

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND WASHINGTON AVE BID INC.

March
This Memorandum of Understanding ("MOU") is hereby entered into as of the 15 day of ~~February~~, 2019, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under Florida law, with principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and the Washington Ave BID Inc., a Florida not-for-profit corporation with principal offices at 2700 Bay Avenue, Miami Beach, Florida 33140 (the "WABID") (collectively, the City and the WABID may hereinafter be referred to as the "Parties").

RECITALS

WHEREAS, on October 18, 2017, the Mayor and City Commission of the City of Miami Beach adopted Resolution No. 2017-30065, creating, pursuant to Chapter 170, Florida Statutes, and subject further to the approval of a majority of the affected property owners, a special assessment district to be known as the Washington Avenue Business Improvement District (the "District"), for a term of ten (10) years, to stabilize and improve the Washington Avenue retail business district, which is located within a nationally recognized historic district, through promotion, management, marketing, and other similar services; and

WHEREAS, the District is bounded on the north by 17th Street, and on the south by 5th Street, and consists of properties abutting Washington Avenue and/or the cross-streets intersecting Washington Avenue; provided, however, that the following properties shall be excluded and exempted from the District: (i) residential properties; (ii) common areas owned by condominium associations; (iii) any property owned by a City, County, State, or Federal governmental entity or school district; and (iv) any property owned or occupied by a religious institution and used as a place of worship or education (as defined in Section 170.201(2), Florida Statutes); and

WHEREAS, on January 17, 2018, the Mayor and City Commission adopted Resolution No. 2018-30150, which, in pertinent part, called for a special mail ballot election (the "Election") to be held from March 8, 2018 to April 20, 2018, to determine whether a majority (50% plus one) of the affected property owners approved the creation of the District; and

WHEREAS, the results of the Election are as follows: sixty-seven (67) ballots were cast in favor of the creation of the District, twelve (12) ballots were cast in opposition to the creation of the District, five (5) ballots were rejected as improperly cast, and twenty-six (26) ballots were not returned. A copy of the Official Election Certification of the Canvassing Board is attached hereto as Exhibit "A"; and

WHEREAS, on April 24, 2018, the Mayor and City Commission approved Resolution No. 2018-30287, adopting the Official Election Certificate of the Canvassing Board for the Election, and setting, pursuant to Sections 170.07 and 170.08, Florida Statutes, a public hearing on June 6, 2018, for the owners of the property to be assessed or any other interested persons to appear before the Mayor and City Commission and be heard as to the propriety and advisability of making such improvements and providing such services (and funding them with special assessments on

property), as to the cost thereof, as to the manner of payment therefor, and as to the amount to be assessed against each property so improved; and

WHEREAS, following the duly noticed hearing on June 6, 2018, the Mayor and City Commission voted to levy the special assessments; and

WHEREAS, thereafter, pursuant to Section 170.08, Florida Statutes, the Mayor and City Commission met as an equalizing board to hear and consider any and all complaints as to the special assessments and to adjust and equalize the assessments on a basis of justice and right, following which the Mayor and City Commission approved Resolution No. 2018-30351, approving the final assessment roll for the District; and

WHEREAS, the WABID shall apply for a tax exemption under the pertinent section(s) of the Internal Revenue Code; and

WHEREAS, the City and the WABID desire to enter into this MOU to set forth the obligations of the Parties with respect to the administration of the District.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

