

CITY OF MIAMI
OFFICE OF AUDITOR GENERAL



**AUDIT OF THE LEASE AGREEMENT BETWEEN
THE CITY OF MIAMI AND BAYSHORE
RESTAURANT MANAGEMENT CORPORATION
D/B/A MONTY'S RESTAURANT**

AUDIT NO. 04-013

Prepared By
Office of Auditor General

Victor I. Igwe, CPA, CIA
Auditor General

City of Miami

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Auditor General



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June 30, 2004

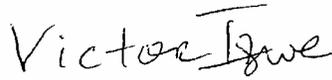
Honorable Members of the
City Commission
City of Miami
3500 Pan American Dr.
Coconut Grove, FL 33133-5504

Re: Audit of the Lease Agreement Between the City of Miami and Bayshore Restaurant Management Corporation d/b/a Monty's Restaurant.
Audit No. 04-013

In accordance with the provisions of Section 48 of the City Charter and Paragraph 16 of the Lease Agreement (Agreement), as amended and assigned, between the City and Bayshore Restaurant Management Corporation (BRMC), we have examined the financial records/accounts of BRMC. The audit was performed to ensure compliance with the Agreement between the City and BRMC. The Agreement provides for the management and operation of a restaurant, marina, rawbar, and retail stores, located on City owned water front property located on 2550 South Bayshore Drive, Coconut Grove, Florida.

The monthly percentage rental paid by BRMC during October 1, 2002, through September 30, 2003, to the City was based on BRMC's annual gross sales for the period October 1, 2001, through September 30, 2002. This audit verified the accuracy and correctness of the annual gross sales for the period October 1, 2001, through September 30, 2003.

Sincerely,



Victor I. Igwe, CPA, CIA
Auditor General
Office of Independent Auditor General

C: Joe Arriola, Chief Administrator/City Manager
Members of the Audit Advisory Committee
Linda M. Haskins, CPA, Chief Financial Officer/Deputy Chief Administrator
Alicia Cuervo-Schreiber, Chief Operating Officer
Larry M. Spring, Chief of Strategic Planning, Budgeting and Performance
Peter W. Korinis, Chief Information Officer
Maria Chiaro, Interim City Attorney
Priscilla A. Thompson, City Clerk
Donald M. Riedel, Director, Office of Citistat
Keith A. Carswell, Director, Economic Development department
Dania F. Carrillo, Director, Risk Management department
J. Scott Simpson, CPA, Director, Finance department
Steve Kneapler, President, Bayshore Restaurant Management Corporation
Audit Documentation File

**AUDIT OF
BAYSHORE RESTAURANT MANAGEMENT CORPORATION
D/B/A MONTY'S RESTAURANT
FOR THE PERIOD OCTOBER 1, 2001, THROUGH SEPTEMBER 30, 2003.**

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INTRODUCTION

On July 18, 1985, the City Commission passed and adopted Resolution Number 85-717, which approved the Agreement between Bayshore Properties, Inc. and the City. This Resolution combined two existing lease Agreements related to the property. The property is composed of a restaurant, marina, raw bar, and retail stores located on City owned waterfront property in the Coconut Grove area of the City.

The City Charter requires that any extension or modification to an existing lease of waterfront property be first approved by a majority of the voters of the City. On August 13, 1985, the modifications and extension of the lease Agreement were approved by a majority of the City voters. The term of the Agreement is for the period September 30, 1985, through May 31, 2035.

The Agreement provides that BRMC would develop, manage, and promote this property to prospective tenants in such a manner that would encourage public enjoyment, use, and participation so as to make the project financially feasible to both BRMC and the City of Miami.

As consideration for the lease of this City-owned waterfront property, BRMC is required to pay a percentage rent to the City calculated as follows:

- Eight (8) percent on all gross receipts up to \$1 million per lease year.
- Ten (10) percent on all gross receipts in excess of \$1 million per lease year.
- Fifteen (15) percent of gross receipts collected from dockage rental.
- Five (5) percent of gross receipts collected from the Stone Crabs Restaurant operation.

