

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2009-251**

A RESOLUTION AUTHORIZING AN AMENDMENT TO AN EXISTING LEASE AGREEMENT BETWEEN THE CITY AND ROBERT MAGUIRE, OPERATOR OF THE GRANADA SNACK SHOP "BURGER BOB'S", PROVIDING FOR A ONE (1) YEAR EXTENSION UNDER THE SAME TERMS AND CONDITIONS; FURTHER STIPULATING THAT SAID LEASE AGREEMENT SHALL BE REVIEWED FOR FUTURE RENEWAL CONSIDERATION ON AN ANNUAL BASIS.

**BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** That the City Commission does hereby authorize the City Manager to amend an existing lease agreement with Robert Maguire, operator of the Granada Snack Shop ("Burger Bob's"), providing for a one (1) year extension under the same terms and conditions.

**SECTION 2.** That said lease agreement shall be reviewed for future renewal consideration on an annual basis.

**SECTION 3.** That said resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS EIGHTH DAY OF SEPTEMBER, A.D., 2009.

(Moved: Kerdyk / Seconded: Cabrera)

(Yea: Kerdyk, Withers, Anderson, Cabrera, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: C-6)

APPROVED:

DONALD D. SLESNICK II  
MAYOR

ATTEST

  
WALTER J. FOEMAN  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
ELIZABETH M. HERNANDEZ  
CITY ATTORNEY

RECEIVE,

JUL 07 2009

PUBLIC WORKS DEPT.

July 7, 2009

Mr. Alberto Delgado  
Public Works Director  
City of Coral Gables  
Public Works Department  
2800 S. W. 72<sup>nd</sup> Avenue  
Miami, Florida 33155

Re: Burger Bob's

Dear Mr. Delgado:

Please accept this letter as my request to extend the Concession Agreement I have with the City of Coral Gables for one year under the same conditions.

It is my understanding that this request must receive the Property Advisory Board's approval, and since the actual Concession Agreement is soon to expire, it would be appreciated if you present my request to the Board at its next meeting for consideration.

I wish to thank you and the Members of the Property Advisory Board for their consideration.

Very truly yours,

  
Robert Maguire  
Lessee

C402

CONCESSION AGREEMENT  
BETWEEN  
CITY OF CORAL GABLES  
AND  
ROBERT MAGUIRE

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THIS AGREEMENT, made and entered into at Coral Gables, Dade County, Florida on this 24 day of October 2003, by and between the CITY OF CORAL GABLES, a municipal corporation of Florida, hereinafter called LESSOR, and ROBERT MAGUIRE, hereinafter called, LESSEE.

WHEREAS, the LESSOR does desire to enter into an agreement with a qualified operator for the operation of the Granada Snack Shop, owned by the CITY and located at the Granada Golf Course; and

WHEREAS, the LESSEE declares that he has examined the premises; and

WHEREAS, the LESSEE has negotiated to operate the above referenced facility; and

WHEREAS, the LESSOR has determined that an agreement should be entered into with the LESSEE,

NOW, THEREFORE, the parties to this agreement do hereby agree as follows:

ARTICLE 1

1.1 TERM: The LESSOR hereby agrees to a Concession Agreement with the LESSEE for a term of three (3) years, commencing September 1, 2003 and ending as of midnight August 31, 2006, for the Snack Shop facility at the Granada Golf Course, 2000 Granada Blvd., Coral Gables, Florida.

ARTICLE 2

2.1 OPTION TO RENEW: Provided there has been no default of this agreement by the LESSEE, the LESSOR may extend this agreement for a maximum of two (2) one (1) year options upon such terms and conditions as the parties may agree to. Such periods shall run consecutively so as to make this agreement continuous in its operation from the beginning to its termination, a period of five (5) years.

### ARTICLE 3

3.1 DESCRIPTION OF LEASED PREMISES: The premises under this agreement consist of: (a) approximately 1,184 square feet of floor area immediately adjacent to the Golf Pro Shop.

### ARTICLE 4

4.1 MONTHLY RENT: During the original term of three years (3 yrs.) of this agreement, the LESSEE shall pay the LESSOR a monthly rent of \$2,100.00. The operator will be responsible for obtaining and paying for cooking gas and for installation and maintenance of its own telephone service.

4.2 PAYMENT PROCEDURES: Rent payment shall be made on or before the tenth of each month for the month to which it pertains. Payment made after the 10<sup>th</sup> may be assessed a 5% late fee and any rent payment delinquent over one month can be assessed including late fees, against the security deposit.

4.3 SALES TAX: The LESSEE shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent payable to the LESSOR under this agreement. This Sales and Use Tax shall be payable to the LESSOR and the LESSOR shall, in turn, remit same, less authorized handling deductions, to the State. However, if the LESSEE so desires, he can pay the prevailing taxes directly to the State and provide the LESSOR with appropriate documentations of such transactions.

4.4 PAYMENT TERMS: The LESSEE shall pay all rents required by this agreement to the following:

City of Coral Gables  
Parks & Recreation Department  
405 University Drive  
Coral Gables, FL 33134

4.5 REPORTS AND RECORDS: The LESSEE shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. LESSEE shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. LESSEE shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. LESSEE agrees that LESSOR, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other

employment records, and proprietary data and information shall be kept and maintained by LESSEE and made available to the LESSOR during the terms of this Agreement and for a period of three (3) years thereafter unless LESSOR'S written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by LESSEE at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at LESSOR'S option LESSEE shall pay LESSOR for travel, per diem, and other costs incurred by LESSOR to examine, audit, excerpt, copy or transcribe such material at such other location. The LESSOR shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the LESSEE'S place of business.

In the event that an audit is conducted by LESSEE specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by LESSEE, then LESSEE shall file a copy of the audit report with the LESSOR'S Auditor within thirty (30) days of LESSEE'S receipt thereof, unless otherwise provided by applicable Federal or State law. LESSOR shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of LESSEE to comply with the provisions of this Paragraph 4.5 shall constitute a material breach upon which the LESSOR may terminate or suspend this Agreement.

4.6 LESSOR AUDIT SETTLEMENTS. If, at any time during or after the term of this Agreement, representatives of the LESSOR conduct an audit of LESSEE regarding the work performed under this Agreement, and if such audit finds that LESSOR'S dollar liability for any such work is less than payments made by LESSOR to LESSEE, then the difference shall be either repaid by LESSEE to LESSOR by cash payment upon demand or, at the sole option of LESSOR, deducted from any amounts due to LESSEE from LESSOR. If such audit finds that LESSOR'S dollar liability for such work is more than the payments made by LESSOR to LESSEE, then the difference shall be paid to LESSEE by cash payment.

## ARTICLE 5

### 5.1 FACILITIES:

A. The premises, described in Article 3 of this agreement, shall be turned over to the LESSEE complete with certain equipment, furnishing and furniture, as per Schedule A. This schedule shall be acknowledged by signatures of both parties to this agreement. Any additional equipment, furnishings and furniture, or any modifications to the premises that might be required or desired by the LESSEE, must be provided and paid for by the LESSEE. However, no

alterations or modifications of the premises may be made without first obtaining the written approval of the LESSOR.