1. Recitals. The Recitals are true and correct and are hereby incorporated into and made a part of this MOU.
2. Purpose. The purpose of the WABID is to stabilize and improve the Washington Avenue retail business district, which is located within a nationally recognized historic district, through promotion, management, marketing, and other similar services, by (i) representing and advocating for the property owners and business owners located within the boundaries of the District; (ii) promoting and encouraging the continued development of a diverse, vibrant and pedestrian-friendly Washington Avenue mixed-use neighborhood, thereby providing a dynamic setting for businesses, the visiting public, arts and entertainment, as well as area residents; (iii) serving as a cultural and civic hub for the community and fostering a spirit of cooperation and maintenance of high standards of quality among its members; and (iv) bringing transformative projects into the District. A draft of the proposed Articles of Incorporation and a draft of the proposed Bylaws that will be presented for adoption by the first Board of Directors of the WABID are attached hereto and incorporated herein as Composite Exhibit "B". The Articles of Incorporation and Bylaws that are adopted by the WABID shall be the same as or substantially the same as the drafts attached in Composite Exhibit "B". The WABID shall provide the City with written notice of any proposed change to the Articles of Incorporation or Bylaws, as well as the date, time, and location at which the WABID's Board of Directors shall consider such proposed change.
3. Scope of Services. In consideration of the revenue generated by the District from special assessments, the WABID shall provide, at a minimum, the services set forth in the Budget, Budget Narrative, and Summary of Services, attached hereto and incorporated herein as Composite Exhibit "C."

4. Term and Expiration Date. This MOU and the Parties' obligations hereunder shall commence upon the full execution of this MOU and shall terminate on the earlier of the expiration of the District, the dissolution of the WABID, the exercise of any of the provisions in Section 13 of this MOU, or upon mutual written agreement of the Parties.
5. City's Authorized Representative. The City Manager shall appoint an Authorized Representative as a non-voting, *ex-officio* member of the Board of Directors of the BID. The City Manager shall have the sole and final authority to select the City's appointee.
6. Collection of Special Assessments. The City shall collect the special assessments levied to fund the District, in accordance with the following procedure:
 - a. On or before April 1 of each year, the City shall invoice each affected property owner for payment of the assessment levied to fund the District. The assessment shall be payable in one annual installment by May 1 of each year. Payments shall be made payable to the Finance Director of the City, or the Finance Director's designee.
 - b. The City shall, on a monthly basis, electronically remit the assessments collected to the WABID.
 - c. Assessments not paid when due shall become due and payable in accordance with statutory provisions and shall remain liens, coequal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid, and shall bear interest, at such rates as specified in Section 170.09, Florida Statutes.
 - d. Notwithstanding the provisions of this Section, the WABID may elect to transfer the responsibility to collect the assessments from the City to the Miami-Dade County Property Appraiser, provided that WABID must first notify the City in writing of such election on or before April 1 of the preceding fiscal year.
7. Reimbursement of City's Expenses. The WABID shall reimburse the City for its actual costs of bank transfer fees, as well as postage and mailing supplies for invoices and any other notices required by law. The WABID shall also reimburse the City for any actual out-of-pocket expenses incurred by the City in the course of remitting the assessments to the WABID and collecting unpaid assessments, including, without limitation, the cost of recording liens, court costs, and filing fees. The City shall deduct any such reimbursable expenses from the City's remittances to the WABID, and concurrently deliver to the WABID an invoice detailing the expenses deducted from the remittance.
8. Budget. The WABID shall not have the power to expend assessment funds in excess of that which is provided for in the current budget of the WABID, except that the WABID may enter into contractual commitments scheduled in years following the

then current fiscal year. Any such commitment shall be binding upon the WABID and shall be included in the budget of the WABID in any and all fiscal years in which any payments required to be made thereunder shall become due and payable. Annually, on or before August 1, the WABID shall prepare and submit to the City Commission a budget accurately itemizing all estimated revenue and expenses for the succeeding fiscal year beginning October 1. The City Commission's review of the WABID's budget shall be limited solely to a determination of the legality of the expenditures. The WABID shall not expend funds or incur any liability which is not authorized or provided for in its current budget, or in any amendment thereto, unless as otherwise provided herein.

