

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2022-46**

A RESOLUTION OF THE CITY COMMISSION ACCEPTING THE RECOMMENDATION TO BEGIN THE COUNTRY CLUB EMPLOYEE HIRING PROCESS AND TO WAIVE THE COMPETITIVE PROCESS OF THE PROCUREMENT CODE FOR ALL PURCHASES RELATED TO THE CORAL GABLES COUNTRY CLUB AS SPECIAL PROCUREMENT/BID WAIVER, PURSUANT TO SECTION 2-691 OF THE CITY'S PROCUREMENT CODE.

**WHEREAS**, at the January 25, 2022, Commission meeting, the Commission approved the decision to engage the Community Recreation Department for the management of the Country Club pursuant to Resolution 2022-21; and

**WHEREAS**, the Community Recreation Department must hire additional staff for the Country Club operation and due to the anticipated start of the operations on May 2022, approval to begin the hiring process is being requested so the necessary employees can expeditiously be put in place; and

**WHEREAS**, due to the urgency and the number of critical matters that must be addressed, a bid waiver (*BW 2022-047*) is also being requested so the necessary supplies, equipment and services can expeditiously be put in place; and

**WHEREAS**, the expectation is for the City to assume the management of the facility and all operations by May 2022; and

**WHEREAS**, this waiver will cover the initial twelve (12) month management period to allow Community Recreation to directly purchase all goods, supplies and equipment, engage vendors for services and facilitate any necessary leases for the continuity of services; and

**WHEREAS**, Section 2-691 of the Procurement Code entitled "Special Procurement/Bid Waiver" authorizes the Procurement Officer to initiate a special procurement/bid waiver when an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposal contrary to the public interest; and

**WHEREAS**, Section 2-585 of the Procurement Code, entitled "Authority" authorizes the City Manager to delegate authority to the Procurement Officer to administer and make recommendations on contract awards;

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

**SECTION 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

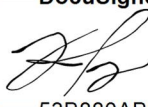
**SECTION 2.** That the City Commission accepts this recommendation and authorizes the City Manager to begin the hiring process for additional staff for the Country Club operation and waive the competitive process for the purchase of all goods, supplies and equipment, the engagement of vendors for services and any leases necessary for the continuity of services in amount not to exceed the available budget for a twelve (12) month period, pursuant to Section 2-691 of the City’s Procurement Code.

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

PASSED AND ADOPTED THIS FIFTEENTH DAY OF FEBRUARY, A.D., 2022.


(Moved: Anderson / Seconded: Menendez)  
(Yeas: Fors, Jr., Mena, Menendez, Anderson, Lago)  
(Unanimous: 5-o Vote)  
(Agenda Item: I-2)

APPROVED:


DocuSigned by:  
  
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VINCE LAGO  
MAYOR

ATTEST:

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BILLY Y. URQUIZA  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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MIRIAM SOLER RAMOS  
CITY ATTORNEY

## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2022, is effective as of 5/31/2022, 2022 (the “Effective Date”), between the City of Coral Gables (the “City”), a municipal corporation of the State of Florida, having its principal address at 405 Biltmore Way, Coral Gables, Florida 33134, and Fresh AN LLC, a limited liability company of the State of Florida, having its principal address at 9963 SW 157 Street, Miami FL 33157 (“Concessionaire”).

WHEREAS, the City owns that certain real property located at 997 North Greenway Drive, Coral Gables, Florida 33134 now known as the “Coral Gables Golf & Country Club” (the “Country Club”) which had been managed and operated by a private operator from late 2009 until May 2, 2022; and

WHEREAS, going forward, the City intends to manage and operate the Country Club through its Community Recreation Department with the café area located in the Country Club being operated through this Concession Agreement; and

WHEREAS, pursuant to Resolution No. 2022-46, the City Commission waived the competitive process for, among other things, the engagement of vendors for services and any leases necessary for the continuity of services; and

WHEREAS, the City has agreed to grant Concessionaire the exclusive right to manage the food and beverage service at the café area and the non-exclusive use of certain additional areas, including the kitchen and restroom area, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing, the promises and mutual covenants set forth in this Concession Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein as if repeated in their entirety.

### Section 2. Term.

2.1 This Agreement shall be for an initial term of one (1) year, commencing on a date mutually agreed upon by the parties for the commencement of food and beverage service to the public by Concessionaire at the café area (the “Commencement Date”) and ending one year following the Commencement Date (the “Initial Term”).

2.2 Provided that Concessionaire is not in default under the Agreement, the Concessionaire shall have the option of negotiating terms and conditions for one (1) additional five (5) year term (the “Renewal Term” and collectively with the Initial Term, the “Term”), subject to the approval of the City Commission, exercisable by providing written notice to the City Manager or his or her designee of such intent to negotiate terms for a Renewal Term, which notice shall be given no later than six (6) months prior to the expiration of the Initial Term. If Concessionaire and the City Manager or his or her designee reach agreement on essential terms and conditions for a Renewal Term, the City Manager or his or her designee shall place an item

requesting approval of the additional five (5) year term on the next available agenda for a regularly scheduled City Commission meeting.

Section 3. Café Area(s) and Shared Space. The City hereby grants to Concessionaire the exclusive right, during the Term, to prepare, or cause to be prepared, and provide prepared and/or prepackaged food and beverage service, as described herein, in the café area located in the Country Club as described and delineated in the shaded areas shown on **Exhibit A** (the “Café Area”) under the terms and conditions of this Agreement. Additionally, Concessionaire will have the non-exclusive use of additional areas within the Country Club that include the kitchen and restrooms (the “Shared Space”), as depicted on **Exhibit A**. Concessionaire acknowledges and agrees that the Shared Space, specifically, the kitchen, may also be used by the City and/or third-party caterers in connection with events to be held in the event space of the Country Club.