B. The LESSOR hereby grants permission to the LESSEE to properly use all City-owned property, equipment, furnishings and furniture. This property shall be used only at the leased premises and shall be turned back to the LESSOR upon termination or expiration of this agreement or termination of any extension to the agreement. The property shall be returned in the same condition as when received, except for normal wear and tear. Excluding such normal wear and tear, the LESSEE shall replace all damaged property, equipment, furnishings and furniture belonging to the LESSOR with like quantity and quality and such replacement shall then become the property of the LESSOR'S.

5.2 LESSOR'S APPROVAL: The LESSEE agrees to obtain prior written approval from the LESSOR in all of the following matters:

- A. Use of any type vending machines on the premises
- B. Changes in approved signage and graphics

The parties acknowledge that there is an existing soda vending machine as previously approved by the City.

5.3 PUBLIC CONTACT OF THE LESSEE'S EMPLOYEES: Realizing the facilities herein are publicly owned and that these facilities are part of a larger facility that is publicly owned and operated and that, this being true, the manner in which the facilities are operated will reflect upon the LESSOR, it is therefore, imperative that the LESSEE'S employees who have contact with the public, perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the LESSOR to demand the removal of that employee from duties in the facilities.

5.4 HOURS OF OPERATION: Normal hours of operation will be from an hour before the opening of the Golf Course till minimum of 3:30 p.m seven days a week. Hours of operation beyond 3:30 p.m. daily shall be at the discretion of the LESSEE. Any change in hours of operation other than stated herein shall be approved by the LESSOR.

5.5 QUALITY OF SERVICES:

A. The LESSEE will, at all times, have qualified personnel for preparation and handling of food behind the counter and kitchen and will obtain all the necessary Permits, Licenses and Health Certificates for all personnel.

B. The LESSEE shall control the conduct, demeanor and appearance of the officers, members, employees, agents and representatives and customers and patrons, and upon objection of the LESSOR concerning the conduct, demeanor or appearance of any such person, the LESSEE shall immediately take all necessary steps to correct the cause of such objection.

C. The LESSEE shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.

D. The LESSEE shall serve only the best quality food obtainable for the type of menu being offered.

E. The operator will be responsible for maintaining a coin operated beverage dispensing machine for the benefit of golfers primarily after the closing of the Snack Shop.

5.6 Background Investigation. The LESSEE agrees that all employees including the LESSEE may be subject to an annual background investigation at City's request.

5.7 Polygraph Examination. The LESSEE agrees to submit to polygraph examinations at the request of the Director or designee.

5.8 Medical, Drug Screening and Check-ups. At City's request, LESSEE'S, their contractors, employees, agents and subcontractors must satisfactorily complete appropriate drug screening examinations and be certified as drug free. The LESSOR may require that the LESSEE, contractor and/or their employees, agents and subcontractors performing services for the LESSOR submit to a yearly medical and drug screen examination, at contractor's expense.

## ARTICLE 6

6.1 ASSIGNMENT AND SUBCONTRACTING - This Agreement and the rights of the LESSEE and obligations hereunder may not be assigned, delegated or subcontracted by the LESSEE without the express prior written consent of the LESSOR. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the LESSOR may immediately terminate the Agreement in accordance with the provisions of paragraph 14.1 (Termination by Default). The LESSOR may assign its rights, together with its obligations hereunder.

## ARTICLE 7

7.1 ELECTRICITY AND WATER: The LESSOR shall provide:

- A. Electrical distribution to the extent as existing;
- B. Water and meter to the premises, as existing

## ARTICLE 8

**8.1 FACILITIES, EQUIPMENT AND SERVICES PROVIDED BY THE LESSEE:** The LESSEE shall provide and/or maintain within the premises, in accordance with all legal requirements:

- A. Janitorial and trash pick-up
- B. Services or registers for recording original sales
- C. Pest Control

## ARTICLE 9

**9.1 MAINTENANCE RESPONSIBILITIES:**

**A. APPEARANCE OF FACILITIES:** The LESSEE shall, at its sole cost and expense, be responsible for maintaining and inspecting the grease trap, kitchen hood/exhaust system, and the kitchen stove at least quarterly. The LESSEE shall be responsible for maintaining the food service operation in a clean and sanitary manner and be responsible for all the Health Department Certification requirements.

**B. OTHER MAINTENANCE:** The LESSOR will be responsible for the general maintenance of the physical plant, the maintenance of the City owned appliances such as air conditioning, freezer coolers, dish washer, ice machine and a limited amount of Janitorial Services to include cleaning of areas around the snack bar.

## ARTICLE 10

**10.1 QUIET ENJOYMENT OF PROPERTY:** The LESSOR covenants and agrees that so long as no default exists in the performance of the LESSEE'S covenants and agreements contained herein, the LESSEE shall peaceably and quietly hold and enjoy the premises and all parts thereof free from eviction or disturbance by the LESSOR or any persons claiming under, by, or through the LESSOR.

## ARTICLE 11

**11.1 INGRESS AND EGRESS:** Subject to the rules, regulations, statutes and ordinances governing the use of the facility, the LESSEE, all agents and servants, patrons and invitees, and all suppliers of service and furnishers of

materials, shall have the right to unobstructive ingress and egress to and from the premises and shall have the non-exclusive right to use of the adjacent LESSOR parking facilities.

## ARTICLE 12

12.1 SECURITY DEPOSIT: The LESSEE shall furnish the LESSOR a security deposit of \$6,000.00. The City acknowledges receipt of said security deposit. The security deposit shall be in the form of a cash deposit, and in case of satisfactory compliance of the Lease, the cash deposit will be returned with interest at the prevailing bank interest rate. 50% of the security deposit will also be used to repair and/or replace and LESSOR owned equipment or furniture, if necessary, due to the negligence of the operator. The other 50% of the deposit will bind the operator for the faithful performance of the written agreement.

## ARTICLE 13

13.1 INSURANCE -Without limiting LESSEE'S indemnification of the LESSOR, and during the term of this Agreement, LESSEE shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the LESSOR and shall be primary to and not contributing with any other insurance maintained by the LESSOR. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Attn: City Manager  
Cc: City Attorney  
Purchasing Director

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that the LESSOR is to be given written notice by certified mail at least thirty (30) days in advance of any modification or termination of insurance.

