

**AMENDMENT NO. 1 TO LEASE
BETWEEN
THE MIAMI BEACH REDEVELOPMENT AGENCY
AND
CUBICHE 105, LLC**

This Amendment No. 1 (Amendment) to the Lease, dated December 28, 2015 (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 Cubiche 105, LLC, a Florida limited liability company, having its principal place of business at 1555 Washington Avenue, Miami Beach, FL 33139 (Tenant), is entered into this ____ day of _____, 2021 (Effective Date):

RECITALS

WHEREAS, on December 28, 2015, pursuant to Resolution Number 614-2015, the Miami Beach Redevelopment Agency (RDA), (Landlord) and CUBICHE 105, LLC (Tenant) entered into a Lease for the operation of a restaurant at 1555 Washington Avenue (Premises); and

WHEREAS, the initial Lease term is for nine (9) years and 364 days with two (2) five (5) year renewal options, commencing on January 15, 2015 and ending on January 14, 2025; and

WHEREAS, upon execution of the Lease, the Tenant began a \$3 million renovation project on the Premises that exceeded the expected completion date and which significantly delayed the restaurant's opening; and

WHEREAS, consequently, the construction delays did not allow the Tenant to open until February 28, 2020; and

WHEREAS, Tenant was open and operating for two weeks, when due to the COVID-19 pandemic, the Tenant was forced to shut down operations and remained closed until March 1, 2021; and

WHEREAS, although, pursuant to Resolution No. 2021-31702, the Tenant qualified for the additional Minimum Rent abatement for the period of October 2020 through December 2020, Tenant has suffered significant loss in revenue and has not been able to meet full rental obligations; and

WHEREAS, Tenant has requested 1) the complete abatement of Minimum Rent from January 1, 2021, to February 28, 2021 in the amount of \$ 74,898.76. ("Abatement Period") 2) the abatement of Minimum Rent for the period from March 1, 2021 to March 31, 2022 ("Partial Rent Abatement Period"), in the amount of \$495,830.45, and the replacement of Minimum Rent with Percentage Rent equal to 10% of Gross Sales; and

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

WHEREAS, at the end of the Partial Rent Abatement Period, the rental terms under the Lease would return to the then current rent obligations for year six (6) at \$69.56 per square foot in order to provide Tenant time to ramp up its operations; 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.

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 January 1, 2021 and ending on February 28, 2021 ("Abatement Period") is hereby abated. During the period from March 1, 2021 through March 30, 2022, ("Partial Rent Abatement Period"), Tenant's Minimum Rent payment shall be replaced with Percentage Rent payments as described in the new following Section 2.3:

2.3 Percentage Rent (During Partial Rent Abatement Period)

Percentage Rent. During the Partial Rent Abatement Period, Tenant shall pay the Landlord monthly percentage rent payments ("Percentage Rent") in an amount equal to ten percent (10%) 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 including, without limitation, receipts from the sale of food, beverage, alcoholic beverages, merchandise, rental of space, or from any other source whatsoever. At the end of the Partial Rent Abatement Period, Tenant will no longer be responsible for making Percentage Rent payments under this Section 2.3 of the Lease, and instead shall commence making Minimum Rent payments pursuant to Section 2.2 of the Lease under the then current monthly rent obligation for year six (6) at \$69.56 per square foot, based upon the below schedule:

		Monthly	Annual	Monthly	Annual	Monthly	Annual	
	Year	Rent	Rent	OPEX	OPEX	Rent & OPEX	Rent & OPEX	PSF
2017	1	\$33,273.33	\$399,280.00	\$5,234.61	\$62,815.30	\$38,507.94	\$462,095.30	\$60.00
2018	2	\$34,271.53	\$411,258.40	\$5,234.61	\$62,815.30	\$39,506.14	\$474,073.70	\$61.80
2019	3	\$35,299.68	\$423,596.15	\$5,234.61	\$62,815.30	\$40,534.29	\$486,411.45	\$63.65
2020	4	\$36,358.67	\$436,304.04	\$5,234.61	\$62,815.30	\$41,593.28	\$499,119.34	\$65.56
2021	5	\$37,449.43	\$449,393.16	\$5,234.61	\$62,815.30	\$42,684.04	\$512,208.46	\$67.53
2022	6	\$38,572.91	\$462,874.95	\$5,234.61	\$62,815.30	\$43,807.52	\$525,690.25	\$69.56
2023	7	\$39,730.10	\$476,761.20	\$5,234.61	\$62,815.30	\$44,964.71	\$539,576.50	\$71.64
2024	8	\$40,922.00	\$491,064.04	\$5,234.61	\$62,815.30	\$46,156.61	\$553,879.34	\$73.79
2025	9	\$42,149.66	\$505,795.96	\$5,234.61	\$62,815.30	\$47,384.27	\$568,611.26	\$76.01
2026	10	\$43,414.15	\$520,969.84	\$5,234.61	\$62,815.30	\$48,648.76	\$583,785.14	\$78.29

(b) Section 25 of the Lease Summary (Tenant's Minimum Hours of Operation) is hereby amended to read as follows:

Any change in the established minimum hours of operation shall require the prior written consent of the Landlord.

(c) A new Section 2.9 (Audit and Inspections)

2.9 Inspection and Audit.

(A) Tenant shall maintain its financial records pertaining to its operations pursuant to this Lease, and records with respect to the Percentage Rent required pursuant to Section 2.3 during the Partial Rent Abatement Period, for a period of three (3) years after the conclusion of the Term. Such records shall be open and available to the Executive Director or the Executive Director's designee, as deemed necessary by the Executive Director or the Executive Director's designee, upon ten (10) business days' written notice that the Landlord desires to review said records. Tenant shall maintain accurate receipt-printing cash registers or a like alternative which will record and show the payment for every sale made or service provided. Tenant shall also maintain such other records as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. Tenant shall maintain its records relating to the operation of the Premises within Miami-Dade County, Florida.

(B) The Executive Director or Executive Director's designee shall be entitled to audit Tenant's records pertaining to its operations during the Partial Rent Abatement Period as often as it deems reasonably necessary throughout the Term of this Lease, and within the three (3) year period following the expiration or termination of the Lease. Landlord shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Tenant's statement of Gross Sales for any Lease Year audited, in which case the Tenant shall pay Landlord, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest as required pursuant to Section 2.6. These audits are in addition to periodic audits by the City of Resort Tax collections and payments, which are performed separately. Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

(C) Tenant shall submit, at the end of each Lease Year during the Partial Rent Abatement Period, an annual statement of Gross Sales, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be accompanied by a report from an independent CPA.

(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 Lease, for examination, audit, or reproduction, until three (3) years after final payment under this Lease or for any longer period required by statute or by other clauses of this Lease. In addition:
- (1) If this Lease 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 Lease 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 Lease.
- (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: (1) unilaterally terminate the Lease after providing Tenant with written notice and eighttt (8) days to cure and Tenant having failed to fully comply with the Public Records Request; (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:

CUBICHE 105, LLC

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date