Section 4. Uses.

4.1 The Concessionaire shall procure, prepare, or cause to be prepared, and provide prepared and prepackaged food and beverage service, including, but not limited to meal items, non-alcoholic beverages, alcoholic beverages (beer and wine only), snacks, ice cream and similar items according to the following conditions:

- A. The Concessionaire will maintain a standard menu with prices that will be preapproved, in writing, by the City Manager or his or her designee as those set forth in the attached **Exhibit B**. The City herein approves the types of food and beverages, and prices for same, as set forth in **Exhibit B**. Any amendments to **Exhibit B**, whether as to type of food and beverages to be sold, or as to changes in prices for same, must be approved, in writing, by the City Manager or his or her designee prior to such changes being implemented within the Café Area.
- B. The Concessionaire will provide alternative menu items such as vegetarian and gluten-free options, if viable.
- C. The Concessionaire will provide a reduced-price kid’s menu that will be offered to the Community Recreation Department’s Country Club Camp participants which will be preapproved, in writing, by the City Manager or his or her designee.
- D. The City’s Country Club memberships will include discounted incentives for member food and beverage purchases which may not exceed 10% of their total food and beverage order at the café. As set forth in Section 6, Concessionaire shall be credited the total amount of discounts for purposes of calculating the monthly compensation owed to the Concessionaire.
- E. The Concessionaire shall use products to serve food and beverage that are environmentally friendly. Specifically, the use or distribution of expanded polystyrene, single-use plastic bags, single-use plastic beverage straws and single-use plastic stirrers shall be prohibited, and Concessionaire shall at all times abide by Sections 2-730 and 2-731 of the City of Coral Gables City Code.
- F. While the City will obtain and hold the appropriate license food service establishment license, the Concessionaire shall meet all applicable federal, state, and local regulations governing concession food service, the Florida Department of Health, Food Safety and

Sanitation regulations, the Department of Business and Professional Regulation (DBPR) mandates, including inspection and regulation of food service establishments in Florida under Chapter 509, Florida Statutes, and Florida Administrative Code, Rule 61C-4. For additional information, visit websites: Florida Department of Health: <http://www.floridahealth.gov/> and Department of Business and Professional Regulation: <http://www.myfloridalicense.com/dbpr/>.

- G. The Concessionaire shall meet inspection standards set by the Community Recreation Department, Florida DBPR Routine Food Inspections, and the Fire Marshal. If either the Community Recreation Department, DBPR or the Fire Marshal report a violation, the Concessionaire will correct the violation within thirty (30) days or prior to the next routine inspection whichever is sooner. For more information, please visit the website: <http://www.myfloridalicense.com/dbpr/index.html>.
- H. If the City and/or Concessionaire shall be warned, cited, or fined in connection with any violation or potential violation of any rules and/or regulations regarding the City's food service establishment license associated with the Café Area or other shared spaces at the Country Club, Concessionaire shall take any and all actions to correct such violation(s) and shall be responsible for any fines and/or fees associated with any such violation(s). Additionally, any such violation(s) of the applicable laws or regulations regarding food service which are not timely corrected shall be grounds for termination for cause of this Agreement.
- I. The Concessionaire shall ensure that at least one supervisory employee possesses a Food Service Management Certification. In addition, any Concessionaire staff member that will be preparing or serving food must also have a food handler certification.
- J. Alcoholic Beverage Requirements- The Concessionaire may sell alcoholic beverages which shall be limited to beer and wine. The Concessionaire shall comply with the following:
  - 1. The City shall obtain an alcoholic beverage license from DBPR, Division of Alcoholic Beverages and Tobacco before Concessionaire may sell any alcoholic beverage at the Café Area and at other spaces in the Country Club;
  - 2. The Concessionaire will be responsible for complying with Chapters 561, 562, 563 and 564, Florida Statutes, and Rule 61A-3, Florida Administrative Code, the Division's Operations Manual, and Miami-Dade County Ordinances that regulate alcoholic beverage licenses.
  - 3. Before starting to serve alcoholic beverages under the City's alcoholic beverage license, Concessionaire shall submit a written plan of action, including hours of service and control methods, to the City Manager or his designee for approval.
  - 4. If the City and/or Concessionaire shall be warned, cited, or fined in connection with any violation or potential violation of any rules and/or regulations regarding the City's alcoholic beverage license associated with the Café Area and other shared spaces at the Country Club, Concessionaire shall take any and all actions to correct such violation(s) and shall be responsible for any fines and/or fees associated with any such violation(s). Additionally, any such violation(s) of the applicable laws or regulations regarding alcoholic beverage

which are not timely corrected shall be grounds for termination for cause of this Agreement.

- K. The Concessionaire may be permitted, at the City's discretion, to extend food and beverage services to other spaces at the Country Club for the Community Recreation Department's special events and programming.
- L. The Concessionaire will provide supervisory service during special events over the kitchen area and will be compensated through a separate fee by the contracted caterer or renter/client to ensure that the kitchen area is properly operated and cleaned after each permitted third-party catered event.