The amount to be paid each month in any given Lease year shall be equal to the annual gross sales, for the immediately preceding Lease year, multiplied by each applicable percentage rate provided in the Lease, divided by twelve (12). Therefore, the monthly percentage rental paid by BRMC during October 1, 2002, through September 30, 2003, to the City was based on BRMC's annual gross sales for the period October 1, 2001, through September 30, 2002. The monthly percentage rental paid by BRMC during October 1, 2003, through September 30, 2004, is based on BRMC's annual gross sales for the period October 1, 2002, through September 30, 2003. The monthly percentage rental fee due and payable by the first of each month, during October 1, 2002, through September 30, 2003, as determined by the Economic Development department (EDD), was \$64,808.63.

According to staff of the EDD, BRMC is currently (as of June 2004) in the process of being sold to new owners. The City and BRMC current and prospective owners are working with the State in order to resolve some open issues prior to closing the sale.

The EDD is responsible for monitoring the lease Agreement. This report describes the results of EDD's and BRMCs compliance with this lease Agreement.

SCOPE AND OBJECTIVES

As part of our oversight responsibilities as outlined in Section 48, City of Miami Charter, the Office of the Independent Auditor General (OIAG) performs financial and operational audits to determine the extent of compliance with provisions of contracts, programs, and/or lease Agreements between the City and private companies and/or other government entities. The scope of this audit focused primarily on whether Bayshore Restaurant Management Corporation (BRMC) d/b/a Monty's Restaurant complied with the contractual provisions of the Agreement between the City and BRMC. The audit also included examinations of various transactions to determine whether they were executed in accordance with governing provisions of City Codes/Charter, and other guidelines. The examination covered the period October 1, 2001, through September 30, 2003, and selected transactions prior and subsequent to this period. In general, the audit focused on the following six broad objectives:

- Determine whether the City and BRMC complied with the terms of the Agreement.
- Determine whether the insurance coverage was in compliance with the terms of the Agreement.
- Determine whether BRMC remitted the correct percent for each category of rent due to the City.
- Determine whether adequate internal controls were maintained.
- Verify whether rental remittances and other related transactions were recorded in the City's accounting system and deposited into the City's treasury.
- Other procedures as deemed necessary.

METHODOLOGY

We conducted our audit in accordance with Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States. To obtain an understanding of the internal controls, we interviewed appropriate personnel, reviewed applicable policies and procedures, and made observations to determine whether effective controls were in place. The audit methodology included the following:

- Obtained sufficient understanding of the internal control policies and procedures and determined the nature, timing and extent of substantive tests necessary and performed the required tests.
- Performed substantive testing consistent with the audit objectives.
- Drew conclusions based on the testing and made corresponding recommendations.

SUMMARY OF AUDIT FINDINGS

BAYSHORE RESTAURANT MANAGEMENT CORPORATION AND THE ECONOMIC DEVELOPMENT DEPARTMENT

UNTIMELY MONTHLY RENTAL PAYMENTS.

Paragraph 13 II (a) and (b) of the Agreement between the City and Bayshore Restaurant Management Corporation (BRMC) as described on page 1 of this report, stipulates the percentage rental fee to be paid to the City. The “Memorandum of Understanding” between the City and BRMC states that, “Company agrees that the Percentage Rental, as said term is defined in the Lease, shall be paid monthly on the first day of each month in advance during the term of the Lease.....”

However, in two prior audit reports (audit report number 02-008, dated December 14, 2001, and audit report number 03-004, dated July 1, 2003) relative to this lease Agreement, we disclosed that none of the monthly percentage rent payments to the City were made on a timely manner during the period October 1, 2000, through September 30, 2002, as required. The audit reports noted that late payments ranged from 7 to 96 days for the said period. Once again, our current year audit also disclosed that the total amounts due were paid to the City but none of the monthly percentage rent payments to the City were made on a timely manner during the period October 1, 2002, through September 30, 2003, as required. The late payments for the current year audit ranged from 49 to 158 days late.

Upon audit inquiry and review of pertinent records, we noted that no follow-up letters were sent to the President of BRMC during the audit period reminding BRMC to remit payments. BRMC is currently (as of June 2004) in the process of being sold to new owners. The City and BRMC’s current and prospective owners are working with the State in order to resolve some open issues prior to closing the sale.

LACK OF CITY MANAGER'S APPROVAL OF THE VALET PARKING OPERATION.

In our prior year's audit (audit report number 03-004, dated July 1, 2003) we noted that the approval of the City Manager relative to the operation of valet parking services within the confines of the leased Property was not obtained. In our current audit, we again noted that said approval is yet to be obtained. Such approval would ensure that the City's interest is properly protected, in the event of litigation claims arising from any accident relating to the valet parking operation.