13.2 The LESSEE shall maintain during the terms, except as noted, of this Agreement the following insurance:

a. LESSEE Liability Insurance in the amount of \$500,000 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the LESSEE shall become legally obligated to pay as damages for

claims arising out of the services performed by the LESSEE or any person employed in connection with this Agreement. This insurance shall be maintained for three (3) years after any WORK covered by this Agreement.

x.b. Liquor Liability- LESSEE shall be solely responsible for obtaining and maintaining all required licenses and permits for the operation and maintenance of a restaurant facility, including, without limitation, any and all licenses and permits required for the serving of alcoholic beverages. LESSEE shall further be responsible for complying with all requirements and qualifications of all federal, state and local health and rehabilitation service departments.

x.c. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and \$2,000,000. in aggregate. Said policy or policies shall name City as additional insured and shall reflect the hold harmless provision contained herein.

x.d. Worker's Compensation Insurance for all employees of LESSEE as required by Florida Statutes Section 440, and employer's liability insurance with limits not less than \$500,000.

x.e. Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

x.f. Other (or increased amounts of) insurance which LESSOR shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

x.g. All policies shall contain waiver of subrogation against LESSOR where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the LESSOR may have.

x.h. All of the above insurance is to be placed with Best-rated A-8 or better insurance companies, qualified to do business under laws of the State of Florida.

x.i. The LESSOR shall be named as additional insured under such policies. Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The LESSOR reserves the right to request a copy of required policies for review.

x.j. All policies shall provide for thirty (30) days notice to LESSOR prior to cancellation or material change.

x.k. The LESSEE shall furnish Certificates of Insurance to the Employee Relations Department prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the LESSOR is

named as and additional insured and that the LESSEE has obtained insurance in the type, amount and classification required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior notice to the LESSOR.

13.3 Failure on the part of the LESSEE to obtain and maintain all required insurance coverage is a material breach upon which the LESSOR may, in its sole discretion, immediately suspend LESSEE'S performance or terminate this Agreement.

13.4 Indemnification and Hold Harmless. To the fullest extent permitted by Laws and Regulations, the LESSEE shall indemnify and hold harmless the LESSOR and its consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury and (b) is caused in whole or in part by any willful or negligent act or omission of LESSEE, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

13.5 In any and all claims against the LESSOR or any of its consultants, agents, or employees by any employee of LESSEE, and subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for LESSEE or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

#### ARTICLE 14

14.1 TERMINATION LESSOR may, by written notice to LESSEE, terminate the whole or any part of this Agreement if, in the judgment of the City Manager:

- a) LESSEE has materially breached any portion of this Agreement;
- b) LESSEE fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement;
- c) LESSEE has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by the LESSOR;
- d) Insolvency of LESSEE. LESSEE shall be deemed insolvent if it has ceased to pay its debts for at least sixty days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not LESSEE is insolvent within the meaning of such laws;
- e) There has been a filing of a voluntary or involuntary petition regarding LESSEE under the Federal Bankruptcy Code;
- f) There has been the appointment of a Receiver or Trustee for LESSEE;
- g) There has been an execution by LESSEE of a general assignment for the benefit of creditors.

If, after LESSOR has given notice of termination under the provisions

Hereunder, if it is determined by LESSOR that LESSEE was not in default under these provisions, or that the default was excusable under these provisions, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.2 (Termination for Convenience).

The rights and remedies of LESSOR provided in this Paragraph 14.1 are non-exclusive and cumulative.

**14.2 Termination for Convenience.** This Agreement, may be terminated, when such action is deemed by LESSOR to be in its best interest. Termination shall be effected by delivery to LESSEE of a notice of termination specifying the extent to which performance of Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than ten (10) days after the notice is sent.

After receipt of a notice of termination, LESSEE shall submit its termination claim and invoice to LESSOR, in the form and with any certifications as may be prescribed by LESSOR. Such claim and invoice shall be submitted promptly, but not later than three months from the effective date of termination. Upon failure by LESSEE to submit its termination claim and invoice within the time allowed, LESSOR may determine on the basis of the information available to

the LESSOR, the amount, if any, due to LESSEE in respect to the termination, and such determination shall be final. When such determination is made, LESSOR shall pay LESSEE the amount so determined.

**14.3 Termination by LESSEE.** This Agreement may be terminated by the LESSEE upon thirty (30) days prior written notice to the LESSOR in the event of substantial failure by the LESSOR to perform in accordance with the terms of the Agreement through no fault of the Professional. It may also be terminated by the LESSOR, with or without cause, upon thirty (30) days written notice to the LESSEE.

The LESSEE shall be paid for services actually rendered to the date of termination.

**14.4 NOTICE** -Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

Cc: City Attorney

Notice as to Professional shall be to:

Robert Maguire  
2001 Granada Blvd.  
Coral Gables, FL 33134

## ARTICLE 15

**15.1 LESSOR Policy Regarding Conduct.** The Lessee, their employees, agents and subcontractors must abide by the LESSOR'S policies regarding conduct. Discrimination, harassment, and/or violations of LESSOR policies will

not be tolerated and are grounds for termination of the contract without harm to the LESSOR or its employees.

#### ARTICLE 16

16.1 PAYMENT OF TAXES AND OTHER OBLIGATIONS: The LESSEE shall pay any personal property tax or any other obligations assessed against the LESSEE or his personal property on the premises promptly, or if paid by the LESSOR, shall reimburse the LESSOR immediately upon demand.

#### ARTICLE 17

17.1 FACILITY REPAIRS, ALTERATIONS AND ADDITIONS BY THE LESSOR: The LESSOR shall have the absolute right, without limitations, to make any repairs, alterations, additions to any structures and facilities at or near the premises, including the facilities leased under this agreement, free from any and all liability to the LESSEE for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions.

17.2 In the event that the LESSEE operations hereunder are substantially interrupted or halted by virtue of the exercise of the LESSOR of its rights hereunder:

- A. The rent guarantee shall cease for the term of the interruption; and
- B. The term of this agreement, at LESSEE'S option, may be extended by a period of time equal to the length of the interruption; and
- C. If the LESSEE'S operations are interrupted for a period of at least sixty (60) days, the LESSEE shall have the option, any time thereafter, to cancel this agreement and receive a refund of any deposits due at that time.

17.3 UNCONTROLLABLE FORCES -Neither the LESSOR nor LESSEE shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

17.4 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of

reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### ARTICLE 18

**18.1 TERMINATION OF CONTRACT:** The LESSEE, with fifteen (15) calendar days following the termination of this agreement, shall remove all his personal property. Any personal property of the LESSEE not removed in accordance with this article shall constitute a gratuitous transfer of title thereof to the LESSOR for whatever disposition is deemed to be in the best interest of the LESSOR. The LESSOR shall not be liable to the LESSEE for safekeeping of the LESSEE'S personal property.

#### ARTICLE 19

**19.1 INDULGENCES:** Indulgences granted with regard to breach or failure to perform under any provisions of this agreement or amendments to this agreement, either initial occurrence or any time thereafter, shall not constitute a waiver of the rights of the LESSOR under this agreement.

#### ARTICLE 20

**20.1 REMEDIES:** Remedies provided under this agreement shall not be deemed as exclusive and shall not exclude any remedy otherwise provided by law. The exercise of any remedy under this agreement shall not preclude the LESSOR from exercising any other rights under this agreement or under the law.

#### ARTICLE 21

**21.1 MODIFICATION** - This Agreement may not be amended or modified unless in writing and signed by both parties.

#### ARTICLE 22

**22.1 COMPLIANCE WITH LAWS-** In performance of the services, the LESSEE will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the LESSEE to obtain and maintain, at no cost to the LESSOR, any and all license and permits required to complete the services provided pursuant to this Agreement.

22.2 CONFLICT OF INTEREST LESSEE covenants that no person employed by the LESSEE which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the LESSOR. LESSEE further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of LESSEE or its employees must be disclosed in writing to LESSOR.