4.2 Food and beverage services shall be offered daily (Monday through Sunday) to patrons from 7:00 a.m. to 8:00 p.m. with a schedule of closure for holidays and any reduced holiday hours to be approved in writing by the City Manager or his or her designee; provided, however, that if Concessionaire can show, to the City Manager or his or designee's reasonable satisfaction, that, if either an increase or decrease in demand for such service exists in the Café Area, then, in that event, Concessionaire may request, which request shall be subject to the City Manager's or his or her designee's prior written consent, an increase or decrease, in the hours of operation.

The City reserves the right to temporarily close the building including the Café area for repairs, maintenance, or renovations for not more than seven (7) consecutive days and not more than two (2) periods of seven (7) consecutive days in any calendar year with advanced 30-days' notice unless the repairs are due to Force Majeure or any other emergency or life safety situations which may require immediate attention.

4.3 Because the parties agree and acknowledge that the provision of food and beverage services are a vital and principal component of this Agreement, there shall be no interruption in Concessionaire's provision of food and beverage services at any time during the Term (except due to temporary City closures for repairs, maintenance, or renovations or events of Force Majeure, as defined herein).

4.4 Concessionaire shall obtain, at its sole cost and expense, any Business Tax Receipts (BTRs) required by applicable City regulations, as may be amended from time to time.

4.5 The City shall provide and maintain all point-of-sale hardware and software equipment necessary to process food and beverage sales transactions in the Café Area and all processing fees associated with such point-of-sale system shall be borne by the City. All food and beverage sales shall be recorded by Concessionaire's personnel using the City's point-of-sale equipment and software. Concessionaire shall be responsible for daily reconciliation of all sales and must comply with the Community Recreation Department's Financial Policies and Procedures No. 4.05- Handling of Funds as set forth in Exhibit D. Any cash or checks collected by Concessionaire shall be turned over to the City as part of the daily reconciliation and the City shall handle the deposit of such cash and checks, with the exception of tips which belong to the tipped employee per the Fair Labor Standards Act

4.6 The Café Area shall be operated under a name mutually agreed to in writing by the parties. Concessionaire understands and agrees that any such name, including any branding or logos associated with such name, shall be the sole and exclusive property of the City and shall not be used without the City's prior written consent. Moreover, upon expiration or termination of this Agreement, the City shall have all rights to continue using such name in its sole discretion.

Section 5. Furniture and Equipment. The City agrees to purchase certain furniture and equipment to facilitate the operation of the Café Area ("Additional City-Owned Furniture and Equipment"). Concessionaire shall identify and procure the Additional City-Owned Furniture and Equipment, subject to the written approval of the City Manager or his or her designee, including approval of the purchase price for each item, but the total purchase price shall not exceed \$125,000.00. Upon the purchase of the Additional City-Owned Furniture and Equipment, Concessionaire must provide written documentation evidencing the total amount paid by Concessionaire which amount the City shall reimburse in installments as set forth more fully in Section 6. For avoidance of doubt, the Additional City-Owned Furniture and Equipment shall at all times be owned by the City and shall not be removed by Concessionaire at any time, including upon expiration or termination of the Term and/or this Agreement. The Concessionaire will provide the City with any warranty information associated with the Additional City-Owned Furniture and Equipment. The Additional City-Owned Furniture and Equipment will be tagged as City assets by the Procurement Division. Once warranties expire for the Additional City-Owned Furniture and Equipment purchased by the Concessionaire, the Public Works Facilities Operations Division will use City-authorized vendors to provide any on-going maintenance necessary for the Additional City-Owned Furniture and Equipment.

Section 6. Compensation. At the end of each month, the City shall review the point-of-sale transaction records and any and all gross revenues collected from all sources of revenue by the Concessionaire. The City shall run a report to determine the total monthly Gross Revenues (including a credit for any discounts provided under section 4.1(D)), less any sales taxes (the "Monthly Gross Revenues Amount"). By the seventh (7<sup>th</sup>) business day of the following month, the City, shall remit to Concessionaire, via wire transfer, an amount equal to seventy-five percent (75%) of the Monthly Gross Revenues Amount. The City will file and submit payment to the Florida Department of Revenue for all sales taxes due as a result of the Gross Revenues collected by the Concessionaire.

Section 7. Reimbursement of Additional City-Owned Furniture and Equipment. The City agrees to make monthly reimbursement payments to Concessionaire for the full and actual purchase price paid by Concessionaire for the Additional City-Owned Furniture and Equipment (the "Reimbursement Payment"). Accordingly, along with payment of 75% of the Monthly Gross Revenues Amount, the City shall remit the remainder of the Monthly Gross Revenues Amount toward the Reimbursement Payment, until the full amount of the Reimbursement Payment has been satisfied. If the Reimbursement Payment has not been paid in full upon the expiration or termination of the Term, then, within thirty (30) days of such expiration or termination, the City shall pay to Concessionaire the remaining portion of the Reimbursement Payment.

Section 8. Employees and Independent Contractors.

8.1 In connection with the operation of the Café Area and use of the Shared Space, and in the performance of its responsibilities under this Agreement, Concessionaire shall select, train, and employ (or otherwise retain) such number of employees and/or independent contractors, as is reasonably necessary or appropriate for Concessionaire to satisfy its responsibilities hereunder. Each of Concessionaire's employees or independent contractors must satisfy a Level 2 background screening conducted by the City prior to working in the Café Area, Shared Space, or any other area of the Country Club. Concessionaire shall have the authority to hire, terminate, and discipline any and all personnel employed (or otherwise retained) by the Concessionaire. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may at its discretion and at any time, adjust or revise the terms and conditions relating to such employees and/or independent contractors. None of the employees or contractors of Concessionaire shall be deemed to be employees or contractors of the City for any purpose whatsoever. The Concessionaire shall ensure that at least one supervisory employee possesses a Food Service Management Certification. In addition, any Concessionaire staff member that will be preparing or serving food must also have a food handler certification.

