

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782  
Office of the City Attorney

April 1, 2021

Via electronic mail to [ars@levinelawfirm.com](mailto:ars@levinelawfirm.com)  
And Via Certified Mail

Mr. Allan S. Reiss, Esq.  
Levine & Partners, P.A.  
3350 Mary Street  
Miami, Florida, 33133

**Re: *Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").***

Mr. Reiss:

This letter shall serve as the City of Miami Beach's ("City") response to your letter dated March 17, 2020 on behalf of Alchemy, (attached as Exhibit "A" hereto), wherein Alchemy claims to "reject" the Notice of Default, and further alleges that Alchemy's payment obligations to the City remain tolled to this day because Alchemy claims the City's garages remain closed with "little limited exception" and because "ingress and egress to the garages are 100% banned from 12:01 am to 6:00 am." It is clear that, based on the allegations contained in your letter, you have clearly misconstrued and misinterpreted the Agreement, the Letter Agreement and the City's Emergency Orders.

As of the date of this letter, the Agreement between Alchemy and the City has expired by its own terms, and Alchemy's default as set forth in the City's March 2, 2021 correspondence to Alchemy ("Notice of Default") remains uncured, with Alchemy owing the City **\$104,165.00**, including interest, for past due payments. The Notice of Default is attached as Exhibit "B" hereto.

The Agreement expired on its own terms on March 6, 2021 when the City did not exercise its exclusive right to extend the Agreement for an additional year in accordance with Section 2(b). Prior to the City's Notice of Default and the expiration of the Agreement, the City and Alchemy entered into a letter agreement on March 24, 2020 (the "Letter Agreement"), whereby the parties mutually agreed to "temporarily toll and suspend Alchemy's payment obligations to the City... until such time that the City's Emergency Measures prohibiting ***the general public's access to the City-owned parking garages is lifted or expired***". Alchemy's payment obligations pursuant to the Agreement would be "automatically reinstated" once the restrictions to the general public's access to the

garages was lifted. At the time, the City had closed all parking garages as part of its initial response to the COVID-19 pandemic.

On October 1, 2020, the City's Emergency Measures were amended to allow general public access to the City-owned parking garages. Accordingly, the period the Agreement was tolled pursuant to the Letter Agreement was March 24, 2021 to October 1, 2020, and Alchemy's payment obligations pursuant to the Letter Agreement automatically reinstated on October 1, 2020. The tolling of the payment obligations resulted in a savings to Alchemy of at least **\$124,998.00**.

Your letter has claimed that Alchemy's payment obligation remains tolled because "ingress and egress to the garages are 100% banned from 12:01 am to 6:00 am" and that the garages remain closed with "little limited exception." This statement is simply not supported by the facts. While it is true that a curfew remains in place from 12:01 am to 6:00 am, the general public has complete access to the City Garages for the entirety of business hours, and cars may be parked in the garages when the curfew is in place from 12:01 am to 6:00 am. Most importantly, the hours of operation during the garages' highest and best viewing value remain open. Accordingly, the general public was granted access to the garages when the City amended its Emergency Orders, effective as of October 1, 2020, and Alchemy's payment obligation was automatically reinstated on that date in accordance with the Letter Agreement.

Nevertheless, the City is still amenable to opening discussions with Alchemy in an effort to amicably resolve all outstanding issues alleged by the parties. We propose the following options that the City is prepared to discuss:

1. Alchemy pay the City \$35,000.00 and allow the City to retain all the hardware that Alchemy has installed in the City Garages, in exchange for full mutual releases from Alchemy and the City; **or**
2. Upon Alchemy's payment of the full past due amount of \$104,165, the City Manager is prepared to present an item to the Mayor and City Commission to recommend that the City reinstate the Agreement, based on the proposal initially provided by Alchemy, which includes, converting the Agreement from a minimum guarantee to a revenue share format.

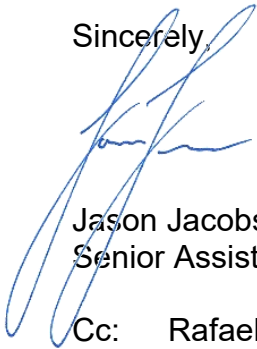
Please advise if Alchemy is amenable to the City's proposal within no later than ten (10) days receipt of this written notice. Should Alchemy reject moving forward with either of the City's options, then the City shall consider the Agreement terminated for cause as a result of Alchemy's default for non-payment.

Finally, it is worth noting that, at the City's February 2021 Neighborhoods and Quality of Life Committee ("Committee"), the members of the Committee discussed the Agreement and the general prospect of the future of advertising in the City's publicly owned garages. While the members of the Committee did not discuss the substantive merits of Alchemy's claims (instead deferring to the City Commission), each of the members of the Committee raised genuine concern about the future of advertising in City owned garages, so I strongly urge you to give our proposals due consideration.