LACK OF FORMAL WRITTEN AGREEMENT WITH MALL TENANTS.

In our prior year's audit report (audit report number 03-004, dated July 1, 2003); we disclosed that BRMC did not execute a written Agreement with 2 mall tenants. Our audit disclosed that the shopping mall, which is a part of this property, has a total of 15 rental spaces leased to 8 different companies. During the fiscal year ended September 30, 2003, BRMC's records indicated that it generated approximately \$195,493 in rental income. The City receives 10% of the rental income generated. Once again, we noted that BRMC did not execute a formal written Agreement with 2 mall tenants (One is the same tenant that was reported in audit report number 03-004, dated July 1, 2003). Additionally, a formal written Agreement signed by both parties provides an audit trail and verifies the amount of rent paid by the tenant.

DELINQUENT TAX LIABILITIES.

Section 10 of the Agreement between the City and Bayshore Restaurant Management Corporation (BRMC) requires BRMC to pay all taxes of any nature lawfully levied or assessed against the property and improvements, sales, rents or operations thereon, including, but not limited to, ad valorem taxes. The failure of BRMC to pay said taxes shall constitute grounds for the immediate cancellation of the Lease Agreement by the City. However, based on our review of certain records of the Miami Dade Property Appraiser (MDPA), BRMC is delinquent on payment of its 2002 and 2003 ad valorem taxes to the County Tax Collector for the property located at 2550 S Bayshore Drive, in a total amount of \$201,197.66. Further, a search of publicly recorded tax liens in Miami-Dade County disclosed a sales tax lien filed against BRMC by the Florida Department of Revenue (FDOR) in the amount of \$180,875.41. The status of said sales tax lien could not be confirmed, and a representative from the FDOR indicated to us that information regarding a business's sales tax status, except for publicly filed liens, is not considered public record. She indicated the publicly filed tax lien does not necessarily mean that the full balance of a lien is outstanding, and that BRMC is currently in "good standing" as far as sales tax payments to FDOR. Nevertheless, the delinquent ad valorem tax balances and/or any other delinquent tax balance, such as past due sales tax or unemployment tax, could potentially subject the City to additional/unnecessary expenses in the event that BRMC fails to satisfy these liabilities.

BAYSHORE RESTAURANT MANAGEMENT CORPORATION AND THE RISK MANAGEMENT DIVISION

LACK OF INSURANCE REQUIREMENTS.

Section 21 (a) through (k) of the lease Agreement provides that Bayshore Restaurant Management Corporation (BRMC) shall maintain liability, fire, lightning, windstorm, and automobile insurance policies during the term of the Agreement. Our review disclosed that all the required insurance policies were obtained during the audit period. However, we noted certain deficiencies as discussed below:

- Our test of 4 of 5 Certificates of Liability Insurance covering the audit period disclosed only 10 days and not 30 days (as required) of advance written notice of cancellation of insurance policies. Ten (10) days of advance notice may not be enough to ensure adequate review and response to material modifications to insurance policies.
- Section 21(k) states “The policy shall be endorsed as follows: It is agreed that in the event of any claim or suit against the insured for damages covered by this policy, the insurance company will not deny liability by the use of a defense based on governmental immunity.” This endorsement was not disclosed on the certificate of insurance that we reviewed as part of this audit. We requested but a copy of the insurance policy could not be located. Therefore, we could not verify whether the said endorsement was disclosed on the insurance policy, as required.
- We requested copies of insurance policies from the Economic Development (EDD) and the Risk Management (RMD) departments. However, the EDD and/or RMD were unable to locate said copies of insurance policies. The copies of certificates of insurance in the possession of the EDD and the RMD indicated that an insurance policy was in place and also included certain summary information. However, said document did not include specific details such as the nature and extent of coverage, benefits, compensations, and all relevant provisions such as the endorsement required in Section 21(k) of the Agreement between the City and BRMC as noted on the second bullet

above. To ensure that RMD carries out its responsibilities in monitoring the terms and conditions of the insurance coverage provision of the lease Agreement, RMD would have to review this insurance policy in its entirety, rather than only the certificate of insurance.

