

**AMENDMENT NO. 1 TO LEASE
BETWEEN
THE MIAMI BEACH REDEVELOPMENT AGENCY
AND
MIAMI BEACH CHAMBER OF COMMERCE**

This Amendment No. 1 (Amendment) to the Retail Lease, dated May 26, 2021 ("Lease"), by and between the Miami Beach Redevelopment Agency (RDA), a Public Body Corporate and Politic 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 ("Landlord"), and the Miami Beach Chamber of Commerce, a nonprofit organization, having its principal place of business at 1920 Meridian Ave, 3rd Floor, Miami Beach, FL 33139 ("Tenant"), is entered into this ____ day of _____, 2021 (Effective Date):

RECITALS

WHEREAS, on May 26, 2021, pursuant to Resolution No.655-2021, the Miami Beach Redevelopment Agency (RDA) ("Landlord") entered into a Retail Lease dated May 26, 2021 ("Lease") with the Miami Beach Chamber of Commerce (Tenant) for approximately 721 square feet of ground floor retail space at the Anchor Shops, located at 100 16th Street, Suite No. 6, Miami Beach, Florida ("Premises"), having an initial term for one (1) year, with two (2) additional one (1) year renewal terms, at the option of the RDA; and

WHEREAS, Tenant operates the Miami Beach Convention Center Visitor Center at the Premises; and

WHEREAS, the Lease included operating expenses in the amount of \$529.34 per month ("Operating Expenses"); and

WHEREAS, Tenant is a nonprofit organization and is unable to meet the Operating Expenses as stipulated in the Lease; and

WHEREAS, as a result of the construction activities relating to the Miami Beach Convention Center improvements, Tenant was required to relocate its operations and executed a lease with the RDA and the City ("Penn 17 Lease") for use of a portion of the space located at 1661 Pennsylvania Avenue ("Penn 17 Retail Space"); however, under the Penn17 Lease, Tenant was not required to pay operating expenses, due to its limited income; and

WHEREAS, the inclusion of the Operating Expenses in this Lease was an oversight and Tenant is requesting that the Lease be amended to correct this provision of the Lease; and

WHEREAS, on _____ the Chairman and Members of the Miami Beach Redevelopment Agency adopted Resolution No._____, approving Amendment No.1 to the Lease, removing Tenant's obligation to pay Operating Expenses.

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 2.4 (Operating Costs; Taxes) is hereby deleted in its entirety.
- (b) Section 9.5 (Default by Landlord) is hereby amended as follows:

9.5 Default by Landlord. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or injunction, but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have a period of thirty (30) days following the date of such notice in which to cure such default (provided, however, that if such default reasonably requires more than thirty (30) days to cure, Landlord shall have a reasonable time to cure such default, provided Landlord commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion). Notwithstanding any provision of this Lease, Landlord shall not at any time have any personal liability under this Lease and Landlord's maximum liability shall be as provided for in Section 9.6 of this Lease. ~~In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Retail Space, and in no event shall any deficiency judgment be sought or obtained against Landlord. It is expressly understood that the obligations of Landlord under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, or employees, as such, of the Landlord, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Landlord contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.~~

(c) A new Section 9.6 (Limitation of Landlord's Liability) is hereby added to the Lease to read as follows:

9.6 Limitation of Landlord's Liability. Landlord desires to enter into this Lease only if in so doing the Landlord can place a limit on its liability for any cause of action for money damages due to an alleged breach by the Landlord of this Lease, so that its liability for any such breach never exceeds the sum of \$10,000. Tenant hereby expresses its willingness to enter into this Lease with Tenant's recovery from the Landlord for any

damage action for breach of contract to be limited to a maximum amount of \$10,000. Accordingly, and notwithstanding any other term or condition of this Lease, Tenant hereby agrees that the Landlord shall not be liable to the Tenant for damages in an amount in excess of \$10,000, which amount shall be reduced by the amount actually paid by the Landlord to Tenant pursuant to this Lease, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the Landlord by this Lease. Nothing contained in this paragraph or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon the Landlord's liability as set forth in Section 768.28, Florida Statutes.

(d) A new Section 14.8 (Inspector General Audit Rights) is hereby added to the Lease, as follows:

14.8 Inspector General Audit Rights.

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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:

(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

(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.

(F) 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.

(G) 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.

(e) A new Section 14.9 (Tenant's Compliance with Florida Public Records Law)

14.9 Tenant's Compliance with Florida Public Records Law.

(A) Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of Landlord.

(C) Pursuant to Section 119.0701 of the Florida Statutes, if the Tenant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Tenant shall:

(1) Keep and maintain public records required by the Landlord to perform the service;

(2) Upon request from the Landlord's custodian of public records, provide the Landlord with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Lease if the Tenant does not transfer the records to the Landlord;

(4) Upon completion of the Lease, transfer, at no cost to the Landlord, all public records in possession of the Tenant or keep and maintain public records required by the Landlord to perform the service. If the Tenant transfers all public records to the Landlord upon completion of the Lease, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Lease, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Landlord, upon request from the Landlord's custodian of public records, in a format that is compatible with the information technology systems of the Landlord.

(D) Request for Records; Noncompliance.

(1) A request to inspect or copy public records relating to the Landlord's contract for services must be made directly to the Landlord. If the Landlord does not possess the requested records, the Landlord shall immediately notify the Tenant of the request, and the Tenant must provide the records to Landlord or allow the records to be inspected or copied within a reasonable time.

(2) Tenant's failure to comply with the Landlord's request for records shall constitute a breach of this Lease, and the Landlord, at its sole discretion, may: 3 unilaterally terminate the Lease; (2) avail itself of the remedies set forth under the Lease; and/or (3) avail itself of any available remedies at law or in equity.

(3) A Tenant who fails to provide the public records to the Landlord within a reasonable time may be subject to penalties under s. 119.10.

(E) Civil Action.

(1) If a civil action is filed against Tenant to compel production of public records relating to the Landlord's contract for services, the court shall assess and award against the Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:

(a) The court determines that Tenant unlawfully refused to comply with the public records request within a reasonable time; and

(b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Tenant has not complied with the request, to the Landlord and to Tenant.

(2) A notice complies with subparagraph (1)(b) if it is sent to the Landlord's custodian of public records and to the Tenant at the Tenant's address listed on its contract with the Landlord or to the Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Tenant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

MIAMI BEACH REDEVELOPMENT AGENCY
ATTENTION: RAFAEL E. GRANADO, SECRETARY
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

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.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR LANDLORD:

**THE MIAMI BEACH
REDEVELOPMENT AGENCY**

ATTEST:

By: _____
Rafael E. Granado, Secretary

Alina T. Hudak, Executive Director

Date

FOR TENANT:

**MIAMI BEACH CHAMBER OF
COMMERCE**

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date