**We respectfully request your written response no later than ten (10) days from receipt of this notice; otherwise we consider the Agreement terminated for cause.**

In the event you have any questions regarding the foregoing, please do not hesitate to reach out to me at (305) 673-7470. The City reserves all of its rights and remedies under the Agreement, at law and in equity.

Sincerely,



Jason Jacobson  
Senior Assistant City Attorney

Cc: Rafael Andrade, Esq.  
Mr. Michael A. Freedman, Alchemy Miami Beach LLC  
Raul Aguila, City of Miami Beach Interim City Manager  
Alina Houdak, City of Miami Beach Assistant City Manager  
Tonya Daniels, City of Miami Beach Director of Marketing and Communications  
Mayor and Members of the City Commission

LEVINE & PARTNERS, P.A.  
ATTORNEYS AT LAW

3350 Mary Street  
MIAMI, FLORIDA 33133

Allan S. Reiss, Esquire

TELEPHONE: (305) 372-1350 Ext. 115  
FACSIMILE: (305) 423-3203  
E-MAIL: [asr@levinelawfirm.com](mailto:asr@levinelawfirm.com)

March 17, 2021

**VIA EMAIL: [raulaguila@miamibeachfl.gov](mailto:raulaguila@miamibeachfl.gov)**  
**& VIA FEDERAL EXPRESS**

Raul Aquila, Esquire  
City Manager  
1700 Convention Center Drive  
Miami Beach, FL 33139

**VIA FEDERAL EXPRESS**

Tonya Daniels, City of Miami Beach Director  
of Marketing and Communications  
1700 Convention Center Drive  
Miami Beach, FL 33139

**VIA FEDERAL EXPRESS**

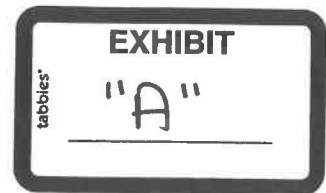
Attention: Alex Dennis, Procurement department  
1700 Convention Center Drive  
Miami Beach, FL 33139

**RE: Agreement dated October 24, 2017, Between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach, LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services pursuant to RFP 2017-081-WG (the "Agreement").**

Dear Mr. Aguila:

The undersigned has been recently retained as special litigation counsel to Alchemy regarding the above-referenced matter. This will acknowledge receipt of your letter dated March 2, 2021. This firm does not try cases by correspondence. Without limiting the foregoing, Alchemy rejects the City's Notice of Default and demands retraction of same.

I note that your letter of references a March 17, 2021 City Commission Meeting regarding Alchemy's advertising contract. It is also my understanding that that meeting did not occur and the matter has been deferred. It is Alchemy's hope that this matter, under the circumstances, will be resolved at or before that meeting. In any event, in light of that discussion, Alchemy



understands that it is currently unnecessary for it to remove its hardware from the subject lots until the matter is brought up for discussion and potentially resolved. Please confirm and advise of the date and time of the meeting.

In the meantime, the course of conduct between the parties, the Agreement, the Letter Agreement negate the Notice of Default. The garages were closed by the City. The City acknowledges that under the circumstances there was no duty to pay. One of the fundamental flaws in the Notice of Default is that as of today's date of the garages continue to be closed, with little limited exception, 100% from 12:01 AM until 6:00 AM. Obviously, where by order of the City ingress and egress to the garages are 100% banned from 12:01 a.m. to 6:00 a.m. the City at the same time cannot demand performance by Alchemy. This construction is supported by the City's rightful voluntary suspension of the payment obligation; the express language of the force majeure provision (section 13) of Agreement; and the Letter Agreement dated March 24, 2020 which provides that Alchemy's payment obligations were suspended "until such time as the City's Emergency Measures prohibiting the general public's access to City owned parking garages is lifted or expired." The prohibition, in fact, has not been lifted, but persist to this day. The City's letter is, *inter alia*, an anticipatory repudiation. Alchemy demands retraction.

Again, Alchemy welcomes an amicable resolution of the current dispute but wholly rejects the City's Notice of Default. Similarly, any claim made on the bond would likewise be considered a willful violation, malicious, and conversion.

This letter is not intended as a full recitation of the law or facts upon which the City's liability may rest, the damages for which it may be responsible or Alchemy's defenses. All claims and defenses are preserved and none are waived.

I look forward to the opportunity to discuss the foregoing with you in a good faith effort to quickly restore what to this point has been a mutually beneficial business relationship.

Very truly yours,

LEVINE & PARTNERS, P.A.

