

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY ADVERTISED PUBLIC HEARING, ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND ECONOMIC RESILIENCY COMMITTEE AND OF THE CITY MANAGER, AND WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(a) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE BETTER SERVED BY WAIVING SUCH CONDITION, AND APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE LEASE AGREEMENT, DATED AUGUST 12, 2019, AMONG THE CITY OF MIAMI BEACH, THE MIAMI BEACH REDEVELOPMENT AGENCY (COLLECTIVELY, LANDLORD) AND MOONLIGHTER FABLAB, INC. (TENANT) FOR USE OF APPROXIMATELY 6,720 SQUARE FEET OF RETAIL SPACE, LOCATED AT 1661 PENNSYLVANIA AVENUE (DEMISED PREMISES); SAID AMENDMENT INCREASING THE SIZE OF THE DEMISED PREMISES, BY ADDING THE REMAINING 935 SQUARE FEET OF AVAILABLE SPACE AT THE PROPERTY, FOR USE OF A TOTAL OF 7,655 SQUARE FEET.

WHEREAS, the City owns the Pennsylvania Avenue Garage Condominium, located at 1661 Pennsylvania Avenue, Miami Beach, Florida 33139, which includes Unit 1, a municipal garage (the "Penn Garage"), having approximately 560 parking spaces, and Unit 2, which includes Suites A-G, and has a total of approximately 7,655 square feet of ground floor retail space (the "Retail Space"); and

WHEREAS, the Retail Space has been vacant since the previous tenant vacated in 2015; and

WHEREAS, since that time, the City has utilized the vacant Retail Space for various purposes like EnerGov training, temporary offices for Code Compliance and Housing & Community Services, and as a temporary location for the Miami Beach Chamber of Commerce (MBCC) Visitor's Center (the "Visitor's Center"); and

WHEREAS, on December 21, 2018, the City received a letter of intent for the Retail Space from Moonlighter Fablab, Inc. d/b/a Moonlighter Makerspace ("Moonlighter"), a 501 (c)3 nonprofit organization that serves as a Science, Technology, Engineering, Arts & Math (S.T.E.A.M.) education center; co-working space; and digital fabrication lab, all together in one space; and

WHEREAS from December 7, 2016 to December 31, 2020 the MBCC utilized approximately 935 square feet of northeasterly portion of the Retail Space for the Visitor Center; and

WHEREAS, on January 25, 2019, the Finance and Citywide Projects Committee (FCWPC) favorably recommended authorizing the City Manager to negotiate a lease of the Retail Space with Moonlighter, with an initial term of 3 years, and two (2) one-year renewal options, at the City's option, and with an enhanced offering of public benefits, specifically benefiting Miami Beach students; and

WHEREAS, at its March 13, 2019 meeting, pursuant to City Commission Resolution No. 2019-30761, the Mayor and City Commission accepted the recommendation of the FCWPC and approved the draft lease, for the use of the remaining 6,720 square feet of the Retail Space; and

WHEREAS, on August 12, 2019, the City, the Miami Beach Redevelopment Agency (“RDA”) (collectively, “Landlord”), and Moonlighter Fablab, Inc. (“Tenant”) executed a Lease Agreement (“Lease”) for use of the Demised Premises, which Lease commences as of the date the Landlord tenders possession of the Demised Premises to Tenant; and

WHEREAS, Moonlighter has not been able to move into the Demised Premises, because in order to share the Retail Space with MBCC, the City would have to install a devising wall to separate the spaces and perform repairs to the existing kitchen equipment at the Retail Space, at a cost of approximately \$80,000; or Moonlighter would have to secure a zoning change of use (i.e., Light Industrial); and

WHEREAS, on February 19, 2021, the Finance and Economic Resiliency Committee (FERC) discussed expanding the Moonlighter Demised Premises to include the northeasterly 935 square feet area of the Retail Space, previously occupied by MBCC, and recommended in favor of amending the Lease to include the remaining 935 square feet; and

WHEREAS, in a separate item, FERC discussed a new lease for MBCC, relocating the Visitor Center to an available retail space at the Anchor Shops, located at 100 16th Street, Suite No. 6, and recommended in favor of approving the new lease; and