8.2 Any complaints by the City regarding Concessionaire's personnel violating a City policy or otherwise engaging in unacceptable conduct shall be reported to Concessionaire who shall be responsible for any discipline or other action Concessionaire deems appropriate.

8.3 To the extent not already included in any other indemnification provision in this Agreement, and to the fullest extent permitted by laws and regulations, Concessionaire shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, 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, resulting from, or in connection with, any claims by Concessionaire's employees or independent contractors related to compensation, benefits, payment of wages, including overtime wages, and any and all other employment-related claims arising, directly or indirectly, out of, or from, or on account of, Concessionaire's operation of the Café Area or occasioned in whole or in part through the use of the Café Area or Shared Space.

Section 9. Utilities. The City shall maintain all utilities, including without limitation, water, sewer, gas, electricity, and any other utility service furnished to the Café Area and Shared Space during the Term.

Section 10. Condition of the Café Area and Shared Space. Concessionaire understands and acknowledges that it has inspected the Café Area and Shared Space and enters into this Agreement with full knowledge of the physical condition and available equipment and furniture and the suitability of the Café Area and Shared Space for the intended food and beverage service to be provided by Concessionaire.

Section 11. Maintenance and Repair; Alterations, and Signage.

11.1 The Café Area and the kitchen in the Shared Space shall at all times be maintained by Concessionaire in a clean and sanitary manner. Without limitation of the foregoing,



Concessionaire shall ensure that all equipment and areas used for the preparation of food shall be properly cleaned. The City shall be responsible for any repair and maintenance required in the Café Area and Shared Space, except that Concessionaire shall be responsible for any repair or maintenance required for any of Concessionaire's equipment and other personal property.

11.2 Concessionaire shall not make any alterations or improvements to the Café Area or Shared Space without the City Manager's or his or her designee's prior written consent which may be withheld or conditioned in the City's sole and absolute discretion.

11.3 Concessionaire shall not erect or install any signs, lettering or placards in or around the Café Area or Shared Space without the prior written consent of the City Manager or his or her designee. The form, color, materials, design, location, and dimensions of any sign will be subject to the City's prior written approval, not to be unreasonably withheld in its capacity as owner of the Country Club, the Café Area, and the Shared Space, not in its regulatory capacity, and such signage shall comply with all applicable local governmental and any other regulations, laws, orders, or ordinances. Concessionaire shall, at its sole cost and expense, remove all signage at the expiration or earlier termination of the Term and repair any damage to the Café Area, Shared Space, and/or the Country Club caused by the installation and removal of such signage.

Section 12. Insurance. Prior to the Effective Date, Concessionaire shall provide documented proof of insurance and Concessionaire shall, at its sole cost and expense, throughout the Term, comply with the insurance requirements set forth in **Exhibit C.**

Section 13. Independent Contractor. Concessionaire acknowledges entering into this Agreement as an independent contractor, and the Concessionaire shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Concessionaire's services, or those of employees of the Concessionaire. The City shall not withhold from sums payable to the Concessionaire, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The Concessionaire, its employees or agents, will not be considered as employees of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to City employees. The Concessionaire is an independent contractor. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Concessionaire. The Concessionaire has no authority to bind the City to any promise, debt, default, or undertaking. The Concessionaire and the City agree that it is not intended that any provision of the Agreement establish a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

Section 14. Indemnification. In consideration of the City granting to Concessionaire the exclusive right to manage the food and beverage service at the Café Area and the non-exclusive use of the Shared Space, to the fullest extent permitted by laws and regulations, Concessionaire shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, 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, resulting from, or in connection with, loss of life, bodily or personal injury or property damage arising, directly or indirectly out of, or from, or on account of, any accident or other occurrence in, upon, at or from the Café Area or the Shard Space or occasioned in whole or in part through the use of the Café Area or the Shared Space, including without limitation, (i) any willful, intentional, reckless, or negligent act or omission of Concessionaire, or its employees, agents, contractors, invitees, guests or patrons, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and Concessionaire's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Concessionaire is alleged to have acted willfully, intentionally, recklessly, or negligently under this Agreement or in its use of the Café Area or the Shared Space.

Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

Section 15. Compliance with Applicable Law. In performance of the services, Concessionaire shall comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards, including but not limited to, compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements. It shall be the responsibility of the Concessionaire to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement. Concessionaire warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. Concessionaire shall indemnify, defend, and hold harmless City, its officers and employees from and against any sanctions and any other liability which may be assessed against Concessionaire or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

Section 16. Equal Opportunity. It is understood that Concessionaire shall not discriminate against any employee in the performance or the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of race, creed, color, national origin, age, disability, sex, gender identity, sexual orientation, or any other legally protected class. Discrimination, harassment, and/or violations of this clause and City non-discrimination policies will not be tolerated and are grounds for immediate termination of the contract without liability to the City or its employees.

Section 17. Policy Regarding Conduct. All contractors, including Concessionaire, its employees, agents, and subcontractors, must abide by the City's policies regarding conduct. Violations of City policies will not be tolerated and if not timely corrected are grounds for termination of this Agreement without liability to the City or its employees.