AUDIT FINDINGS AND RECOMMENDATIONS

BAYSHORE RESTAURANT MANAGEMENT CORPORATION AND THE ECONOMIC DEVELOPMENT DEPARTMENT

UNTIMELY MONTHLY RENTAL PAYMENTS.

Paragraph 13 II (a) and (b) of the Agreement between the City and Bayshore Restaurant Management Corporation (BRMC) as described on page 1 of this report, stipulates the percentage rental fee to be paid to the City. The “Memorandum of Understanding” between the City and BRMC states that, “Company agrees that the Percentage Rental, as said term is defined in the Lease, shall be paid monthly on the first day of each month in advance during the term of the Lease. The amount to be paid each month in any given Lease year shall be equal to the annual gross sales, as said term is defined in the Lease, for the immediately preceding Lease year, multiplied by each applicable percentage rate provided for in the Lease, divided by twelve (12).” Therefore, the monthly percentage rental paid by BRMC during October 1, 2002, through September 30, 2003, to the City was based on BRMC’s annual gross sales for the period October 1, 2001, through September 30, 2002. The Florida State Use tax rate in Miami - Dade County increased from 6.5% to 7.0% beginning January 1, 2003. Therefore, the monthly percentage rental fee due and payable by the first of each month, as determined by the Economic Development department (EDD) during October 1, 2002, through December 31, 2002, was \$64,505.79, and for January 1, 2003, through September 30, 2003, was \$64,808.63.

In two prior audit reports (audit report number 02-008, dated December 14, 2001, and audit report number 03-004, dated July 1, 2003) relative to this lease Agreement, we noted that none of the monthly percentage rent payments to the City were made on a timely manner during the period October 1, 2000, through September 30, 2002, as required. The audit report noted that late payments ranged from 7 to 96 days for the said period. Once again, our current year audit also disclosed that the total amounts due were paid to the City but none of the monthly percentage rent payments to the City were made on a timely manner during the period October 1, 2002, through September 30, 2003, as required. The late payments for the current year audit

ranged from 49 to 158 days late. We noted that the lease Agreement does not include provisions for late charges/penalties, therefore, none was assessed. However, Section 18 (Default) of said lease agreement states: “If the Company fails to make the rental payments as set forth herein and said payment is not made within thirty (30) days after written notice is given to the company, then the Company shall be in default and the City may re-enter the Property and terminate this lease in any matter then permitted or provided by law.”

Upon audit inquiry and review of pertinent records, we noted that no follow-up letters were sent to the President of BRMC during the audit period reminding BRMC to remit payments. BRMC is currently (as of June 2004) in the process of being sold to new owners. The City and BRMC’s current and prospective owners are working with the State in order to resolve some open issues prior to closing the sale.

Recommendation

BRMC management should remit the agreed monthly percentage rent payments to the City in a timely manner. Economic Development department (EDD) should send monthly follow-up letters and should ensure that all tenants are fully aware of the payment terms and default provisions set forth in the lease agreements. In light of the imminent sale of BRMC to a new owner as indicated by City management, EDD should work with the City Attorney’s Office to ensure that lease payments to the City are current at the time of the sale. Further, EDD should consult with the City Attorney’s Office to amend the lease agreement to provide for late charges/penalties in the event that BRMC does not timely pay its future lease payments.

Auditee’s Response and Action Plan

The Director of the Economic Development department concurs with this finding and recommendations.

LACK OF CITY MANAGER’S APPROVAL OF THE VALET PARKING OPERATION.

The Economic Development department (EDD) requested a legal opinion in connection with an audit finding (audit report number 02-008, dated December 14, 2001) relative to the operation of a valet parking service within the confines of the leased Property without the approval of the City Manager, as required. The legal opinion, which was dated January 13, 2003 noted: “We are in agreement with the City’s Internal Audit Department that the operation of the valet parking service on the Property should have been approved by the City Manager pursuant to the provisions of subsection (AF) of Section 3 of the Lease.”

In our prior year’s audit (audit report number 03-004, dated July 1, 2003) we noted that said approval had not been obtained. In our current audit, we again noted that said approval has not been obtained. Such approval would ensure that the City’s interest is properly protected, in the event of litigation claims arising from any accident relating to the valet parking operation.

Recommendation

In light of the imminent sale of BRMC to a new owner as indicated by City management, EDD should work with the City Manager’s Office and BRMC owners to ensure that BRMC obtains the City Manager’s approval for the valet parking operation.