WHEREAS, the relocation of the Visitor Center would avail the remaining 935 square feet of Retail Space previously occupied by the Visitor Center allowing Moonlighter to use the entire Retail Space, without the need to construct a devising wall or going through the expense of applying for a change of use for the Retail Space; and

WHEREAS, based on the foregoing, the City Manager recommends the waiver, by 5/7ths vote, of the formal competitive bidding requirement in Section 82-39(a) of the City Code; accepting the recommendation of FERC; and approving Amendment No. 1 to the Lease, incorporated herein by reference and attached to this Resolutions as Exhibit “A”.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission, following a duly advertised public hearing, hereby accept the recommendation of the City’s Finance and Economic Resiliency Committee and of the City Manager, and waive, by 5/7th vote, the formal competitive bidding requirement in Section 82-39(a) of the City Code, finding such waiver to be in the best interest of the City; and approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Lease Agreement, dated August 12, 2019, among the City of Miami Beach, the Miami Beach Redevelopment Agency (collectively Landlord) and Moonlighter Fablab, Inc. (Tenant) for use of approximately 6,720 square feet of retail space located at 1661 Pennsylvania Garage (Demised Premises); said Amendment increasing the size of the Demised Premises, by adding the remaining 935 square feet of available space at the property, for use of a total 7,655 square feet.

PASSED and ADOPTED THIS ___ day of _____ 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

4-13-21

Date

**AMENDMENT NO. 1 TO LEASE AGREEMENT
AMONG THE CITY OF MIAMI BEACH, FLORIDA AND THE
MIAMI BEACH REDEVELOPMENT AGENCY AND THE MOONLIGHTER FABLAB, INC.**

This Amendment No. 1 (Amendment) to the Lease Agreement, dated August 12, 2019 (“Lease”), by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the “City”) and the Miami Beach Redevelopment Agency (the “RDA”) (hereinafter collectively referred to as the “Landlord”), and Moonlighter Fablab Inc., a Florida not-for-profit corporation, having its principal place of business at 1661 Pennsylvania Avenue (“Tenant”), is entered into this ____ day of _____, 2021 (“Effective Date”):

RECITALS

WHEREAS, on December 21, 2018, the City received a letter of intent for use of the Retail Space, located at 1661 Pennsylvania Avenue, from Moonlighter Fablab, Inc. d/b/a Moonlighter Makerspace (“Moonlighter”), a 501(c)3 nonprofit organization that serves as a Science, Technology, Engineering, Arts & Math (S.T.E.A.M.) education center, co-working space, and digital fabrication lab, together in one space; and

WHEREAS, on January 25, 2019, the Finance and Citywide Projects Committee (FCWPC) favorably recommended authorizing the City Manager to negotiate a lease of the Retail Space with Moonlighter, with an initial term of three (3) years, with two (2) one-year renewal options, and with an enhanced offering of public benefits, specifically benefiting Miami Beach students; and

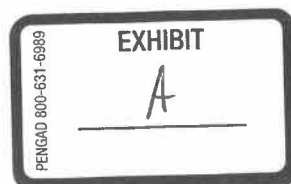
WHEREAS, at its March 13, 2019 meeting, pursuant to City Commission Resolution No. 2019-30761, the Mayor and City Commission accepted the recommendation of the FCWPC and approved the draft lease, for the use of approximately 6,720 square feet of the Retail Space (the “Demised Premises”), as the remaining 935 square feet of the Retail Space was being used by the Miami Beach Chamber of Commerce (MBCC) as the Visitor Center; and

WHEREAS, on August 12, 2019, the City and Tenant executed the Lease for use of the Demised Premises, which Lease commences as of the date the Landlord tenders possession of the Demised Premises; and

WHEREAS, the Tenant has not been able to take possession of the Demised Premises, because in order to jointly use the Retail Space with the Visitor Center, the City would have to install a devising wall to separate the spaces and make repairs to the existing kitchen equipment at a cost of approximately \$80,000; or Moonlighter would have to pursue a zoning change of use to “Light Industrial”; and