22.3 LESSEE is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

### ARTICLE 23

23.1 FEDERAL AND STATE TAXES - The LESSOR is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the LESSOR will provide an exemption certificate to the LESSEE. The LESSEE shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the LESSOR, nor shall the LESSEE be authorized to use the City's Tax Exemption Number in securing such materials.

### ARTICLE 24

24.1 SUCCESSORS AND ASSIGNS - The LESSOR and the LESSEE each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. The LESSEE shall not assign this Agreement without the express written approval of the LESSOR via executed amendment.

### ARTICLE 25

25.1 CONTINGENT FEES - The LESSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the LESSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the LESSEE, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

## ARTICLE 26

26.1 COUNTERPARTS - This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

## ARTICLE 27

27.1 WAIVER - A waiver by either the LESSOR or the LESSEE of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## ARTICLE 28

28.1 SEVERABILITY, SURVIVAL - If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

## ARTICLE 29

29.1 GOVERNING LAW AND VENUE - The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

29.2 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

29.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

### ARTICLE 30

30.1 TIME IS OF THE ESSENCE- If any anticipated or actual delays arise, LESSEE shall immediately so notify the LESSOR. Regardless of notice if services or deliveries are not made at the time agreed upon, the LESSOR may, at its sole discretion, terminate this Agreement and proceed pursuant to Paragraph 14.1(Termination by Default).

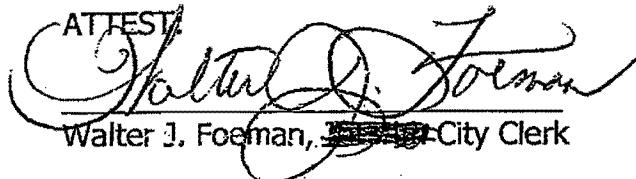
### ARTICLE 31

31 HEADINGS - The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CITY OF CORAL GABLES

ATTEST:



Walter J. Foeman, ~~City Clerk~~ City Clerk

by:



David L. Brown, City Manager

AS TO LESSEE:

ATTEST:

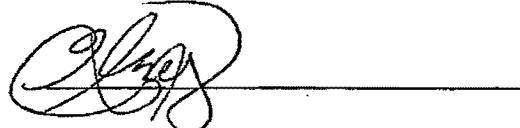


by Robert Maguire  
Robert Maguire

WITNESS Gary R. Martin

WITNESS Toby Marlin

APROVED AS TO FORM:



Elizabeth Hernandez, City Attorney

## SCHEDULE "A"

### Equipment List for Granada Snack Shop 2001 Granada Blvd., Coral Gables, FL

Chairs and tables for \_\_\_\_\_ seating and \_\_\_\_\_ extra chairs (48 chairs)  
sugar bowls, napkin holders, salt and pepper shakers (ok)  
~~cigarette machine (on lease)~~ *R77*  
counter with 8 counter stools  
3 compartment glass sink  
hand sink with SS stand  
soda and coke dispenser with Scotsman ice bin (not refrigerated) (no)  
2 hole ice cream box kelvenator (no)  
SS stand with register (no)  
8 ft. 2 shelve SS Counter  
4 ft. wall hung pie case, 2 shelf SS soda, glasses and dishes  
2 toast master, 2 hole toasters (no)  
1 malted milk mixer  
~~2 hole salad bar, cold storage bottom (not working) (?)~~ *R77*  
~~2 burner stove and 3 E griddle on 8F SS counter (?)~~ *R77*  
1 hood with Ansec System  
1 door upright refrigerator McCall  
1 Cecilware Deep Fryer

### BACK ROOM

Formica cabinet with doors  
Alum. pots, pans, cups, saucers, plates and dishes  
Built in dishwasher single tray Jackson  
3 compartment kitchen sink  
Commercial 2 door refrigerator Challenger  
Storage Shelving  
Coffee Maker 3 burner (Rental)

### BACK ENTRANCE

1 ice maker Whirlpool - Scotsman  
Norge Refrigerator/Freezer Apt. Size - GE

### STORAGE ROOM

1 US slicer (not working)  
~~1 GE Chest Freezer (not working)~~ *R77*  
4 Clothes Locker - 1  
~~1 Lemonade Dispenser (no)~~

RECEIVE,

JUL 07 2009

PUBLIC WORKS DEPT.

July 7, 2009

Mr. Alberto Delgado  
Public Works Director  
City of Coral Gables  
Public Works Department  
2800 S. W. 72<sup>nd</sup> Avenue  
Miami, Florida 33155

Re: Burger Bob's

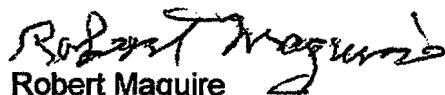
Dear Mr. Delgado:

Please accept this letter as my request to extend the Concession Agreement I have with the City of Coral Gables for one year under the same conditions.

It is my understanding that this request must receive the Property Advisory Board's approval, and since the actual Concession Agreement is soon to expire, it would be appreciated if you present my request to the Board at its next meeting for consideration.

I wish to thank you and the Members of the Property Advisory Board for their consideration.

Very truly yours,

  
Robert Maguire  
Lessee

**COPY**  
**FILE**

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2008-200**

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES, AUTHORIZING THE CITY MANAGER TO RENEW THE LEASE AGREEMENT BETWEEN OUR CITY AND ROBERT MAGUIRE, A QUALIFIED OPERATOR, FOR THE OPERATION OF THE GRANDA SNACK SHOP, ("BURGER BOB'S") AGREEMENT FOR AN ADDITIONAL YEAR, UNDER THE SAME TERMS AND CONDITIONS (SEE ATTACHED); FURTHER STIPULATING THAT SAID LEASE AGREEMENT SHALL BE REVIEWED ON AN ANNUAL BASIS.

**BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** That the City of Coral Gables City Commission does hereby authorize the City Manager to renew said lease agreement with Robert Maguire, for the operation of the Granda Snack Shop ("Burger Bob's"), for an additional year under the same terms and conditions.

**SECTION 2.** That said lease agreement shall be reviewed on an annual basis.

**SECTION 3.** That said Resolution shall become effective immediately upon the date of its passage and adoption herein.

**PASSED AND ADOPTED THIS EIGHTEENTH DAY OF NOVEMBER, A.D., 2008.**

(Moved: Cabrera / Seconded: Anderson)

(Yea: Withers, Anderson, Cabrera, Kerdyk, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: G-4)

**APPROVED:**

**DONALD D. SLESNICK II**  
**MAYOR**

**ATTEST:**

**WALTER J. FOEMAN**  
**CITY CLERK**

**APPROVED AS TO FORM AND**  
**LEGAL SUFFICIENCY:**

**ELIZABETH M. HERNANDEZ**  
**CITY ATTORNEY**

**CITY OF CORAL GABLES**

**OFFICE OF THE CITY ATTORNEY**

**- MEMORANDUM -**

**TO:**

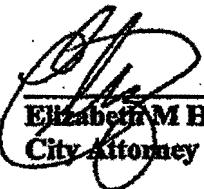
**INTERIM  
CITY MANAGER**

**DATE:**

**December 10, 2008**

**CITY CLERK**

**FROM:**

  
Elizabeth M Hernandez  
City Attorney

**SUBJECT:**

**GRANADA GOLF  
COURSE CONCESSION  
LEASE**

Attached please find an original of the Granada Golf Course Concession Lease which has been approved as to form. Please execute and attest by the City Clerk, who will keep the fully executed original in file in his office. Please send a certified copy of the Lease extension to Mr. Robert Maguire to Granada Snack Shop, 2001 Granada Boulevard, Coral Gables, Florida 33134.