Auditee’s Response and Action Plan

The Director of the Economic Development department concurs with this finding and recommendations.

LACK OF FORMAL WRITTEN AGREEMENT WITH MALL TENANTS.

In our prior year's audit report (audit report number 03-004, dated July 1, 2003); we disclosed that BRMC did not execute a written Agreement with 2 mall tenants. Our audit disclosed that the shopping mall, which is a part of this property, has a total of 15 rental spaces leased to 8 different companies. During the fiscal year ended September 30, 2003, BRMC's records indicated that it generated approximately \$195,493 in rental income. The City receives 10% of the rental income generated. Once again, we noted that BRMC has not executed a formal written Agreement with 2 mall tenants (One is the same tenant that was reported in audit report number 03-004, dated July 1, 2003).

A good business practice would require a formal written Agreement, which would provide the terms, conditions, responsibilities of the parties in regard to the services to be provided and payment thereof, security deposit, use of the property, and insurance requirements, in case of any dispute. Additionally, a formal written Agreement signed by both parties provides an audit trail and verifies the amount of rent paid by the tenant.

Recommendation

In light of the imminent sale of BRMC to a new owner as indicated by City management, EDD should work with the new owners to ensure that BRMC executes a formal written Agreement with all tenants leasing spaces in the mall.

Auditee's Response and Action Plan

The Director of the Economic Development department acknowledged that the execution of a formal written Agreement is a good business practice but also noted that (see page 19) neither Lease Agreement nor Florida law mandates a written agreement.

DELINQUENT TAX LIABILITIES.

Section 10 of the Agreement between the City and Bayshore Restaurant Management Corporation (BRMC) requires BRMC to pay all taxes of any nature lawfully levied or assessed against the property and improvements, sales, rents or operations thereon, including, but not limited to, ad valorem taxes. The failure of BRMC to pay said taxes shall constitute grounds for the immediate cancellation of the Lease Agreement by the City. However, based on our review of certain records of the Miami Dade Property Appraiser (MDPA), BRMC is delinquent on payment of its 2002 and 2003 ad valorem taxes to the County Tax Collector for the property located at 2550 S Bayshore Drive, in a total amount of \$201,197.66. Further, a search of publicly recorded tax liens in Miami-Dade County disclosed a sales tax lien filed against BRMC by the Florida Department of Revenue (FDOR) in the amount of \$180,875.41. The status of said sales tax lien could not be confirmed, and a representative from the FDOR indicated to us that information regarding a business's sales tax status, except for publicly filed liens, is not considered public record. She indicated the publicly filed tax lien does not necessarily mean that the full balance of a lien is outstanding, and that BRMC is currently in "good standing" as far as sales tax payments to FDOR. Nevertheless, the delinquent ad valorem tax balances and/or any other delinquent tax balance, such as past due sales tax or unemployment tax, could potentially subject the City to additional/unnecessary expenses in the event that BRMC does not satisfy these liabilities.

Recommendation

We recommend that the Economic Development department (EDD) consult with the City Attorney's Office to ensure that, prior to closing on the sale of BRMC to new owners, the above noted ad valorem tax liabilities of BRMC, are paid, and no related liabilities will accrue to the City. Also, EDD should work with the City Attorney's Office to ensure that any other liabilities that BRMC may have, such as state sales tax, unemployment tax, or pending litigation, will not adversely impact the City's financial position in its contractual dealings with BRMC.

Auditee's Response and Action Plan

The Director of the Economic Development department concurs with finding and recommendations and indicated that his department is already working with the City Attorney's Office in connection with all outstanding tax liabilities.

BAYSHORE RESTAURANT MANAGEMENT CORPORATION AND THE RISK MANAGEMENT DIVISION

LACK OF INSURANCE REQUIREMENTS.

