its Lease and Development Agreement (Lease) with the City of Miami (City). During the most recent lease years (2016 and 2017), GHM made percentage rent payments totaling \$798,723 and \$817,756, respectively, while reporting total gross revenue of approximately \$6.8 million and \$6.9 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. Improvement is needed to ensure that GHM makes accurate rental payments in a timely manner. In September 2016, GHM submitted late percentage rent payments totaling \$261,638 for the lease years beginning January 1, 2013 through December 31, 2015 for previously unreported revenue generated from Harbour Maintenance, Inc. (HMI is an entity operated on GHM premises). As a result, **GHM owes the City \$319,528 in late fees**. It should be noted that GHM disputes our method of calculation of the late fees, but a legal opinion from the City Attorney's Office supports our calculation method. With respect to HMI, subsequent rent payments for lease year 2016 and 2017 have been remitted timely. However, no rent payments had been submitted for this entity prior to 2013, and GHM has stated that minimum rent thresholds were not exceeded during this period. OIAG will perform additional procedures to provide assurance that there are no other rental payments due to the City related to HMI operations prior to 2013.

We also noted that, **GHM owes the City \$13,811 in additional rent due to under-stated gross revenues**. Finally, GHM's internal controls need to be enhanced to ensure that the City is named as the additional insured on all insurance policies.

We wish to express our appreciation for the cooperation and courtesies extended to us by the GHM and 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 Francis Suarez  
Emilio T. Gonzalez, City Manager  
Victoria Mendez, City Attorney, City Attorney's Office  
Daniel Diaz, Assistant City Attorney  
Todd Hannon, City Clerk  
Joseph Napoli, Deputy City Manager  
Sandra Bridgeman, Assistant City Manager/Chief Financial Officer  
Nzeribe Ihekweba, Assistant City Manager/Chief of Operations  
Fernando Casamayor, Assistant City Manager  
Daniel Rotenberg, Director, Department of Real Estate and Asset Management  
Mark Burns, Lease Manager, Department of Real Estate and Asset Management  
Erica T. Paschal, Director, Finance Department  
Eugene Codner, Controller, Finance Department  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
Ann-Marie Sharpe, Director, Risk Management Department  
Frank Gomez, Assistant Director, Risk Management Department  
Alan Lima, Grove Harbour Marina  
Members of the Audit Advisory Committee  
Audit Documentation File

Audit conducted by: Wesley Laurent, CPA, CIA, Senior Auditor

Audit reviewed by: Mala Khilnani, CPA, CISA, Assistant to the Auditor General

**AUDIT OF GROVE HARBOUR MARINA**

**JANUARY 1, 2013 THROUGH DECEMBER 31, 2017  
REPORT NO. 19-01**

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## **SCOPE, OBJECTIVES AND METHODOLOGY**

The scope of the audit was to determine Grove Harbour Marina's (GHM) compliance with the rental payment, insurance, and maintenance provisions of its Lease and Development Agreement (Lease) with the City of Miami (City). The audit primarily covered the period January 1, 2013 through December 31, 2017 and focused on the following objectives:

- To determine whether GHM reported the accurate amount of Gross Revenue for the period January 1, 2013 through December 31, 2017, which were the basis of percentage rental payments made to the City through December 31, 2017.
- To determine whether GHM rental payments were remitted in a timely manner.
- To determine whether insurance policies were adequate and in compliance with rental agreement terms.
- To determine whether remitted rental payments were properly recorded in the City's accounting system and deposited into the City's treasury.
- 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, 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 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 13.55-acre waterfront site in Coconut Grove at Dinner Key, consisting of 6.95 upland (dry land) acres and 6.6 submerged acres. Subsequent to issuing a request for proposal (RFP) to develop the site, the City executed a Lease and Development Agreement (Lease), dated March 12, 1999, with Grove Harbour Marina and Caribbean Marketplace, LLC, a Florida limited liability company (GHM). Based on the December 4, 2002 commencement date of the Lease, Grove Harbour Marina (GHM) is in the 16<sup>th</sup> year of the forty (40) year Lease.

In accordance with the terms of the Lease, GHM developed the waterfront property into a full-service marina complex (known as “Grove Harbour Marina”). GHM provides “wet slips” (where vessels are moored in the water) and “dry slip” storage space (vessels are stored on dry land in racks) to boat-owners/customers for a stipulated rental rate. In addition, GHM generates revenue from boat repair and hauling, fuel sales, and upland sub-letting (retail and office space). Its largest sub-lessee is “Fresh Market” which is a natural foods grocery store that GHM features as part of its “full-service” amenities.