Section 18. Default and Termination.

18.1 Termination for Convenience. The City may terminate this Agreement for convenience, without cause, at any time by providing 180 days' written notice to Concessionaire. In the event of such termination for convenience, Concessionaire shall be paid any amounts due and owing as of the date of such termination, but Concessionaire shall not be entitled to any other compensation or damages from the City.

18.2 Events of Default. Concessionaire shall be in default of this Agreement if any one or more of the following events (sometimes called "Events of Default") shall occur:

- (1) if Concessionaire fails to operate the Café Area pursuant to Concessionaire's obligations under this Agreement; or
- (2) if default shall be made by Concessionaire in the performance of, or compliance with, any of the covenants, agreements, or terms or conditions contained in this Agreement, including without limitation, default by Concessionaire in compliance or non-compliance with any and all municipal or county ordinances, resolutions or codes and all state and federal statutes, rules and regulations now in force or which may hereafter be in force, and such default shall continue for a period of thirty (30) days following written notice from the City, except to the extent other time periods for performance are provided in this Agreement; or
- (3) if Concessionaire shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Concessionaire, or an assignment for the benefit of creditors or of all or any substantial part of Concessionaire's properties; or
- (4) if within ninety (90) days after commencement of any proceeding against Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other debtor's relief statute or law, such proceeding shall not have been dismissed, or stayed on appeal, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Concessionaire, of any trustee, receiver or liquidator of Concessionaire or of all or any substantial part of Concessionaire's properties, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated; or
- (5) if Concessionaire ceases the continual operation of the food and beverage service in the Café Area for seven (7) continuous days in any consecutive thirty-day period during the Term, unless prevented from operating the food and beverage service in the Café Area as a result of the occurrence of a Force Majeure Event.

18.3 Termination for Cause. In the Event of a Default, the City may, at its option, terminate this Agreement for cause. Upon the City's termination for cause, the Concessionaire will immediately remove itself and all related parties from the Café Area and Shared Space. The Concessionaire's continued occupancy of the Café Area or Shared Space after the City terminates this Agreement will constitute trespass and may be prosecuted. If after notice of termination for cause, it is determined for any reason that Concessionaire was not in default, the rights and obligations of the City shall be the same as though the termination had been a termination for convenience. In no event shall the City be liable to Concessionaire for lost profits on any services not performed, overhead, or any other type of consequential, special or indirect damages, and Concessionaire hereby waives same. Concessionaire may terminate this Agreement due to the City's failure to comply with the material terms of this Agreement after giving City thirty (30) days' notice of its default and an opportunity to cure.

Section 19. Surrender of Café Area and Shared Space. At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Café Area and Shared Space in the same condition as the Café Area and Shared Space were prior to the commencement of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all of its equipment and personal property upon seventy two hours (72) of receipt of written notice from the City Manager or his or her designee unless a longer time is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Café Area or Shared Space after termination of this Agreement and expiration of seventy two hour (72) period shall constitute trespass and may be prosecuted. In addition, Concessionaire shall pay to the City an amount equal to the average daily gross revenues for the Café Area over the most recent thirty-day period prior to the date of expiration or termination, per day as liquidated damages for such trespass and holding over.

Section 20. Force Majeure. Neither the City nor Concessionaire shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Force Majeure" 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, but shall not include financial inability of the Concessionaire. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by a Force Majeure, give written notice to the other party describing the circumstances and Force Majeure preventing continued performance of the obligations of this Agreement.

Section 21. Financial Records. Concessionaire shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Concessionaire 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. Concessionaire agrees that City, 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 during normal business hours. All such materials shall be maintained by Concessionaire at a location in Miami-Dade County, Florida; provided that if any such material is located outside Miami-Dade County, then, at City's option, Concessionaire shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy, or transcribe such material at such other location. In the event that an audit is conducted by Concessionaire specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Concessionaire, then Concessionaire shall file a copy of the audit report with the City's Auditor within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Section 22. Waiver of Consequential Damages. Concessionaire waives claims against the City for consequential damages arising from or related to this Agreement or its performance, including but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any service not performed by Concessionaire.

Section 23. Entire Agreement; Amendment. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written; pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

Section 24. Incorporation of Exhibits. All Exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

Section 25. Attorneys' Fees. In any legal proceeding between the City and Concessionaire seeking enforcement of or attempting to construe any of the terms and provisions of this Agreement, or in connection with the Café Area or Shared Space described herein, including, without limitation, insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including, without limitation, service of process, filing fees, court and court reporter costs, investigation costs, expert witness fees and the cost of any bonds, and reasonable attorneys' fees.

Section 26. Assignment. This Agreement may not be assigned by Concessionaire without the prior written consent of the City, which consent may be withheld or conditioned in the City's sole and absolute discretion. Any assignment or delegation of rights, duties or obligations hereunder, made by Concessionaire without the required prior written consent shall be void and of no effect. No such assignment shall be deemed to relieve Concessionaire from any liability or responsibility hereunder.

Section 27. Notices. All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand delivery or professional messenger service) to

either party or may be sent by registered or certified mail, with postage prepaid, return receipt requested or delivered by Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by facsimile or email transmission and addressed as follows:

If to Concessionaire, at:

Caldera Law PLLC  
c/o Michelle A. White, Esq.  
7293 NW 2<sup>nd</sup> Ave., Miami FL 33150  
michelle@caldera.law

If to the City, at:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida  
Attn: City Manager, piglesias@coralgables.com  
cc: City Attorney, cityattorney@coralgables.com

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. Either Party may change its address for purposes of this section by giving notice to the other Party as provided herein.