EMH/zo

EMH/zo  
12/10/08  
S2  
4413

Received  
DEC 10 2008  
City Attorney's Office

EXTENSION TO CONCESSION AGREEMENT  
BETWEEN  
CITY OF CORAL GABLES  
AND  
ROBERT MAGUIRE

THIS EXTENSION TO CONCESSION AGREEMENT is made and entered into AS OF December, 2008, between the CITY OF CORAL GABLES, a municipal corporation of Florida, hereinafter called LESSOR, and ROBERT MAGUIRE, hereinafter called, LESSEE.

RECITALS

WHEREAS, the LESSOR on October 3, 2003, entered into a Concession Agreement with the LESSEE, for the operation of the Granada Snack Shop, owned by the CITY and located at the Granada Golf Course; and

WHEREAS, the parties wish to extend the lease for an additional one year period, under the same terms and conditions.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the LESSOR agrees to extend the Concession Agreement with the LESSEE for an additional one year period under the same terms and conditions in the Concession Agreement dated October 3, 2003.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

AS TO LESSOR:

**CITY OF CORAL GABLES**

ATTEST:

Walter J. Foeman, City Clerk

by: 

Maria Alberto Jimenez  
Interim City Manager

AS TO LESSEE:

**ROBERT MAGUIRE**

ATTEST:

By: Robert Maguire  
Robert Maguire

Julie

WITNESS

Ben McLean

WITNESS

APROVED AS TO FORM:

Elizabeth M. Hernandez  
Elizabeth M. Hernandez  
City Attorney

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. R-2003-150

A RESOLUTION TO WAIVE THE PUBLIC BID PROCESS PURSUANT TO SECTION 2-231, CITY CODE AND TO AUTHORIZE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH ROBERT MCGUIRE OF BURGER BOB'S FOR OPERATION OF THE GRANADA GOLF COURSE SNACK SHOP FACILITY FOR A PERIOD OF THREE YEARS WITH OPTIONAL TWO, ONE-YEAR EXTENSIONS.

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

Section 1. That the City Manager is hereby authorized to negotiate and execute a Professional Services Agreement with Robert McGuire to operate the Granada Golf Course Snack Shop Concession Operation resulting in revenues of \$2,100.00 per month, \$25,200.00 per year.

Section 2. That the executed Agreement shall be made as part of this resolution and be kept on file in the Office of the City Clerk.

Section 3. Said Resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS TWENTY SIXTH DAY OF AUGUST, A.D., 2003.

(Motion: Cabrera/Second: Anderson)  
(5/0 vote)

DONALD D. SLESNICK II  
MAYOR

ATTEST:

WALTER J. FOEMAN  
INTERIM CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ  
CITY ATTORNEY

CONCESSION AGREEMENT  
BETWEEN  
CITY OF CORAL GABLES  
AND  
ROBERT MAGUIRE

---

THIS AGREEMENT, made and entered into at Coral Gables, Dade County, Florida on this 2nd day of October 2003, by and between the CITY OF CORAL GABLES, a municipal corporation of Florida, hereinafter called LESSOR, and ROBERT MAGUIRE, hereinafter called, LESSEE.

WHEREAS, the LESSOR does desire to enter into an agreement with a qualified operator for the operation of the Granada Snack Shop, owned by the CITY and located at the Granada Golf Course; and

WHEREAS, the LESSEE declares that he has examined the premises; and

WHEREAS, the LESSEE has negotiated to operate the above referenced facility; and

WHEREAS, the LESSOR has determined that an agreement should be entered into with the LESSEE,

NOW, THEREFORE, the parties to this agreement do hereby agree as follows:

ARTICLE 1

1.1 TERM: The LESSOR hereby agrees to a Concession Agreement with the LESSEE for a term of three (3) years, commencing September 1, 2003 and ending as of midnight August 31, 2006, for the Snack Shop facility at the Granada Golf Course, 2000 Granada Blvd., Coral Gables, Florida.

ARTICLE 2

2.1 OPTION TO RENEW: Provided there has been no default of this agreement by the LESSEE, the LESSOR may extend this agreement for a maximum of two (2) one (1) year options upon such terms and conditions as the parties may agree to. Such periods shall run consecutively so as to make this agreement continuous in its operation from the beginning to its termination, a period of five (5) years.

### ARTICLE 3

3.1 DESCRIPTION OF LEASED PREMISES: The premises under this agreement consist of: (a) approximately 1,184 square feet of floor area immediately adjacent to the Golf Pro Shop.

### ARTICLE 4

4.1 MONTHLY RENT: During the original term of three years (3 yrs.) of this agreement, the LESSEE shall pay the LESSOR a monthly rent of \$2,100.00. The operator will be responsible for obtaining and paying for cooking gas and for installation and maintenance of its own telephone service.

4.2 PAYMENT PROCEDURES: Rent payment shall be made on or before the tenth of each month for the month to which it pertains. Payment made after the 10<sup>th</sup> may be assessed a 5% late fee and any rent payment delinquent over one month can be assessed including late fees, against the security deposit.

4.3 SALES TAX: The LESSEE shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent payable to the LESSOR under this agreement. This Sales and Use Tax shall be payable to the LESSOR and the LESSOR shall, in turn, remit same, less authorized handling deductions, to the State. However, if the LESSEE so desires, he can pay the prevailing taxes directly to the State and provide the LESSOR with appropriate documentations of such transactions.

4.4 PAYMENT TERMS: The LESSEE shall pay all rents required by this agreement to the following:

City of Coral Gables  
Parks & Recreation Department  
405 University Drive  
Coral Gables, FL 33134

4.5 REPORTS AND RECORDS: The LESSEE shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. LESSEE shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. LESSEE shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. LESSEE agrees that LESSOR, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other

employment records, and proprietary data and information shall be kept and maintained by LESSEE and made available to the LESSOR during the terms of this Agreement and for a period of three (3) years thereafter unless LESSOR'S written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by LESSEE at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at LESSOR'S option LESSEE shall pay LESSOR for travel, per diem, and other costs incurred by LESSOR to examine, audit, excerpt, copy or transcribe such material at such other location. The LESSOR shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the LESSEE'S place of business.

In the event that an audit is conducted by LESSEE specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by LESSEE, then LESSEE shall file a copy of the audit report with the LESSOR'S Auditor within thirty (30) days of LESSEE'S receipt thereof, unless otherwise provided by applicable Federal or State law. LESSOR shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of LESSEE to comply with the provisions of this Paragraph 4.5 shall constitute a material breach upon which the LESSOR may terminate or suspend this Agreement.