For the year ended December 31, 2017, “Total Gross Revenues” were \$6.9 million. GHM offers both monthly and annual wet and dry slip rentals; however, dry slips are typically rented annually. It also offers weekly or monthly transient rental arrangements for vessels making Miami as a temporary port-of-call. The marina contains 57 “wet slips” for vessels up to 110 feet and 260 “dry slip” spaces for vessels up to 46 feet. During 2017, GHM reported “Marina Revenue” generated from the rental of wet and dry slips totaling \$3.7 million.

## **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. Improvement is needed to ensure that GHM makes accurate rental payments in a timely manner. In September 2016, GHM submitted late percentage rent payments totaling \$261,638 for the lease years beginning January 1, 2013 through December 31, 2015 for previously unreported revenue generated from Harbour Maintenance, Inc. (HMI is an entity operated on GHM premises). As a result, **GHM owes the City \$319,528 in late fees.** It should be noted that GHM disputes our method of calculation of the late fees, but a legal opinion from the City Attorney's Office supports our position. With respect to HMI, subsequent rent payments for lease year 2016 and 2017 have been remitted timely. However, no rent payments had been submitted for this entity prior to 2013, and GHM has stated that minimum rent thresholds were not exceeded during this period. OIAG will perform additional procedures to provide assurance that there are no other rental payments due to the City related to HMI operations prior to 2013.

We also noted that, **GHM owes the City \$13,811 in additional rent due to under-stated gross revenues.** Finally, GHM's internal controls need to be enhanced to ensure that the City is named as the additional insured on all insurance policies.

Details of our findings and recommendations follow:

### **FINDING 1: RENTAL PAYMENTS WERE UNTIMELY RESULTING IN LATE FEES DUE TOTALING \$319,528**

The Lease stipulates that GHM must pay the greater of "Minimum Annual Rent" (minimum rent) or "Percentage Rent". Percentage Rent includes among other items, a percentage of "Gross Revenue" from the marina (i.e., "wet slips" including transients and dry storage), "Floor Rent" (which is another name for rent collected from GHM's other "upland" sub-tenants), as well as the rent that GHM collects from the "Fresh Market" grocery store (FM), which is GHM's largest sub-tenant. During the period audited, we noted that Minimum Annual Rent ranged from \$600,000 to \$680,000, plus sales tax.

Furthermore, the lease states "Within sixty (60) days after the end of every Lease Year, Lessee shall deliver to Lessor a statement of the Gross Revenue for the preceding Lease Year signed by a Certified Public Accountant along with the additional amount of Percentage Rent, if any, which is due from Lessee to Lessor for that preceding Lease Year. In the event GHM does not pay rent within fifteen (15) days after it becomes due (on the 1<sup>st</sup> of the month), the lease states that GHM "shall pay a late fee equal to five percent (5%) of the unpaid amounts inclusive of any accrued late fees for each thirty (30) day period or fraction thereof in which payment remains unpaid."

## Late Rental Payments and Late Fees

In September 2016, GHM submitted percentage rent payments of \$261,638 for the unreported revenue of \$3.3 million generated by Harbour Maintenance, Inc. (HMI) operations, an entity operated on GHM premises, for the lease years beginning January 1, 2013 through December 31, 2015.

Our testing disclosed that GHM owes late fees of \$319,528 for the previously unreported revenue generated at HMI for the lease years beginning January 1, 2013 through December 31, 2015. It should be noted that GHM disputes our method of calculation of the late fee, but a legal opinion from the City Attorney's office supports our calculation method. Evidence that the payments were late is shown by the dates indicated on GHM's rental payment checks. Consequently, the total 5% late fee due is \$319,528 (See Schedule 1 below).

SCHEDULE 1 - CALCULATION OF LATE FEES								
		(1)	(2)	(3)	(2-3)/30		(4)	(4-1)
Lease Year	Check#	Rent Paid	Payment Date	Due Date	# Months Late	% Late Fee - Monthly	Amount Due	Late Fees
2013	10439	\$ 38,599	9/16/2016	3/15/2014	30.53	5%	\$171,221	\$ 132,622
2014	1391	11,383	9/6/2016	3/15/2015	18.03	5%	27,439	16,056
2014	10441	88,944	9/16/2016	3/15/2015	18.37	5%	217,918	128,974
2015	10418	68,683	9/8/2016	3/15/2016	5.90	5%	91,593	22,910
2015	10442	54,029	9/16/2016	3/15/2016	6.17	5%	72,995	18,966
<b>Harbour Main. Inc.</b>		<b>\$ 261,638</b>						<b>319,528</b>

With respect to HMI, subsequent rent payments for lease year 2016 and 2017 have been timely; however, no rent payments have been submitted for the period prior to 2013, GHM has stated that minimum rent thresholds were not exceeded during this period.