9. Annual Report to the Mayor and City Commission. Annually, on or before August 1, the WABID shall, upon request of the City Manager or the City Manager's designee, provide the City with an annual report detailing the WABID's activities during the preceding fiscal year, along with a copy of the WABID's annual budget.
10. Uniform Special District Accountability Act. The Parties acknowledge and agree that the WABID is an independent special district as defined in the Uniform Special District Accountability Act, which is set forth in Chapter 189, Florida Statutes. As such, the WABID shall fulfill and comply with all applicable requirements of Chapter 189, Florida Statutes, as may be amended from time to time. The WABID's compliance with Chapter 189 is a material term of this MOU.
11. Sunshine Law. All meetings of the Board of Directors or general membership of the WABID shall be publicly noticed and open to the public, pursuant to Chapter 286, Florida Statutes, as may be amended from time to time.
12. Public Records Law. The WABID shall be subject to Florida Public Records Law including, without limitation, Chapter 119, Florida Statutes, as may be amended from time to time.
13. Termination for Cause. If the WABID shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this MOU, the City, through its City Manager, shall thereupon have the right to terminate this MOU for cause. Prior to exercising its option to terminate for cause, the City shall notify the WABID of its violation of the particular term(s) of this MOU, and shall grant WABID thirty (30) days to cure such default, provided however that if the default cannot be reasonably cured within such time period, the WABID shall not be in breach of this Agreement, if the WABID commences to cure the breach within such time period and in good faith continues to cure the breach, but in no event shall such time period for cure be extended beyond ninety (90) days. If such default remains uncured after the time period set forth above, the City may terminate this MOU without further notice to WABID. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this MOU. In the event that the City terminates this MOU for cause, and once the WABID's outstanding financial obligations have been satisfied, all remaining unexpended special assessments shall be returned to the owners of property within

the District on a *pro rata* basis, based on each property owner's proportionate share of the total annual special assessments due to the District.

Notwithstanding the above, the WABID shall not be relieved of liability to the City for damages sustained by the City by any breach of the MOU by the WABID. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's rights and remedies against the WABID. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

14. Indemnification. The WABID agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic, or bodily injury, wrongful death, or loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the WABID, its officers, employees, agents, contractors, or any other person or entity acting under the WABID's control or supervision, in connection with, related to, or as a result of the WABID's performance of the services pursuant to this MOU. To that extent, the WABID shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The provisions of this Section and of this indemnification shall survive termination or expiration of this MOU.
15. Choice of Law, Venue, and Waiver of Jury Trial. This MOU shall be construed in accordance with the laws of the State of Florida. This MOU shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of this MOU shall lie in Miami-Dade County, Florida. By entering into this MOU, the WABID and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this MOU.
16. Limitation of Liability. The City desires to enter into this MOU only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this MOU, so that its liability for any such breach never exceeds \$100,000. The WABID hereby expresses its willingness to enter into this MOU with the WABID's recovery from the City for any damages and/or action for breach of contract to be limited to \$100,000.

Accordingly, and notwithstanding any other term or condition of this MOU, the WABID hereby agrees that the City shall not be liable to the WABID for damages in an amount in excess of \$100,000, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this MOU.

Nothing contained in this section or elsewhere in this MOU is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

17. Audit and Inspections. Upon reasonable verbal or written notice to the WABID, and at any time during normal business hours (i.e. 9:00 am – 5:00 pm, Monday through Friday, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/or inspect, any and all other documents and/or records relating to all matters covered by this MOU. The WABID shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this MOU. In addition to the provisions in this Section, the WABID shall also comply with the audit and reporting requirements set forth in Chapter 189, Florida Statutes.
18. Independent Contractor/No Joint Venture. This MOU shall not constitute or make the Parties a partnership or joint venture. For the purposes of this MOU, the WABID shall be deemed to be an independent contractor, and not a partner, agent, agency, department, or ad hoc committee of the City. No agent or employee of WABID shall attain any rights or benefits under the Civil Service or Pension Ordinance of the City, or any right generally afforded classified or unclassified employees, including annual leave and sick day accrual. Further, no agent or employee of WABID shall be deemed entitled to Florida Worker's Compensation Benefits as an employee of the City or accumulation of sick or annual leave.
19. Notices. All notices and communications in writing required or permitted hereunder, shall be delivered personally to the representatives of the WABID and the City listed below, or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Unless changed by notice in writing, all such notices and communications shall be addressed as follows:

To WABID: Andrew Resnick
President and Executive Director
Washington Ave BID Inc.
2700 Bay Avenue
Miami Beach, Florida 33140

To the City: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With a copy to: Heather Shaw
Acting Director
Tourism, Culture & Economic Development
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction is specifically provided for by the party entitled to notice. Notice shall be deemed given on the day on which personally served, or the day of receipt by either U.S. certified mail or overnight delivery.