Section 21 (a) through (k) of the lease Agreement provides that Bayshore Restaurant Management Corporation (BRMC) shall maintain liability, fire, lighting, windstorm, and automobile insurance policies during the term of the Agreement. Our review disclosed that all the required insurance policies were obtained during the audit period. However, we noted certain deficiencies as discussed below:

- Section 21(f) of the lease Agreement provides that the City shall be given at least thirty (30) days advance written notice of cancellation of said policies or any material modifications thereof. However, our test of 4 of 5 Certificates of Liability Insurance covering the audit period provided only ten (10) days advance written notice of cancellation of insurance policies. Ten (10) days of advance notice may not be enough to ensure adequate review and response to material modifications to insurance policies.
- Section 21(k) states “The policy shall be endorsed as follows: It is agreed that in the event of any claim or suit against the insured for damages covered by this policy, the insurance company will not deny liability by the use of a defense based on governmental immunity.” This endorsement was not disclosed on the certificate of insurance that we reviewed as part of this audit. We requested but a copy of the insurance policy could not be located. Therefore, we could not verify whether the said endorsement was disclosed on the insurance policy, as required.
- We requested copies of insurance policies from the Economic Development (EDD) and the Risk Management (RMD) departments. However, the EDD and/or RMD were unable to locate said copies of insurance policies. The copies of certificates of insurance in the possession of the EDD and the RMD indicated that an insurance policy was in place and also included certain summary information. However, said document did not include specific details such as the nature and extent of coverage, benefits, compensations, and all relevant provisions such as the endorsement required in Section 21(k) of the Agreement between the City and BRMC as noted on the second bullet

above. To ensure that RMD carries out its responsibilities in monitoring the terms and conditions of the insurance coverage provision of the lease Agreement, RMD would have to review this insurance policy in its entirety, rather than only the certificate of insurance.

Recommendation

In light of the imminent sale of BRMC to a new owner as indicated by City management, we recommend that RMD work with EDD and the new owners of BRMC to ensure that all applicable insurance policies provide for at least thirty (30) days advance written notice of cancellation, and said insurance policies contain the aforementioned endorsement relating to no defense of governmental immunity. Also, RMD should adopt procedures to have on file or ready access to, all applicable insurance policies in their entirety, in order for RMD to carry out its assigned responsibilities.

Auditee's Response and Action Plan

The Director of the Risk Management department concurred with this finding and recommendations.

Igwe, Victor

From: Carswell, Keith
Sent: Wednesday, June 30, 2004 12:46 PM
To: Goodman, Jon
Cc: Igwe, Victor; Billberry, Lori; Ali, Melissa
Subject: RE: Audit of Monty's

Jon:

The following is in response to your emails dated June 21, 2004 and June 25, 2004 related to the findings and recommendations in Grove Marina Market audit for the period of October 1, 2001 through September 30, 2003:

- 1) Timeliness of Monthly Payments – We concur.
- 2) Valet Parking Operation lacks City Manager Approval - We concur assuming the new operators will continue to have a valet service.
- 3) Written Agreement with subtenants of the Mall – We concur good business practice would require a formal written agreement with each subtenant. It should be noted that based upon the legal opinion provided by Ilene Temchin on May 22, 2002, neither the existing lease nor Florida law requires Grove Marina Market to enter into written agreements.
- 4) Ad Valorem Taxes owed by Grove Marina Market to Miami Dade County for the years 2002 and 2003 - We concur. The parties have agreed that all outstanding amounts will be paid, in full, at or prior to closing. We are already working with the City Attorney's Office to ensure no liabilities of BRMC will adversely impact the City. It is unclear from the email below what monies are being put in escrow and for how long if the intent is to have all liabilities paid in full at or prior to closing.

Keith A. Carswell, Director
Department of Economic Development
City of Miami

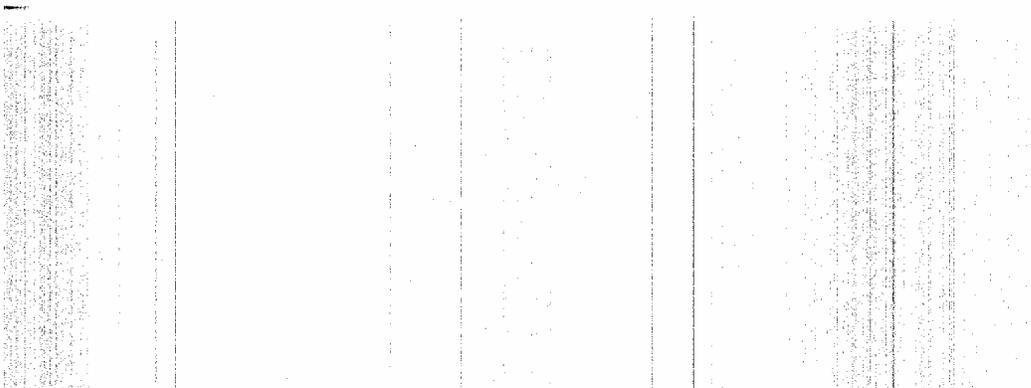
-----Original Message-----

From: Goodman, Jon
Sent: Tuesday, June 29, 2004 5:51 PM
To: Carswell, Keith
Cc: Igwe, Victor; Billberry, Lori; Ali, Melissa
Subject: Audit of Monty's