### **RECOMMENDATION 1.1: GROVE HARBOUR MARINA**

We recommend that Grove Harbour Marina (GHM) enhance its internal controls procedures to ensure that all rental payments to the City are timely and pay the \$319,528 late payment fees. In addition, the statement of GHM's Gross Revenue and corresponding rent payments include all revenue received by the lessee derived directly from business operations located on or initiated at the property.

- **Auditee Response:** Grove Harbour Marina does not agree with the City's current interpretation and assessment of total late fees due as per the terms of the current lease agreement between City of Miami, Florida and Grove Harbour Marina and Caribbean Marketplace, LLC. The total late fees owed by Grove Harbour Marina to the City of Miami have been recalculated by Grove Harbour Marina, utilizing the original table provided by the City. The "Amt Paid" column has been substituted with the 5% late fee charged on each late rent payment check, compounding each late fee over the total period of months late. Based on this methodology, late fees owed to the City of Miami for late rental payments total \$15,983. We are requesting that the City apply this methodology in calculating total late fees owed.

- **Audit Rejoinder** – We have obtained a legal opinion from the City Attorney’s Office and they support our interpretation of the late fee calculation. Accordingly, we reject GHM’s argument.

## **RECOMMENDATION 1.2: FINANCE DEPARTMENT**

We recommend that the City’s Finance department bill and collect the late fees due to the City from GHM in the amount of \$319,528.

- **Auditee Response:** We will bill the late fee to GHM
- **Implementation Date:** Immediately

## **FINDING 2: UNDERSTATED GROSS REVENUES REPORTED TO THE CITY RESULTED IN UNDERPAYMENTS OF PERCENTAGE RENT TOTALING \$13,811**

The Lease stipulates that GHM must pay the greater of “Minimum Annual Rent” (minimum rent) or “Percentage Rent” which includes, among other items, a percentage of “Gross Revenue” from the marina (i.e., wet slips [including transients] and dry storage), “Floor Rent” (which is another name for rent collected from GHM’s other “upland” sub-tenants), as well as the rent that GHM collects from the “Fresh Market” grocery store (FM), which is GHM’s largest sub-tenant. During the period audited, we noted that Minimum Annual Rent was \$600,000 (or \$50,000 monthly) plus sales tax.

In order to determine whether GHM paid the correct amount of percentage rent during 2013 through 2017, we performed reconciliations of gross revenue reported to the City to all cash deposited by GHM into bank accounts. Accordingly, we obtained all bank deposits and made adjustments for various items that should have been excluded from Gross Receipts including sales and use taxes collected and other non-revenue items such as security deposits and common area maintenance charges (CAM). There was insufficient documentation with respect to the CAM charges and security deposits which resulted in an error rate of 2.22%. We applied the 2.22% to the total CAM and security deposits of \$2,353,888 resulting in an adjustment of \$52,256. This resulted in a reporting shortage of \$138,308 between the total reconciled Gross Revenues and the Gross Revenues that GHM reported to the City. Based on 11.50% average composite percentage rent of gross revenues paid to the City during the period 2013 to 2017, GHM owes the City \$13,811 in additional rent, adjusted for an overpayment of \$3,208 due to a calculation error (See Schedule 2, page 6).

SCHEDULE 2 - RECONCILIATION OF GROSS REVENUES (GR)						
	2013	2014	2015	2016	2017	Total
Bank Deposits:	\$ 7,444,450	\$ 7,624,928	\$ 7,972,833	\$ 8,235,754	\$ 8,242,755	\$ 39,520,720
<b>Less: Total Sales &amp; Use (SU) Tax Collected (A)</b>	(252,229)	(333,559)	(379,155)	(548,891)	(382,529)	(1,896,363)
<b>Less: Non-Revenue Deposits</b>	(686,113)	(165,632)	(313,249)	(276,347)	(525,020)	(1,966,361)
<b>Less: CAM &amp; Sec Deposits (SD) (B)</b>	(465,427)	(467,659)	(475,305)	(546,902)	(398,595)	(2,353,888)
<b>Plus: CAM &amp; Security Deposits (Inadequate Documentation 2.22%) (C)</b>	10,332	10,382	10,552	12,141	8,849	52,256
Reconciled Gross Revenue	\$ 6,051,013	\$ 6,668,460	\$ 6,815,676	\$ 6,875,756	\$ 6,945,460	\$ 33,356,365
<b>Less: Gross Revenue Reported to the City</b>	\$ (6,099,726)	\$ (6,720,243)	\$ (6,694,496)	\$ (6,844,594)	\$ (6,858,997)	\$ (33,218,056)
(Over)/Under Reporting	\$ (48,712)	\$ (51,783)	\$ 121,180	\$ 31,161	\$ 86,463	\$ 138,308
Average Composite Rental Rate						11.50%
Percentage Rent Due based on Under Reporting						\$ 15,905
Sales Tax - 7%						\$ 1,113
<b>Amount owed to City</b>						\$ 17,019
<b>Less: Overpayment due to calculation error</b>						\$ (3,208)
<b>Total Due</b>						\$ 13,811
	(A)= According to the lease, SU taxes collected are excluded from GR.					
	(B)= According to the lease, CAM and SD are excluded from GR.					
	(C)= Applied rate of 2.22% to the CAM & SD population for inadequate documentation					