By: s/Allan S. Reiss  
ALLAN S. REISS, ESQ.

ASR/ma



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782  
Office of the City Manager



March 2, 2021

Via electronic mail to [maf@alchemymedia.net](mailto:maf@alchemymedia.net)  
And Via Certified Mail

Mr. Michael A. Freedman  
Alchemy Miami Beach LLC  
103 Bayberry Lane  
Westport, CT 06880

**Re: NOTICE OF DEFAULT**

***Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").***

Mr. Freedman:

This letter shall serve as the City's Notice of Default to Alchemy, in accordance with Article 14.2 of the Agreement, for failure to tender to the City amounts due under the Agreement, including, without limitation, the Minimum Guarantee as set forth in Article 5.1 of the Agreement. The current past due amount to the City is **\$104,165.00**. Alchemy's failure to tender the past due amounts within fifteen (15) days shall result in the termination of this Agreement, for cause pursuant to Article 14.2 of the Agreement.

As a result of the Covid pandemic, the City and Alchemy entered into a letter agreement on or about March 24, 2020 (the "Letter Agreement"), whereby the parties mutually agreed to "temporarily toll and suspend Alchemy's payment obligations to the City... until such time that the City's Emergency Measures prohibiting the general public's access to the City-owned parking garages is lifted or expired." A copy of the Letter Agreement is attached as Exhibit "A" hereto. The Letter Agreement also provides that once the general public is granted access to the City-owned parking garages, Alchemy's payment obligations pursuant to the Agreement shall be "automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished."

On October 1, 2020, the City's Emergency Measures were amended to allow general public access to the City-owned parking garages. Accordingly, the period the Agreement was tolled pursuant to the Letter Agreement was March 24, 2021 to October 1, 2020, and Alchemy's payment obligations pursuant to the Letter Agreement automatically reinstated on October 1, 2020. The tolling of the payment obligations resulted in a savings to Alchemy of at least **\$124,998.00**.

In accordance with Article 14.2 of the Agreement, Alchemy's failure to submit payments due under the Agreement is a "Default in Payment". Alchemy's failure to submit the past due payment within fifteen (15) days of this written notice shall result in the City's termination of the Agreement, for cause, without further demand or notice, and without the City being prejudiced as to any remedies available to the City at law or in equity.

On October 26, 2020, the City notified Alchemy that general public access had been reinstated to the garage as of October 1, 2020, and that Alchemy's payment obligations resumed that date. The letter is attached hereto as Exhibit "B". Despite this, Alchemy has failed to tender any amount due since March 19, 2020. Alchemy's current past due amount, accounting for the tolling period, is **\$104,165.00**, plus all accrued interest, pursuant to Article 5.2 of the Agreement, until such time as payment is actually received by the City. Please note that Alchemy's payment obligations, including the monthly Minimum Guarantee, will continue to accrue until the end of the term.

With regard to a proposed settlement to amicably, and mutually, terminate the Agreement, the City had initially proposed allowing the Agreement to expire on the expiration date of the Agreement, and issue a credit to Alchemy against the past due amounts it owes to the City, in exchange for the City's ability to retain the hardware that Alchemy has installed in the garages. Alchemy has rejected this offer; indicated that it had no desire to allow the City to retain the hardware; and was not interested in any credit. In the alternative, Alchemy affirmed the following counter proposal:

1. Effective February 1, 2021 Alchemy proposes that the current Agreement would convert to a revenue share Agreement.
2. Alchemy and its sub, City Media, will pay the City of Miami Beach 15% of net revenues (gross revenues minus Agency commissions not to exceed 16.667%) on a monthly basis. Payment to be made on the 15th of the following month.
3. The City will receive up to 10% of inventory on a space available basis for the City's own use. The City will pay for production. Alchemy and City Media will post, manage and maintain the City's advertising copy at its own cost.
4. The Term will be extended for one year ending on 2/28/22.
5. If Combined Net Revenues for Alchemy and City Media is equal to or greater than \$500,000 over the 12 months of the Renewal Term, Alchemy and City Media will pay the City an additional \$25,000, and the Agreement would then renew for an additional year at the original base rent.

Having considered Alchemy's counter-offer, we hereby reject it, and would not recommend same to the Mayor and City Commission, especially considering Alchemy's default of the Agreement. Moreover, Alchemy's proposal materially alters the core terms of the original Agreement, including extending the term and significantly altering Alchemy's financial obligations. Alchemy's proposal is effectively, a completely new deal, and as such, it would require a competitive bid waiver and a 5/7ths vote of the Mayor and City Commission. Notwithstanding my lack of authority to unilaterally accept the counter-offer, it will be my recommendation to not accept your proposal.