4.6 LESSOR AUDIT SETTLEMENTS. If, at any time during or after the term of this Agreement, representatives of the LESSOR conduct an audit of LESSEE regarding the work performed under this Agreement, and if such audit finds that LESSOR'S dollar liability for any such work is less than payments made by LESSOR to LESSEE, then the difference shall be either repaid by LESSEE to LESSOR by cash payment upon demand or, at the sole option of LESSOR, deducted from any amounts due to LESSEE from LESSOR. If such audit finds that LESSOR'S dollar liability for such work is more than the payments made by LESSOR to LESSEE, then the difference shall be paid to LESSEE by cash payment.

## ARTICLE 5

### 5.1 FACILITIES:

A. The premises, described in Article 3 of this agreement, shall be turned over to the LESSEE complete with certain equipment, furnishing and furniture, as per Schedule A. This schedule shall be acknowledged by signatures of both parties to this agreement. Any additional equipment, furnishings and furniture, or any modifications to the premises that might be required or desired by the LESSEE, must be provided and paid for by the LESSEE. However, no

alterations or modifications of the premises may be made without first obtaining the written approval of the LESSOR.

B. The LESSOR hereby grants permission to the LESSEE to properly use all City-owned property, equipment, furnishings and furniture. This property shall be used only at the leased premises and shall be turned back to the LESSOR upon termination or expiration of this agreement or termination of any extension to the agreement. The property shall be returned in the same condition as when received, except for normal wear and tear. Excluding such normal wear and tear, the LESSEE shall replace all damaged property, equipment, furnishings and furniture belonging to the LESSOR with like quantity and quality and such replacement shall then become the property of the LESSOR'S.

5.2 LESSOR'S APPROVAL: The LESSEE agrees to obtain prior written approval from the LESSOR in all of the following matters:

- A. Use of any type vending machines on the premises
- B. Changes in approved signage and graphics

The parties acknowledge that there is an existing soda vending machine as previously approved by the City.

5.3 PUBLIC CONTACT OF THE LESSEE'S EMPLOYEES: Realizing the facilities herein are publicly owned and that these facilities are part of a larger facility that is publicly owned and operated and that, this being true, the manner in which the facilities are operated will reflect upon the LESSOR, it is therefore, imperative that the LESSEE'S employees who have contact with the public, perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the LESSOR to demand the removal of that employee from duties in the facilities.

5.4 HOURS OF OPERATION: Normal hours of operation will be from an hour before the opening of the Golf Course till minimum of 3:30 p.m seven days a week. Hours of operation beyond 3:30 p.m. daily shall be at the discretion of the LESSEE. Any change in hours of operation other than stated herein shall be approved by the LESSOR.

5.5 QUALITY OF SERVICES:

A. The LESSEE will, at all times, have qualified personnel for preparation and handling of food behind the counter and kitchen and will obtain all the necessary Permits, Licenses and Health Certificates for all personnel.

B. The LESSEE shall control the conduct, demeanor and appearance of the officers, members, employees, agents and representatives and customers and patrons, and upon objection of the LESSOR concerning the conduct, demeanor or appearance of any such person, the LESSEE shall immediately take all necessary steps to correct the cause of such objection.

C. The LESSEE shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.

D. The LESSEE shall serve only the best quality food obtainable for the type of menu being offered.

E. The operator will be responsible for maintaining a coin operated beverage dispensing machine for the benefit of golfers primarily after the closing of the Snack Shop.

5.6 Background Investigation. The LESSEE agrees that all employees including the LESSEE may be subject to an annual background investigation at City's request.

5.7 Polygraph Examination. The LESSEE agrees to submit to polygraph examinations at the request of the Director or designee.

5.8 Medical, Drug Screening and Check-ups. At City's request, LESSEE'S, their contractors, employees, agents and subcontractors must satisfactorily complete appropriate drug screening examinations and be certified as drug free. The LESSOR may require that the LESSEE, contractor and/or their employees, agents and subcontractors performing services for the LESSOR submit to a yearly medical and drug screen examination, at contractor's expense.

## ARTICLE 6

6.1 ASSIGNMENT AND SUBCONTRACTING - This Agreement and the rights of the LESSEE and obligations hereunder may not be assigned, delegated or subcontracted by the LESSEE without the express prior written consent of the LESSOR. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the LESSOR may immediately terminate the Agreement in accordance with the provisions of paragraph 14.1 (Termination by Default). The LESSOR may assign its rights, together with its obligations hereunder.

## ARTICLE 7

7.1 ELECTRICITY AND WATER: The LESSOR shall provide:

- A. Electrical distribution to the extent as existing;
- B. Water and meter to the premises, as existing

#### ARTICLE 8

8.1 FACILITIES, EQUIPMENT AND SERVICES PROVIDED BY THE LESSEE: The LESSEE shall provide and/or maintain within the premises, in accordance with all legal requirements:

- A. Janitorial and trash pick-up
- B. Services or registers for recording original sales
- C. Pest Control

#### ARTICLE 9

9.1 MAINTENANCE RESPONSIBILITIES:

A. APPEARANCE OF FACILITIES: The LESSEE shall, at its sole cost and expense, be responsible for maintaining and inspecting the grease trap, kitchen hood/exhaust system, and the kitchen stove at least quarterly. The LESSEE shall be responsible for maintaining the food service operation in a clean and sanitary manner and be responsible for all the Health Department Certification requirements.

B. OTHER MAINTENANCE: The LESSOR will be responsible for the general maintenance of the physical plant, the maintenance of the City owned appliances such as air conditioning, freezer coolers, dish washer, ice machine and a limited amount of Janitorial Services to include cleaning of areas around the snack bar.

#### ARTICLE 10

10.1 QUIET ENJOYMENT OF PROPERTY: The LESSOR covenants and agrees that so long as no default exists in the performance of the LESSEE'S covenants and agreements contained herein, the LESSEE shall peaceably and quietly hold and enjoy the premises and all parts thereof free from eviction or disturbance by the LESSOR or any persons claiming under, by, or through the LESSOR.

#### ARTICLE 11

11.1 INGRESS AND EGRESS: Subject to the rules, regulations, statutes and ordinances governing the use of the facility, the LESSEE, all agents and servants, patrons and invitees, and all suppliers of service and furnishers of

materials, shall have the right to unobstructive ingress and egress to and from the premises and shall have the non-exclusive right to use of the adjacent LESSOR parking facilities.

#### ARTICLE 12

12.1 SECURITY DEPOSIT: The LESSEE shall furnish the LESSOR a security deposit of \$6,000.00. The City acknowledges receipt of said security deposit. The security deposit shall be in the form of a cash deposit, and in case of satisfactory compliance of the Lease, the cash deposit will be returned with interest at the prevailing bank interest rate. 50% of the security deposit will also be used to repair and/or replace and LESSOR owned equipment or furniture, if necessary, due to the negligence of the operator. The other 50% of the deposit will bind the operator for the faithful performance of the written agreement.

