

**AMENDMENT NO. 1 TO LEASE
BETWEEN
THE CITY OF MIAMI BEACH
AND
COLONY THEATER CAFE, INC. D/B/A SEGAFREDO**

This Amendment No. 1 (Amendment) to Lease Agreement, dated May 25, 2018 (Lease), by and between the **CITY OF MIAMI BEACH**, a municipality 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 **COLONY THEATER CAFE, INC.** a Florida for profit company, d/b/a Segafredo Zanetti Espresso, having its principal place of business at 1040 Lincoln Road, Miami Beach, FL 33139 (Tenant), is entered into this ____ day of _____, 2021 (Effective Date):

RECITALS

WHEREAS, pursuant to Resolution No. 2017-29834 the City and Tenant executed the Lease on May 25, 2018; and

WHEREAS, the initial term of said Lease was for three (3) years, commencing March 1, 2018 and ending February 28, 2021, with two (2) options of three (3) years each; and

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

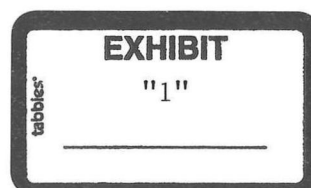
WHEREAS, the City and Tenant entered into a month to month agreement, commencing on March 1, 2021 and ending on July 30, 2021; and

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 in meeting the current rent requirements under the Lease based upon the financial impact of the COVID-19 pandemic and the current economic trend for Lincoln Road; and

WHEREAS, pursuant to the Lease, Tenant pays Base Rent with a 2% annual increase throughout the term; use fee for the Dumpster Storage Area in the amount of \$637.50 per month; Operating Expenses (Real Estate Taxes and Insurance); and an annual percentage of gross receipts (PG) rent payment of 7% of total gross receipts for each Lease Year; and

WHEREAS, Tenant has requested rent relief for the period retroactively commencing January 1, 2021 and continuing throughout the first renewal term commencing March 1, 2021 and ending on February 28, 2024 ("Rent Abatement Period") during which period the Base Rent, use fee for Dumpster/Storage Area, Operating Expenses, and the annual PG payment shall be abated and the PG payment shall be modified to equal eight percent (8%) of gross receipts and payable on a monthly basis; and

WHEREAS, in the event that the City, in the City Manager's sole discretion, approves the second renewal term, the City, prior to the end of the first renewal term, will review the state of the market and determine the financial terms of the Lease; 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; and

WHEREAS, on _____ the Mayor and City Commission adopted Resolution No. _____, approving Amendment No.1 to the Lease, approving the first renewal of the Lease and approving rent relief during the Rent Relief Period, as more particularly set forth herein.

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) During the period from January 1, 2021 to February 28, 2024 ("Rent Relief Period"), the following additional Rent Payments shall be abated:

- (1) Base Rent, as defined in Section 3.1
- (2) Property Tax Payment, as defined in Section 3.2.1.2 and
- (3) Insurance costs for the building, as defined in Section 3.2.1.3

(b) During the Rent Relief Period, Section 3.4 of the Lease shall be deleted in its entirety and replaced with the following:

3.4 Percentage of Gross

3.4.1 Tenant shall pay the Landlord a monthly percentage of gross receipts (PG) payment, in an amount equal to eight percent (8%) of gross receipts for each month, due by the 15th day of the following month.

3.4.2 The term "gross receipts" is understood to mean all income received by the Tenant from all sales made by Tenant of food, beverages and merchandise, in on or from the Demised Premises, inclusive of the receipts generated by the sidewalk café (less returns or refunds), excluding amounts of any Federal, State or City sales tax, governmental imposition, assessment, charge or expense of any kind, collected by the Tenant from customers and required by law to be remitted to the taxing or other governmental authority.

Notwithstanding the foregoing, "gross receipts" shall also not include any of the following:

- (a) gratuities to employees paid by Tenant's patrons or customers (even if included in the check to the patron or customer);
- (b) food and beverages served to employees of Tenant at no cost;
- (c) food and beverages provided by way of promotions or promo check; or
- (d) a walkout (i.e. a meal served but not paid for).

3.4.3 On or before the fifteenth (15th) of each month during the initial term, or any approved renewal term, Tenant shall prepare and deliver to Landlord at the place where rent is payable a copy of Tenant's Sales and Use Tax Return (Form DR-15CS or DR15-EZ) filed with the Florida Department of Revenue reporting Gross Sales made from the Demised Premises during the preceding calendar quarter, which shall be broken down by month or such other documentation approved by Landlord.

- (1) A new Section 14.3 (Inspector General Audit Rights) is hereby added to the Lease, as follows:

14.3 Inspector General Audit Rights.

- 14.3.1 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.
- 14.3.2 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.
- 14.3.3 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.

- 14.3.4 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.
- 14.3.5 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:
- (a) 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
 - (b) 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.
- 14.3.6 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.
- 14.3.7 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.

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:

CITY OF MIAMI BEACH

ATTEST:

By:

Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR TENANT:

COLONY THEATER CAFE, INC.

ATTEST:

By:

Secretary

President

Print Name

Print Name

Date