Section 28. Authority. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this document.

Section 29. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the internal laws of the State of Florida, venue in Miami-Dade County.

Section 30. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

Section 31. Severability. If any paragraph, section, sentence, clause or phrase contained in the Agreement shall become illegal, null or void, against public policy, or to otherwise be unenforceable, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, sections, sentences, clauses or phrases contained in the Agreement shall not be affected thereby.

Section 32. Waiver. The waiver of any breach of any provision hereunder by the City or Concessionaire shall not be deemed to be a waiver of any preceding or subsequent breach hereunder. No failure or delay of any party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.

Section 33. Counterparts. This Agreement may be executed by each of the Parties hereto in separate counterparts and have the same force and effect as if each of the Parties had executed it as a single document. Counterparts to this Agreement may be executed and delivered by facsimile or pdf./email transmission.

Section 34. PUBLIC RECORDS LAW, FLORIDA STATUTES CHAPTER 119. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Concessionaire acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Concessionaire also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Concessionaire agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**IF CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, [cityclerk@coralgables.com](mailto:cityclerk@coralgables.com), 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

Section 35. SOVEREIGN IMMUNITY. Concessionaire acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by Concessionaire against the City other than claims arising out of this Agreement. Specifically, Concessionaire acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Further, Concessionaire recognizes the City is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the City's exercise of that regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Concessionaire acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this

Agreement;

- c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or employees;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Concessionaire.

[SIGNATURES ON NEXT PAGE]



**CONCESSIONAIRE**

By: Veronique Youbi

Name: Veronique Youbi

Title: Manager

**CITY OF CORAL GABLES, a  
municipal corporation of the State of Florida**


By: Peter J. Iglesias  
City Manager

ATTEST:

Approved as to form and legal sufficiency

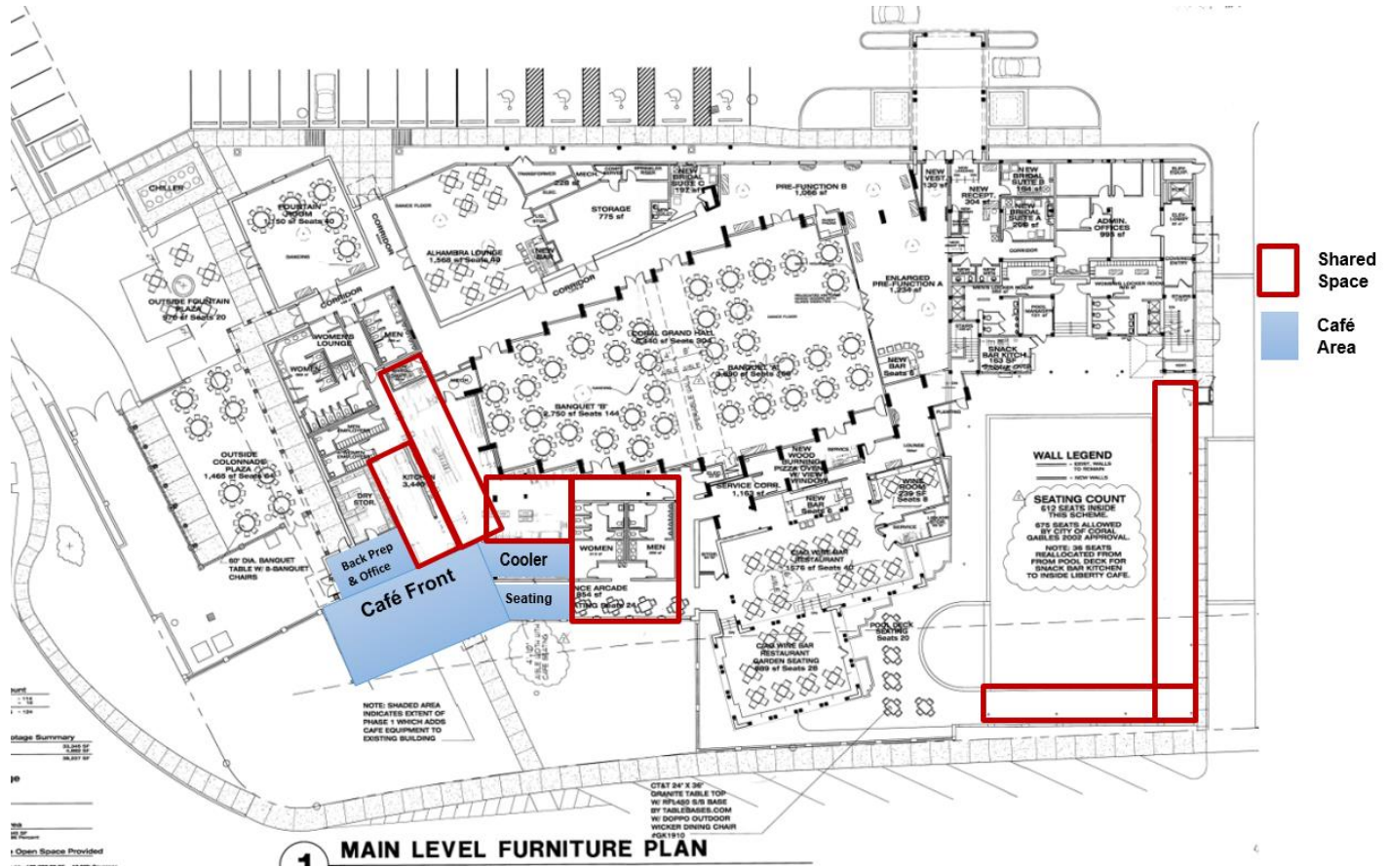
By: Billy Y. Urquia  
City Clerk

By: Miriam Soler Ramos  
City Attorney

DocuSigned by:  


