

**AMENDMENT NO. 1 TO LEASE
BETWEEN
THE MIAMI BEACH REDEVELOPMENT AGENCY
AND
MR. R SPORTS, INC.**

This Amendment No. 1 (Amendment) to the Lease, dated October 2, 2012 (Agreement), 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 Mr. R Sports, Inc, a Florida company, having its principal place of business at 100- 16 Street, Suites No. 1- 4, Miami Beach, FL 33139 (Tenant), is entered into this ____ day of _____, 2021 (Effective Date):

RECITALS

WHEREAS, on October 2, 2012, pursuant to Resolution Number 584-2012, the Miami Beach Redevelopment Agency (RDA), (Landlord) and Mr. R. Sports, Inc, (Tenant) entered into a Lease for the operation of a retail store at 100 – 16 Street, Units 1-4, Miami Beach, Florida (Premises); and

WHEREAS, the initial term was for three (3) years commencing October 1, 2012 and ending September 30, 2015 with two (2) options for three (3) year and 364 days; and

WHEREAS, on October 1, 2015 the first renewal option was exercised commencing on October 1, 2015 and ending on September 30, 2018; and

WHEREAS, on April 30, 2018, the second renewal option was exercised commencing on October 2, 2018 and ending on October 31, 2022, the current term; and

WHEREAS, due to the impacts of the COVID 19 Pandemic, Tenant's sales to rent ratio is below an average threshold to sustain the current rents and Tenant has not been able to meet full rental obligations; and

WHEREAS, since October 1, 2020 the Tenant has only made partial payments; and

WHEREAS, Tenant has requested the abatement of Minimum Rent from October 1, 2020, to October 31, 2022 in the amount of \$228,221.97 ("Partial Rent Abatement Period") and the replacement of Minimum Rent with Percentage Rent equal to 7% of Gross Sales; and

WHEREAS, Tenant shall continue to be obligated to pay the Operating Expenses, as more particularly described in Section 2.4 of the Lease; and

WHEREAS, Tenant and Landlord will enter into a Conditional Termination Agreement to allow the Landlord to market the space while the Tenant continues to occupy and operate under the new financial terms; and

WHEREAS, on _____ the Chairman and Members of the Miami Beach Redevelopment Agency adopted Resolution No. _____, approving Amendment No.1 to the Lease, granting Tenant the rent relief requested as more particularly set forth herein, and approving the Conditional Termination Agreement.

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) The Minimum Rent payment due under Section 2.2 of the Lease, for the period commencing October 1, 2020 and ending on October 21, 2022, ("Partial Rent Abatement Period" shall be replaced with Percentage Rent payments as described in the following new Section 2.3:

2.3 Percentage Rent

2.4 During the Partial Rent Abatement Period, Tenant shall pay the Landlord monthly percentage rent payments ("Percentage Rent") in an amount equal to seven percent (7%) of Gross Sales for each month due by the 15th day of the following month. The Term Gross Sales as used herein shall include all receipts, whether collected or accrued from the Premises.

- (b) A new Section 2.9 (Inspection and Audit)

Tenant shall maintain its financial records pertaining to its operation pursuant to this Lease, and records with respect to the Percentage Rent required pursuant to Section 2.3 for a period of three (3) years after the conclusion of the term, and such records shall be open and available to the Executive Director or his designee, as deemed necessary by the Executive Director or the Executive Director's designee, upon ten (10) business days' written notice from the Executive Director or his designee that the Landlord desires to review said records. Tenant shall maintain its records relating to the operation of the Premises within Miami-Dade County, Florida.

- (c) 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.
- (d) 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: (1) 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

15 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:

MR. R. SPORTS, INC.

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date