#### ARTICLE 13

13.1 INSURANCE -Without limiting LESSEE'S indemnification of the LESSOR, and during the term of this Agreement, LESSEE shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the LESSOR and shall be primary to and not contributing with any other insurance maintained by the LESSOR. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Attn: City Manager  
Cc: City Attorney  
Purchasing Director

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that the LESSOR is to be given written notice by certified mail at least thirty (30) days in advance of any modification or termination of insurance.

13.2 The LESSEE shall maintain during the terms, except as noted, of this Agreement the following insurance:

\_\_\_\_\_a. LESSEE Liability Insurance in the amount of \$500,000 with deductible per claim if any, not to exceed 5% of the limit of liability providing for all sums which the LESSEE shall become legally obligated to pay as damages for

claims arising out of the services performed by the LESSEE or any person employed in connection with this Agreement. This insurance shall be maintained for three (3) years after any WORK covered by this Agreement.

x.b. Liquor Liability- LESSEE shall be solely responsible for obtaining and maintaining all required licenses and permits for the operation and maintenance of a restaurant facility, including, without limitation, any and all licenses and permits required for the serving of alcoholic beverages. LESSEE shall further be responsible for complying with all requirements and qualifications of all federal, state and local health and rehabilitation service departments.

x.c. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and \$2,000,000. in aggregate. Said policy or policies shall name City as additional insured and shall reflect the hold harmless provision contained herein.

x.d. Worker's Compensation Insurance for all employees of LESSEE as required by Florida Statutes Section 440, and employer's liability insurance with limits not less than \$500,000.

x.e. Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

x.f. Other (or increased amounts of) insurance which LESSOR shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

x.g. All policies shall contain waiver of subrogation against LESSOR where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the LESSOR may have.

x.h. All of the above insurance is to be placed with Best-rated A-8 or better insurance companies, qualified to do business under laws of the State of Florida.

x.i. The LESSOR shall be named as additional insured under such policies. Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The LESSOR reserves the right to request a copy of required policies for review.

x.j. All policies shall provide for thirty (30) days notice to LESSOR prior to cancellation or material change.

x.k. The LESSEE shall furnish Certificates of Insurance to the Employee Relations Department prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the LESSOR is

named as and additional insured and that the LESSEE has obtained insurance in the type, amount and classification required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior notice to the LESSOR.

13.3 Failure on the part of the LESSEE to obtain and maintain all required insurance coverage is a material breach upon which the LESSOR may, in its sole discretion, immediately suspend LESSEE'S performance or terminate this Agreement.

13.4 Indemnification and Hold Harmless. To the fullest extent permitted by Laws and Regulations, the LESSEE shall indemnify and hold harmless the LESSOR and its consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury and (b) is caused in whole or in part by any willful or negligent act or omission of LESSEE, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

13.5 In any and all claims against the LESSOR or any of its consultants, agents, or employees by any employee of LESSEE, and subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for LESSEE or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

#### ARTICLE 14

14.1 TERMINATION LESSOR may, by written notice to LESSEE, terminate the whole or any part of this Agreement if, in the judgment of the City Manager:

- a) LESSEE has materially breached any portion of this Agreement;
- b) LESSEE fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement;
- c) LESSEE has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by the LESSOR;
- d) Insolvency of LESSEE. LESSEE shall be deemed insolvent if it has ceased to pay its debts for at least sixty days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not LESSEE is insolvent within the meaning of such laws;
- e) There has been a filing of a voluntary or involuntary petition regarding LESSEE under the Federal Bankruptcy Code;
- f) There has been the appointment of a Receiver or Trustee for LESSEE;
- g) There has been an execution by LESSEE of a general assignment for the benefit of creditors.

If, after LESSOR has given notice of termination under the provisions

Hereunder, if it is determined by LESSOR that LESSEE was not in default under these provisions, or that the default was excusable under these provisions, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.2 (Termination for Convenience).

The rights and remedies of LESSOR provided in this Paragraph 14.1 are non-exclusive and cumulative.

**14.2 Termination for Convenience.** This Agreement, may be terminated, when such action is deemed by LESSOR to be in its best interest. Termination shall be effected by delivery to LESSEE of a notice of termination specifying the extent to which performance of Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than ten (10) days after the notice is sent.

After receipt of a notice of termination, LESSEE shall submit its termination claim and invoice to LESSOR, in the form and with any certifications as may be prescribed by LESSOR. Such claim and invoice shall be submitted promptly, but not later than three months from the effective date of termination. Upon failure by LESSEE to submit its termination claim and invoice within the time allowed, LESSOR may determine on the basis of the information available to

the LESSOR, the amount, if any, due to LESSEE in respect to the termination, and such determination shall be final. When such determination is made, LESSOR shall pay LESSEE the amount so determined.

**14.3 Termination by LESSEE.** This Agreement may be terminated by the LESSEE upon thirty (30) days prior written notice to the LESSOR in the event of substantial failure by the LESSOR to perform in accordance with the terms of the Agreement through no fault of the Professional. It may also be terminated by the LESSOR, with or without cause, upon thirty (30) days written notice to the LESSEE.

The LESSEE shall be paid for services actually rendered to the date of termination.

**14.4 NOTICE** -Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

Cc: City Attorney

Notice as to Professional shall be to:

Robert Maguire  
2001 Granada Blvd.  
Coral Gables, FL 33134

## ARTICLE 15

**15.1 LESSOR Policy Regarding Conduct.** The Lessee, their employees, agents and subcontractors must abide by the LESSOR'S policies regarding conduct. Discrimination, harassment, and/or violations of LESSOR policies will

not be tolerated and are grounds for termination of the contract without harm to the LESSOR or its employees.

#### ARTICLE 16

16.1 PAYMENT OF TAXES AND OTHER OBLIGATIONS: The LESSEE shall pay any personal property tax or any other obligations assessed against the LESSEE or his personal property on the premises promptly, or if paid by the LESSOR, shall reimburse the LESSOR immediately upon demand.

#### ARTICLE 17

17.1 FACILITY REPAIRS, ALTERATIONS AND ADDITIONS BY THE LESSOR: The LESSOR shall have the absolute right, without limitations, to make any repairs, alterations, additions to any structures and facilities at or near the premises, including the facilities leased under this agreement, free from any and all liability to the LESSEE for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions.

17.2 In the event that the LESSEE operations hereunder are substantially interrupted or halted by virtue of the exercise of the LESSOR of its rights hereunder:

- A. The rent guarantee shall cease for the term of the interruption; and
- B. The term of this agreement, at LESSEE'S option, may be extended by a period of time equal to the length of the interruption; and
- C. If the LESSEE'S operations are interrupted for a period of at least sixty (60) days, the LESSEE shall have the option, any time thereafter, to cancel this agreement and receive a refund of any deposits due at that time.

17.3 UNCONTROLLABLE FORCES -Neither the LESSOR nor LESSEE shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

17.4 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of

reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### ARTICLE 18

**18.1 TERMINATION OF CONTRACT:** The LESSEE, with fifteen (15) calendar days following the termination of this agreement, shall remove all his personal property. Any personal property of the LESSEE not removed in accordance with this article shall constitute a gratuitous transfer of title thereof to the LESSOR for whatever disposition is deemed to be in the best interest of the LESSOR. The LESSOR shall not be liable to the LESSEE for safekeeping of the LESSEE'S personal property.