# EXHIBIT A

## CAFÉ AREA - AND SHARED SPACE



**EXHIBIT B  
STANDARD MENU AND PRICES**

**Breakfast Menu**

2 eggs your choice	\$10.00
Vegetable omelet	\$14.00
Avocado toast & Goat Cheese	\$14.00
French Toast	\$14.00
Salmon Plate	\$16.00
Fruit Salad	\$7.00

**Add on items:**

Bacon	\$5.00
½ Avocado	\$5.00
Potatoes	\$5.00
Poached Egg (each)	\$3.00

**Bakery**

Croissant	\$3.95
Chocolate Croissant	\$4.25
Almond Croissant	\$4.95
Ham and Cheese Croissant	\$4.95
Toasted Bread Butter and Jam	\$3.75

## Lunch Menu

Eggs Mayo	\$6.00
Soup of the Day	\$9.75
Onion Soup	\$11.00
Small Cheese Raviolis	\$11.00
Florentine Poached Eggs	\$12.00
Salmon Tartare & Avocado	\$12.00
Quiche of the Day	\$13.75
Foie Gras	\$25.00

### Salads

Caesar with chicken	\$17.00
Goat Cheese	\$16.00
Islander	\$16.00

### Main

Penne Tomato & Basil	\$14.00
Chicken Supreme Mushroom Sauce	\$18.00
Grilled Salmon & Vegetables	\$21.00
Beef Tartare	\$17.00
Classic burger	\$18.00
Steak Filet & French Fries 6 oz.	\$29.75

**Sandwiches**

Croque Monsieur	\$14.00
Club Turkey	\$14.00
Club Salmon	\$14.00
Plate 3 Cheeses	\$12.00
Charcuterie Board	\$16.00

**Dessert**

Crepe	\$8.00
Chocolate Mousse	\$8.00
Crème Brulé	\$8.00
Baba au Rhum	\$8.00
Daily Special	\$8.00
Ice Cream or Sorbet 2 Scoops	\$6.75

**Coffee, Tea & Beverages**

All drinks can be hot or iced

Change of milk for soya or almond \$1, add a flavor (hazelnut, caramel, vanilla \$1.00)

Espresso	\$3.75
Cortado	\$3.95
Drip	\$3.50
Cappuccino	\$4.25
Latte	\$4.25
Gourmand Coffee	\$8.00
Hot Tea	\$4.25
Hot Chocolate	\$4.25
Fresh OJ	\$6.00
Arnold Palmer	\$6.00

Iced tea	\$6.00
Alain Milliat Juices	\$6.00
Sparkling Water	\$4.25
Still Water	\$4.25

**Wine**

Bottle of Champagne	\$65.00
Glass of Champagne	\$13.00
Bottle of Wine	\$27.00
Glass of Wine	\$7.00

**For children 10 or under**

Fixed-Price \$10 Choice of:

- Cheeseburger with fruits/or French fries
- Homemade Mac and Cheese
- Grilled chicken with Fruits/or French fries
- French toast with Fruits

## EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Concessionaire's indemnification of the City, and during the Term of this agreement, Concessionaire and any of its hired sub-Contractors shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and the City Attorney's Office.

Such programs and evidence of insurance shall be satisfactory to the City and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the City. All certificates of insurance or other forms evidencing coverage to the City must be acceptable to the City. The certificate holder should read, and all coverage shall be evidenced to:

City of Coral Gables, Risk Management Division  
Insurance Compliance  
Attn: David Ruiz, Risk Manager  
Email: druiz@coralgables.com;  
cityofcoralgables@ebix.com  
2151 Salzedo Street, 5<sup>th</sup> Floor  
Coral Gables, Florida 33134

The following documents must be provided to the City a certificate of insurance containing the following information: (i) issued to entity contracting with the City; (ii) evidencing the appropriate coverage; (iii) evidencing the required limits of liability required; (iv) evidencing that coverage is currently in force; and (v) language provided in the special provision section of the certificate of insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

Such certificates or other document evidencing all insurance coverage shall be delivered prior to operating on the Premises under this agreement. All insurance coverage evidenced to the City shall specifically identify this agreement and shall contain the express condition that the City is to be given written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy.

**A.** The Concessionaire (and any of its hired sub-Contractors) shall maintain during the Term of this Agreement, except as noted, the following insurance:

**1. Workers' Compensation and Employers Liability Insurance** covering all employees, its hired sub-Contractors, and/or volunteers of the Concessionaire and/or vendor engaged in the performance of this Agreement. The minimum limits of liability shall be in accordance with

applicable state and/or federal laws that may apply to workers' compensation insurance, with the following limits:

- (i) Workers' Compensation - Coverage A
- (ii) Statutory Limits (State of Florida or Federal Act)
- (iii) Employers' Liability - Coverage B
- (iv) \$1,000,000 Limit - Each Accident
- (v) \$1,000,000 Limit - Disease each Employee
- (vi) \$1,000,000 Limit - Disease Policy Limit

**2. Commercial General Liability Insurance** written on an occurrence basis including, but not to; coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

- (i) Each Occurrence Limit - \$1,000,000
- (ii) Fire Damage Limit (Damage to rented premises) - \$100,000
- (iii) Personal & Advertising Injury Limit - \$1,000,000
- (iv) General Aggregate Limit - \$2,000,000
- (v) Products & Completed Operations Aggregate Limit - \$2,000,000

**3. Liquor Liability-** written on an occurrence basis with limits of no less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate.