WHEREAS, on February 19, 2021, the Finance and Economic Resiliency Committee (FERC) recommended in favor of relocating the MBCC Visitor Center to a space available at the Anchor Shops, located at 100 16th Street, Suite No. 6, Miami Beach, Florida; and

WHEREAS, the relocation of MBCC would avail the remaining 935 square feet of Retail Space previously occupied by MBCC, allowing Moonlighter to use the entire Retail



Space, without the need for the City to construct a devising wall or for Tenant to go through the expense of applying for a change of use for the Retail Space; and

WHEREAS, on the February 19, 2021, FERC recommended in favor of amending the Lease with Moonlighter to include the remaining 935 square foot area of the Retail Space as part of the Demised Premises.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Landlord and Tenant hereby agree to amend the Lease as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

(a) Section 1.1 of the Agreement is hereby amended to read as follows

1. Demised Premises.

1.1. Landlord owns that certain land (the "Land") and the facility (the "Facility") located thereon, located at 1661 Pennsylvania Avenue, Miami Beach, Florida 33139, which includes a municipal garage (the "Penn Garage"), having approximately 560 parking spaces, and ground floor retail space (the "Retail Space"), having approximately 7,655 square feet (the Land and the Facility shall be collectively referred to herein as the "Property"). Landlord, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions, and agreements to be kept and performed by the Tenant, hereby leases, lets, and demises to Tenant, and Tenant hereby leases and hires from Landlord, those certain premises, which are part of the Retail Space (the "Demised Premises"), having approximately ~~6,720~~ 7,655 square feet, as depicted in Amended Exhibit A and more fully described as follows:

Unit 1, ~~less the northeasterly 935 square feet~~, of Pennsylvania Garage Condominium, a Condominium, according to the Declaration thereof, as recorded in Official Records Book 28080, at Page 4536, of the Public Records of Miami-Dade County, Florida.

a/k/a 530 17th Street, Miami Beach, Florida 33139

(b) Exhibit A to the Agreement is deleted in its entirety and replaced with the attached Amended Exhibit A.

(c) A new Section 41, entitled "Inspector General Audit Rights" is added to the Lease as follows:

41. Inspector General Audit Rights.

- 41.1 Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- 41.2 The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- 41.3 Upon ten (10) days written notice to the Tenant, the Tenant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- 41.4 The Inspector General shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- 41.5 The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- 41.5.1 If this Agreement is completely or partially terminated, the Tenant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- 41.5.2 The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

- 41.6 The provisions in this section shall apply to the Tenant, its officers, agents, employees, subcontractors and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this Agreement.
- 41.7 Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Tenant or third parties.

(d) A new Section 42, entitled "E-Verify" is hereby added to the Lease, as follows:

42. E-Verify

42.1 Tenant shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Tenant shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Tenant shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Tenant enters into a contract with an approved subcontractor, the subcontractor must provide the Tenant with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Tenant shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

42.2 Termination Rights.

42.2.1 If the City has a good faith belief that Tenant has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Tenant for cause, and City shall thereafter have or owe no further obligation or liability to Tenant.

42.2.2 If the City has a good faith belief that a subcontractor has knowingly violated Section 42.1, but the Tenant otherwise complied with such section, the City will promptly notify the Tenant and order the Tenant to immediately terminate the agreement with the subcontractor. Tenant's failure to terminate a subcontractor shall be an event of default under this Lease, entitling Landlord to terminate the Tenant's Lease for cause.

42.3 A contract terminated under the foregoing Subsections 42.2.1 or 42.2.2 is not in breach of contract and may not be considered as such.

42.4 The Landlord or Tenant or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsections 42.2.1 or 42.2.2 no later than 20 calendar days after the date on which the contract was terminated.

42.5 If the Landlord terminates the Lease with Tenant under the foregoing Subsection 42.2.1, Tenant may not be awarded a public contract for at least 1 year after the date of termination of this Lease.

42.6 Tenant is liable for any additional costs incurred by the Landlord as a result of the termination of this Lease under this Section 42.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Lease shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Lease, the provisions of this Amendment shall govern.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Tenant:
MOONLIGHTER FABLAB, INC

ATTEST:

By: _____
Sign

Print Name

Date

Sign

Print Name

Date

Thomas Pupo, Director