Keith:

Pursuant to the four draft findings for which your department has substantial involvement, and which have been e-mailed to your staff (i.e. 1)Timeliness of Monthly Lease Payments, 2)Manager's Approval of Valet Parking Operation, 3)BRMC Lack of Written Agreements with Mall Tenants, and 4)BRMC Delinquent Taxes), please indicate your concurrence and your department's agreed upon actions. Your staff indicated that City Management has been told the sale of BRMC is imminent, and there are some issues with the State that were being worked out prior to closing the sale. Your agreed upon actions include 1) work with the City Attorney's Office in amending the Agreement with the new owner to include a penalty/late charge provision for untimely rent payments to the City, 2) facilitate the City Manager's approval of the Valet Parking operation, 3) work with the new owners to ensure that BRMC executes

6/30/2004



a formal written Agreement with all tenants leasing spaces in the mall, 4) consult with the City Attorney's Office to ensure that, prior to closing on the sale of BRMC to new owners, ad valorem tax liabilities of BRMC, are paid, and any related liabilities such as state sales tax, unemployment tax, or pending litigation, will not adversely impact the City's financial position in its contractual dealings with BRMC. Also, monies will be put in escrow to protect the City's interests regarding any tax liabilities of BRMC.

Jon Goodman
Deputy Auditor General
City of Miami

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Miami, FL 33130

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6/30/2004

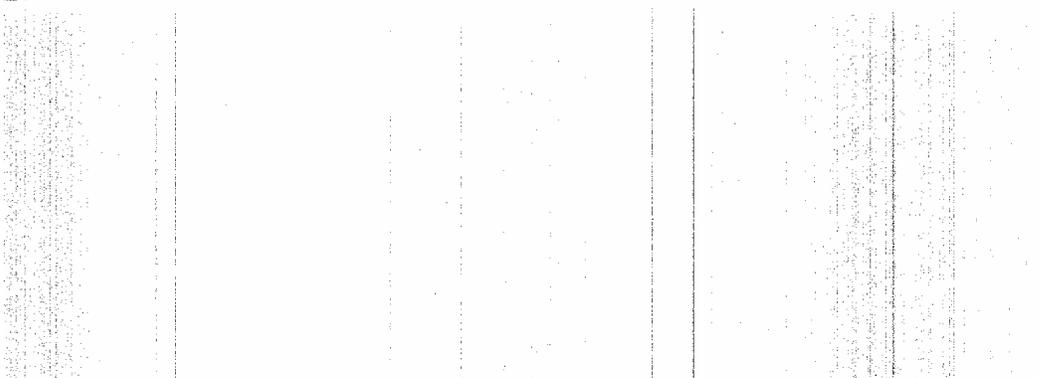


EXHIBIT I

BAYSHORE RESTAURANT MANAGEMENT CORPORATION
 COMPUTATION OF RENT DUE
 FOR THE PERIOD OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003**

Category	** Gross Sales FYE 9/30/02	Percentage Rental	Rent Due
Rawbar	\$ 1,000,000.00	8%	\$ 80,000.00
Rawbar	3,995,879.06	10%	399,587.91
Restaurant Stone Crabs	2,867,998.90	5%	143,399.95
Retail	220,689.49	10%	22,068.95
Marina - Sales	2,066.10	10%	206.61
Marina - Dockage	543,749.14	15%	81,562.37
 Total Gross Sales	 \$ 8,630,382.69		
City Rental Revenue			\$ 726,825.78
 State Use Tax			49,969.26
Other Charges			1,514.25
 Annual Rent Due for FY 02-03			778,309.29
 Total Rent Paid for FY 02-03			778,309.29
 Total Balance due to the City			\$ 0.00

** The monthly percentage rental paid by BRMC during October 1, 2002, through September 30, 2003, to the City was based on BRMC's actual annual gross sales for the period October 1, 2001, through September 30, 2002.