

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE LEASE AGREEMENT DATED MAY 25, 2018 BETWEEN THE CITY (LANDLORD) AND THE COLONY THEATER CAFE, INC. (TENANT), FOR THE USE OF APPROXIMATELY 1,371 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1040 LINCOLN ROAD; SAID AMENDMENT APPROVING THE FIRST THREE (3) YEAR RENEWAL OF THE LEASE, AND PROVIDING RENT RELIEF FOR THE PERIOD FROM JANUARY 1, 2021 THROUGH FEBRUARY 28, 2024, IN ORDER TO ADDRESS THE FINANCIAL IMPACT THAT THE COVID 19 PANDEMIC HAS HAD ON TENANT'S OPERATIONS.

WHEREAS, on May 25, 2018, pursuant to Resolution No. 2017-29834, the City executed a new lease agreement ("Lease") with the Colony Theater Café, Inc., a Florida corporation, ("Tenant"), for an initial term of three (3) years commencing retroactively on March 1, 2018 and ending February 28, 2021, with two (2) additional three (3) year renewal terms; and

WHEREAS, the initial term expired on February 28, 2021; and

WHEREAS, the City and Tenant entered into a month to month agreement, commencing on March 1, 2021 and ending on July 30, 2021; and

WHEREAS, prior to expiration of the initial term, the Tenant expressed an interest to exercise the first renewal term for a period of three (3) years, with modifications to the financial terms, citing concerns over meeting the rent requirements; and

WHEREAS, the initial base rental rate under the lease was \$200.55 per square foot (PSF), with a 2% annual increase throughout the term; and

WHEREAS, in addition to the Base Rent payment, the Tenant is subject to an annual percentage of gross receipts payment equal to 7% of total gross receipts for the Lease Year; and

WHEREAS, Tenant has argued that Lincoln Road has been in a downward trend since 2018 and the COVID-19 pandemic has exponentially impacted foot-traffic and sales, as evidenced by the increased vacancies along Lincoln Road; and

WHEREAS, Tenant has requested rent relief from the period from January 1, 2021 through February 28, 2024 ("Rent Relief Period"), abating Tenant's obligation to pay a Base Rent, insurance, real estate taxes, use fee for the Dumpster/Storage Area, and the annual PG payment; and replacing said obligations with a monthly PG payment equal eight percent (8%) of the total monthly gross receipts; and

WHEREAS, in the event that the City, in the City Manager's sole discretion, approves the second renewal term, prior to the expiration of the first renewal term, the City will review the state of the market and determine the financial terms for the final renewal term; however, should Tenant not be in agreement with the financial terms established by the City, Tenant shall have the option of rejecting the approval of the final renewal term; and

WHEREAS, based upon the foregoing, the City Manager recommends that the Mayor and City Commission approve Amendment No. 1 to the Agreement, in the form attached to the City Commission Memorandum accompanying this Resolution as Exhibit "1"; said Amendment approving the first renewal term and modifying the financial terms during the Rent Relief Period.

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 hereby approve and authorize the City Manager and City Clerk to execute Amendment No.1 to the Lease Agreement dated May 25, 2018 between the City ("Landlord") and the Colony Theater Cafe, Inc. ("Tenant") for the use of approximately 1,371 square feet of City-owned property, located at 1040 Lincoln Road; said Amendment approving the first three (3) year renewal term of the Lease and providing rent relief for the period from January 1, 2021 through February 28, 2024, in order to address the financial impact that the COVID 19 pandemic has had on Tenant's operations.

PASSED and **ADOPTED THIS** ____ day of _____ 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

7-15-21