## **RECOMMENDATION 2.1: GROVE HARBOUR MARINA**

We recommend that GHM enhance their internal control procedures to ensure that all “Monthly Gross Revenue Statements” and percentage rent payments to the City are accurately calculated consistent with the Lease. The \$13,811 due in percentage rent shall be paid to the City.

- **Auditee Response:** Grove Harbor Marina (GHM) disagrees with the City’s finding that monthly gross revenue is neither reported accurately nor consistent with the lease. However, GHM will enhance its internal controls to ensure the completeness of documentation that states CAM charges and security deposits calculated by GHM are due from the tenant under GHM’s lease agreement. The amount deemed owed to the City of Miami is because a deficiency was identified from a sample of CAM and Security Deposits. The deficiency sample percentage, or error rate, was generally applied to the total amount of CAM and security deposits. Had the entire population of CAM and Security Deposits been examined during the audit; the conclusion and deficiency amount would likely be different from the current conclusion of the City. A deficiency rate of 2.22% was then applied to the total CAM and security deposits reported by GHM.

The total CAM and security deposits reported over the audited period were \$2,353,887.76. The calculated CAM and security deficiency was then calculated to be \$52,172.26. GHM believes that had the entire population of CAM and security deposits were reviewed, the City would have arrived at a significantly lower amount. The \$52,172.36 was then added to gross revenue per bank deposits (total sum for audit period \$33,356,282.06) less gross revenue per bank deposits and other adjustments then multiplied to an average amount (11.50%). As a result, the net amount due to the City was calculated to be \$13,811. As a result, there are multiple assumptions within the City’s analysis used to arrive at the calculated deficiency.

**Conclusion:** GHM will ensure the completeness of lease documentation to further document that CAM charges and security deposits are due as calculated by GHM and due from tenant.

- **Implementation Date:** August 1, 2018

### **RECOMMENDATION 2.2: FINANCE DEPARTMENT**

We recommend that the City's Finance department bill and collect the percentage rent due to the City from GHM in the amount of \$13,811.

- **Auditee Response:** The amount has been collected.

### **FINDING 3: INSURANCE COVERAGE WAS NOT IN COMPLIANCE WITH LEASE TERMS**

In accordance with the terms of the Lease Agreement between the City of Miami and Grove Harbour Marina (GHM), Article XI-Sect 11, GHM shall maintain liability and property insurance on the property in the amount of two million (\$2,000,000) for General liability and the appraised replacement cost of the property. In addition, in accordance with the lease GHM shall name the City as an additional insured on all policies.

Based on our review of the current "Certificate of Liability Insurance and Certificate of Property Insurance" for GHM, we noted that the City was not named as the additional insured. Failure to name the City as the additional insured could increase the City's risk of sustaining a material financial loss in the event of a major catastrophe.

The Departments of Real Estate Asset Management (DREAM) and Risk Management (RM) did not adequately review the Certificates of Insurance to ensure that the City was named as the additional insured.

### **RECOMMENDATION 3.1: DEPARTMENTS OF REAL ESTATE ASSET MANAGEMENT AND RISK MANAGEMENT**

We recommend that DREAM and RM review the Certificates of Insurance provided by lessee in detail to ensure that the insurance coverage is in accordance with the terms of the lease. In addition, we recommend that said departments retain a copy of the certificates of insurance reviewed with the necessary departmental sign-offs and date, as evidence of the review performed.

- **Auditee Response:** RM reviewed the revised certifications and deemed them as adequate.
- **Implementation Date:** Implemented

### **RECOMMENDATION 3.2: GROVE HARBOUR MARINA**

We recommend that GHM enhance its internal control procedures to ensure that the City is named as the additional insured in accordance with the terms of the lease.

- **Auditee Response:** GHM agreed to the finding and has named the City as the additional insured as per the terms of the lease.
- **Implementation Date:** Implemented