20. Changes and Additions. This MOU cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
21. Severability. If any term or provision of this MOU is held invalid or unenforceable, the remainder of this MOU shall not be affected and every other term and provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.
22. Entirety of Agreement. The City and WABID agree that this MOU constitutes the entire agreement between the parties. This MOU supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this MOU that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this MOU.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures, effective on the day first above written.

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael Granado
City Clerk

Date

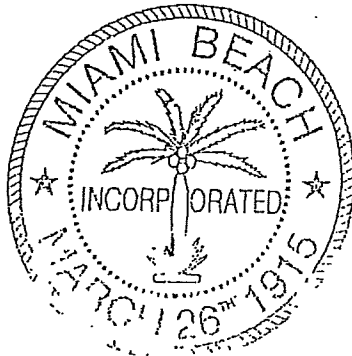
78/3/15/19
3/15/19

By:

Dan Gelber
Mayor

Date

[Signature]



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

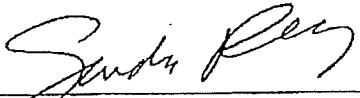
[Signature]
City Attorney

2/6/19
Date

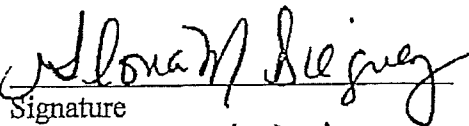
NK

WASHINGTON AVE BID INC.

ATTEST:


Signature

Sandra Perez
Print Name


Signature

Gloria M Dieguez
Print Name

By: 
Andrew Resnick
President

2/22/19
Date

EXHIBIT "A"

Official Election Certification of the Canvassing Board

MIAMI BEACH

SPECIAL MAIL BALLOT ELECTION HELD IN THE CITY OF MIAMI BEACH
FROM MARCH 8, 2018 TO APRIL 20, 2018,
TO DETERMINE WHETHER A MAJORITY OF THE AFFECTED PROPERTY OWNERS
APPROVE THE CREATION OF A SPECIAL ASSESSMENT DISTRICT
TO BE KNOWN AS THE WASHINGTON AVENUE BUSINESS IMPROVEMENT DISTRICT

OFFICIAL ELECTION CERTIFICATION OF THE CANVASSING BOARD

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

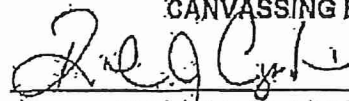
We, the undersigned, Raul J. Agulla, City Attorney, Nick Kallergis, Assistant City Attorney, and Rafael E. Granado, City Clerk, constituting the Canvassing Board for the Special Mail Ballot Election to approve the creation of the Washington Avenue Business Improvement District, do hereby certify that we met on the 20th day of April, 2018, and proceeded to publicly count the votes cast.

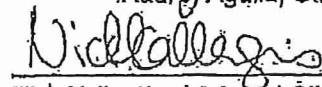
We do hereby certify the results as follows:

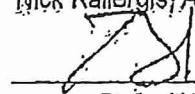
Shall a special assessment district known and designated as the Washington Avenue Business Improvement District (the "District") be created for a term of ten (10) years, with an estimated annual budget of \$511,331, to stabilize and improve the Washington Avenue retail business district, which is located within a nationally recognized historic district, through promotion, management, marketing, and other similar services, which district is to be funded by special assessments against benefited properties?

67 YES VOTES
12 NO VOTES
6 REJECTED BALLOTS
26 UNRETURNED BALLOTS

CANVASSING BOARD


Raul J. Agulla, City Attorney


Nick Kallergis, Assistant City Attorney


Rafael E. Granado, City Clerk

Date: April 20, 2018