**4. Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles, with a combined single limit of liability for bodily injury and property damage of not less than: Combined Single Limit (Each Accident) - \$1,000,000.

**5. Crime Insurance** covering the City's monetary property committed by acts of employee dishonesty; forgery or alteration; theft, disappearance, and destruction; premises theft and outside robbery; computer fraud; robbery and safe burglary; money and securities; and securities deposited with others. Such coverage shall be written on a Contract Blanket Basis, in an amount no less than \$1,000,000 per loss with a deductible of no less than \$25,000.

All liability policies shall name the City as an additional insured on a primary and non-contributory basis.

All liability insurance policies (except for liquor liability) and workers compensation shall contain a waiver of subrogation endorsement in favor of the City.

All insurance policies evidenced to the City shall contain provisions and/or be endorsed so that the City will receive written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy that has evidenced to the City. The City will accept the State of Florida statutory notice provisions (including 10-day notice for cancellation due to non-payment of premium) provided such notice is provided to the City in the same manner it is provided to the first named insured, the Concessionaire (and/or its hired sub-Contractors)



**The standard cancellation language on a certificate of insurance does not meet this requirement.**

Notices of cancellation, non-renewal or material change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
P.O. Box 100085 - CE  
Duluth, GA 30096

Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the City. The City reserves the right to request a copy of the required policies directly from their insurance representative for review at any time.

## EXHIBIT D



**CITY OF CORAL GABLES  
COMMUNITY RECREATION DEPARTMENT  
ADMINISTRATIVE REGULATION**

<b>AR#:</b>	04.05		<b>EFF. DATE:</b>	6/12/01
<b>CHAPTER:</b>	04		<b>NEW:</b>	<b>XX</b>
<b>FILE:</b>	FINANCIAL POLICIES AND PROCEDURES		<b>REVISION:</b>	<b>5/17/2022</b>
<b>TOPIC:</b>	<b>HANDLING OF FUNDS</b>			
<b>APPROVED BY:</b>				

**PURPOSE:** All funds and revenue must be accounted for on a daily basis to ensure financial accountability and cash control.

**POLICY:** Division Managers/Supervisors will assign fund handling responsibility to personnel at their respective facilities. All funds and count sheets should be placed in secure bank bags and locked in a safe or secured area.

**DEFINITIONS:** *Cashier Count Sheet*-To ensure a correct cash drawer balance, the opening and closing staff completes a count sheet for individual drawer at the beginning and ending of each day. This document then should be forwarded to the site manager/supervisor verification of figures. These forms will be collected with all daily financial reports and filed on site for the fiscal year.

**PROCEDURE:**

1. Staff must count their bank at the beginning and ending of each shift to confirm their bank amounts are correct and log amounts on *Cashier Count Sheet*.
2. Staff must sign the bank count sheet at the beginning and ending of each shift and have a manager/supervisor sign off to confirm amount.
3. Any discrepancies should be reported to shift managers/supervisors immediately.
4. When receiving cash payment, staff will take proper amount and return proper change. All cash will be deposited in register or holding device.
5. Checks, refund receipts, and gift cards/vouchers will also be deposited in register or holding device.
6. When customers are paying with bills larger than \$20, bills will need to be checked with a counterfeit detection pen.
7. The Department will only accept company backed checks and will not accept personal checks as form of payment. All processed checks will be stamped with the bank stamp for deposit.
8. At the end of their work shift, each cashier will print a Daily Cash Journal log detailing the transactions they processed during the work shift.

9. Staff will reconcile the totaled contents of their cash drawer against the Daily Cash Journal log minus the beginning of day's starting bank. Any discrepancies (cash over/under) need to be reported to the manager/supervisor.
10. All remaining cash from transactions, Daily Cash Journal, and POS refund receipts will be placed into a banker's bag and deposited into the facility's drop safe.
11. At the end of the business day, the supervisor will proceed with the facility's daily reconcile and creating the deposit for pickup. All reports will be emailed to the Finance Department and a hard copy of all reports will be kept on site and filed daily.

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<b>TITLE</b>	Cafe Concession Agreement 5-26-2022-FINAL.pdf
<b>FILE NAME</b>	Cafe%20Concession...26-2022-FINAL.pdf
<b>DOCUMENT ID</b>	886ea1b6260bcba2a69c14cd451506ffe53deeb
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

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## Document History



SENT

**05 / 27 / 2022**

00:57:27 UTC

Sent for signature to Veronique Youbi (lyoubi@aol.com) from michelle.white10@gmail.com  
IP: 98.242.184.183



VIEWED

**05 / 27 / 2022**

01:06:15 UTC

Viewed by Veronique Youbi (lyoubi@aol.com)  
IP: 107.213.218.192



SIGNED

**05 / 27 / 2022**

01:07:00 UTC

Signed by Veronique Youbi (lyoubi@aol.com)  
IP: 107.213.218.192



COMPLETED

**05 / 27 / 2022**

01:07:00 UTC

The document has been completed.