As you are aware, on February 24<sup>th</sup>, 2021, the Neighborhood and Quality of Life Committee had a discussion regarding Alchemy's advertising contract with the City. After ample discussion, the Committee ultimately requested that the item be sent to the City Commission on March 17, 2021 for the City Commission to review Alchemy's request. We strongly urge that you, prior to that time, pay the City the outstanding amounts due under the Agreement, in the amount of **\$104,165.00**.

Despite your initial rejection, the City is still prepared to offer a credit to Alchemy against the past due amounts it owes to the City in exchange for the City's ability to retain the hardware that Alchemy has installed in the garage. Please advise if Alchemy is amenable to the City's proposal no later than fifteen (15) days receipt of this written notice.

The City reserves all of its rights and remedies under the Agreement, at law and in equity. Should you have any questions regarding the foregoing, please do not hesitate to reach out to Tonya Daniels at (305) 216-9462.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raul Aguila", with a stylized flourish at the end.

Raul Aguila  
Interim City Manager

Cc: Rafael Andrade, Esq.  
Tonya Daniels, City of Miami Beach Director of Marketing and Communications  
Jason Jacobson, Sr. Assistant City Attorney  
Mayor and members of the City Commission



## EXHIBIT A

City of Miami Beach

Office of the City Manager  
Tel. 305-673-7010

Via e-mail to [maf@alchemymedia.net](mailto:maf@alchemymedia.net)  
and Via Overnight Delivery

March 24, 2020

Mr. Michael A. Freedman  
Alchemy Miami Beach LLC  
104 Bayberry Lane  
Westport, CT 06880

Re **Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").**

Mr. Freedman:

Due to the onset of the COVID-19 pandemic, the State, County and City of Miami Beach have declared a State of Emergency. The City has enacted Emergency Measures, which in part, provides that "[a]ll City-owned parking garages and City-owned surface parking lots shall be **CLOSED** to the general public (except for permit and access card hold)."

Pursuant to Section 13.1(b) of the Agreement, Alchemy and the City hereby agree to temporarily toll and suspend Alchemy's payment obligations to the City for the Minimum Guarantee and Utility Charges (as defined in Article 5.1 and 5.4 of the Agreement) until such time that the City's Emergency Measures prohibiting the general public's access to the City-owned parking garages is lifted or expired. Once the general public is again granted access to the City-owned parking garages, Alchemy's payment obligations of the Minimum Guarantee and Utility Charges shall be automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished.

Except as amended in this Letter Agreement, all other terms and conditions of the Agreement shall remain in full force and effect (unless amended, in writing, and executed by the parties, at a future date).

City of Miami Beach

  
Jimmy L. Morales, City Manager

cc Tonya Daniels, City of Miami Beach

Alchemy Miami Beach LLC

NAME  
TITLE

  
Michael A. Freedman  
(130)

## EXHIBIT B

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782  
Office of the City Manager

October 26, 2020

Via electronic mail to [maf@alchemymedia.net](mailto:maf@alchemymedia.net)  
And Via Overnight Delivery

Mr. Michael A. Freedman  
Alchemy Miami Beach LLC  
103 Bayberry Lane  
Westport, CT 06880

**Re: Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").**

Mr. Freedman:


This shall serve as a follow up to the City of Miami Beach's March 24, 2020 letter to Alchemy, whereby the City temporarily tolled and suspended Alchemy's payment obligations for the Minimum Guarantee and Utility Charges pursuant to the Agreement, due to the onset of the COVID-19 pandemic and the State, County and City of Miami Beach declaration of a State of Emergency. The City enacted the Emergency Measures, which in part, provided that "[a]ll City-owned parking garages and City-owned surface parking lots shall be CLOSED to the general public (except for permit and access card hold)."

Pursuant to the direction set forth during the recent Miami Beach Commission Meeting held on Wednesday, September 29, 2020, all Miami Beach parking facilities have been reopened at full capacity. The City's March 24, 2020 letter provided that once "the general public is again granted access to the City-owned parking garages, Alchemy's payment obligations of the Minimum Guarantee and Utility Charges shall be automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished." Accordingly, access to the general public has been reestablished and Alchemy's payment obligations pursuant to the Agreement are reinstated as of October 01, 2020. Payment to the City shall be remitted for past due amounts on or before November 30, 2020.

The City reserves all of its rights and remedies under the Agreement, at law and in equity. Should you have any questions regarding the foregoing, please do not hesitate to reach out to Tonya Daniels at (305) 216-9462.

Sincerely,

DocuSigned by:

  
28CA18194070496...  
Jimmy Morales  
City Manager

Cc:

Tonya Daniels, City of Miami Beach Director of Marketing and Communications