#### ARTICLE 19

**19.1 INDULGENCES:** Indulgences granted with regard to breach or failure to perform under any provisions of this agreement or amendments to this agreement, either initial occurrence or any time thereafter, shall not constitute a waiver of the rights of the LESSOR under this agreement.

#### ARTICLE 20

**20.1 REMEDIES:** Remedies provided under this agreement shall not be deemed as exclusive and shall not exclude any remedy otherwise provided by law. The exercise of any remedy under this agreement shall not preclude the LESSOR from exercising any other rights under this agreement or under the law.

#### ARTICLE 21

**21.1 MODIFICATION** - This Agreement may not be amended or modified unless in writing and signed by both parties.

#### ARTICLE 22

**22.1 COMPLIANCE WITH LAWS**- In performance of the services, the LESSEE will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the LESSEE to obtain and maintain, at no cost to the LESSOR, any and all license and permits required to complete the services provided pursuant to this Agreement.

22.2 CONFLICT OF INTEREST LESSEE covenants that no person employed by the LESSEE which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the LESSOR. LESSEE further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of LESSEE or its employees must be disclosed in writing to LESSOR.

22.3 LESSEE is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

### ARTICLE 23

23.1 FEDERAL AND STATE TAXES - The LESSOR is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the LESSOR will provide an exemption certificate to the LESSEE. The LESSEE shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the LESSOR, nor shall the LESSEE be authorized to use the City's Tax Exemption Number in securing such materials.

### ARTICLE 24

24.1 SUCCESSORS AND ASSIGNS - The LESSOR and the LESSEE each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. The LESSEE shall not assign this Agreement without the express written approval of the LESSOR via executed amendment.

### ARTICLE 25

25.1 CONTINGENT FEES - The LESSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the LESSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the LESSEE, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

## ARTICLE 26

26.1 COUNTERPARTS - This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

## ARTICLE 27

27.1 WAIVER - A waiver by either the LESSOR or the LESSEE of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## ARTICLE 28

28.1 SEVERABILITY, SURVIVAL - If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

## ARTICLE 29

29.1 GOVERNING LAW AND VENUE - The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

29.2 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

29.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

## ARTICLE 30

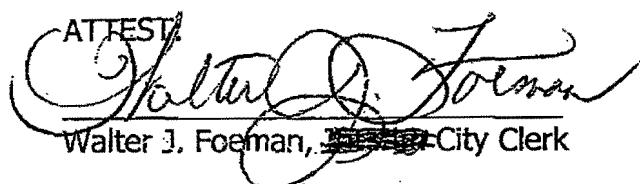
30.1 TIME IS OF THE ESSENCE- If any anticipated or actual delays arise, LESSEE shall immediately so notify the LESSOR. Regardless of notice if services or deliveries are not made at the time agreed upon, the LESSOR may, at its sole discretion, terminate this Agreement and proceed pursuant to Paragraph 14.1(Termination by Default).

## ARTICLE 31

31 HEADINGS - The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

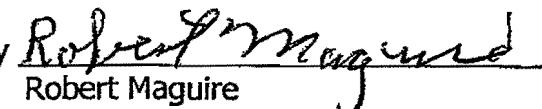
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CITY OF CORAL GABLES

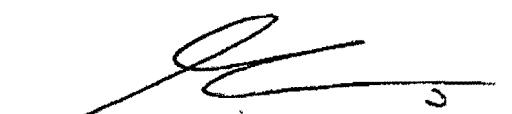
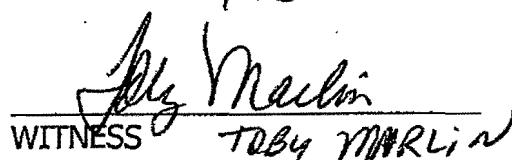
ATTEST:  
  
Walter J. Foeman, ~~City Clerk~~ City Clerk

by:   
David L. Brown, City Manager

AS TO LESSEE:

by   
Robert Maguire

ATTEST:

  
WITNESS Gary R. Martin  
  
WITNESS Toby Marlin

APROVED AS TO FORM:

  
Elizabeth Hernandez, City Attorney

## SCHEDULE "A"

### Equipment List for Granada Snack Shop 2001 Granada Blvd., Coral Gables, FL

Chairs and tables for \_\_\_\_\_ seating and \_\_\_\_\_ extra chairs (48 chairs)  
sugar bowls, napkin holders, salt and pepper shakers (ok)

~~cigarette machine (on lease)~~

counter with 8 counter stools

*R77*

3 compartment glass sink

hand sink with SS stand

soda and coke dispenser with Scotsman ice bin (not refrigerated) (no)

2 hole ice cream box kelvenator (no)

SS stand with register (no)

8 ft. 2 shelve SS Counter

4 ft. wall hung pie case, 2 shelf SS soda, glasses and dishes

2 toast master, 2 hole toasters (no)

1 malted milk mixer

~~2 hole salad bar, cold storage bottom (not working) (?)~~

~~2 burner stove and 3 E griddle on 8F SS counter (?)~~

*R77*

1 hood with Ansec System

1 door upright refrigerator McCall

1 Cecilware Deep Fryer

### BACK ROOM

Formica cabinet with doors

Alum. pots, pans, cups, saucers, plates and dishes

Built in dishwasher single tray Jackson

3 compartment kitchen sink

Commercial 2 door refrigerator Challenger

Storage Shelving

Coffee Maker 3 burner (Rental)

### BACK ENTRANCE

1 ice maker Whirlpool – Scotsman

Norge Refrigerator/Freezer Apt. Size – GE

### STORAGE ROOM

1 US slicer (not working)

~~1 GE Chest Freezer (not working)~~

4 Clothes Locker – 1

~~1 Lemonade Dispenser (no)~~

*R77*

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. R-2003-150

A RESOLUTION TO WAIVE THE PUBLIC BID PROCESS PURSUANT TO SECTION 2-231, CITY CODE AND TO AUTHORIZE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH ROBERT MCGUIRE OF BURGER BOB'S FOR OPERATION OF THE GRANADA GOLF COURSE SNACK SHOP FACILITY FOR A PERIOD OF THREE YEARS WITH OPTIONAL TWO, ONE-YEAR EXTENSIONS.

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

Section 1. That the City Manager is hereby authorized to negotiate and execute a Professional Services Agreement with Robert McGuire to operate the Granada Golf Course Snack Shop Concession Operation resulting in revenues of \$2,100.00 per month, \$25,200.00 per year.

Section 2. That the executed Agreement shall be made as part of this resolution and be kept on file in the Office of the City Clerk.

Section 3. Said Resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS TWENTY SIXTH DAY OF AUGUST, A.D., 2003.

(Motion: Cabrera/Second: Anderson)  
(5/0 vote)

DONALD D. SLESNICK II  
MAYOR

ATTEST:

WALTER J. FOEMAN  
INTERIM CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ  
CITY ATTORNEY