

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. 5 TO THE MANAGEMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND LIVE NATION WORLDWIDE, INC., FOR THE OPERATION AND MANAGEMENT OF THE FILLMORE MIAMI BEACH AT THE JACKIE GLEASON THEATER, TO SUSPEND THE TERM OF THE AGREEMENT DURING THE CONTEMPLATED CLOSURE OF THE FACILITY NECESSITATED BY EARLY WORK ON THE MBCC HOTEL PROJECT AND TO PRE-APPROVE THE SECOND FIVE-YEAR RENEWAL TERM CONTEMPLATED BY THE AGREEMENT; AND FURTHER APPROVING AMENDMENT NO. 1 TO THE EARLY ACCESS AGREEMENT BETWEEN THE CITY AND MB MIXED USE INVESTMENT, LLC TO CLARIFY MB MIXED USE INVESTMENT, LLC'S EXISTING RESPONSIBILITY TO PAY FOR LIVE NATION'S COSTS AND EXPENSES RESULTING FROM THE TEMPORARY CLOSURE OF THE FILLMORE.

WHEREAS, on June 22, 2007, the City entered into a management agreement (the "Original Agreement") with Live Nation Worldwide, Inc. ("Live Nation") to manage the Jackie Gleason Theater of the Performing Arts (now named and known as the Fillmore Miami Beach at the Jackie Gleason Theater) (the "Facility" or "Venue"); and

WHEREAS, the Management Agreement has been amended four times: on December 9, 2009 (the "First Amendment"), July 7, 2011 (the "Second Amendment"), May 6, 2016 (the "Third Amendment"), and on March 10, 2021 (the "Fourth Amendment") (the Original Management Agreement as so amended, the "Agreement").

WHEREAS, the Agreement provides for an initial term of ten (10) years and two 5-year renewal options: the initial 5-year renewal option is at the discretion of Live Nation ("First Renewal Term"); the second 5-year renewal option may be exercised upon mutual agreement of the parties ("Second Renewal Term"); ; and

WHEREAS, at the end of the Initial Term, Live Nation exercised the First Renewal Term pursuant to Section 3.2 (i) of the Agreement, commencing on September 1, 2017 and expiring on August 31, 2022; and

WHEREAS, on December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27278, approving the First Amendment, to authorize Live Nation to extend its hours of operation and sell alcohol at the Facility for a trial period, subject to conditions; and

WHEREAS, on April 13, 2011, the Mayor and City Commission adopted Resolution No. 2011- 27640, approving Amendment No. 2 to the Agreement, to permanently approve the extension of hours of operation and liquor sales at the Facility for the duration of the Management Agreement; and

WHEREAS, on April 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29368, approving Amendment No. 3 to the Agreement (the "Third Amendment"), which established the terms on which the City may remove the "Rehearsal Hall" from the Management Agreement, should the City continue to pursue development of the Miami Beach Convention

Center Hotel Project (the "Hotel Project") and other related off-site improvements. The Third Amendment also contemplates among other conditions, (1) financial and operational adjustments related to Live Nation's operations of the Venue, including establishing the Required City Distribution to be paid by Live Nation; (2) that a portion of the Facility and the surrounding area may undergo construction, including modifications to the Facility's back of house, reconfiguration of the Facility's loading docks, and upgrade of the fire alarm system (the "Facility Improvements"); and (3) that Live Nation shall receive a credit against amounts payable by Live Nation to the City in the event Hotel Project construction activities result in (a) cancellation or relocation of an Event or (b) for a continuous period of not less than twenty-four (24) hours, either (i) renders the Facility inaccessible, (ii) render the Facility uninhabitable or unfit for use, or (iii) causes the cessation of utilities at the Venue (collectively, "Material Disruptions"). Specifically, the Third Amendment stipulates that that if the City verifies that Live Nation is required to close the Facility due to Material Disruptions then Live Nation is to receive a credit equal to the sum of the following (collectively, the "Required Credit") (1) a pro-rated per-diem amount of the then-applicable Required City Distribution ("RCD") for the duration of such closure; (2) a pro-rated per-diem amount of all other fixed costs incurred by Live Nation to operate the Facility (net of the chilled water credit stipulated in the Third Amendment), and (3) any and all out-of-pocket expenses incurred by Live Nation in connection with the cancellation of Events, including without limitation, talent guarantees, marketing costs and costs related to personnel; and

WHEREAS, on January 14, 2021 the Mayor and City Commission adopted Resolution No. 2021-31546 approving the Fourth Amendment to the Management Agreement, extending the first renewal term by the number of days corresponding to the days the Facility has been closed due to the COVID-19 Pandemic; and adjusting the Required City Distribution payment to be suspended and prorated to the days corresponding to the Facility's closure. Accordingly, on February 1, 2022, the City and Live Nation entered into a Memorandum of Understanding to memorialize the Facility reopening date as November 14, 2021, thereby extending the current term through April 27, 2024, and resuming the Required City Distribution payment in January 2022 in the amount of \$407,196.42 after applying the corresponding credits in the amount of \$900,000.00, pursuant to Section 3.2 (b) of the Fourth Amendment to the Management Agreement.

WHEREAS, on July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30425, approving a lease agreement (the "Hotel Lease") between the City and MB Mixed Use investment, LLC (the "Developer") approving the construction and development of the Miami Beach Convention Center Hotel (the "Hotel Project") at the site defined in the Hotel Lease (the "Site"); and

WHEREAS, on November 6, 2016, more than sixty percent (60%) of the voters voting thereon in a City-wide referendum approved of the Hotel Lease as required by Section 1.03(b)(3) of the City Code.

WHEREAS, on March 4, 2020, the City and the Developer entered into an early access agreement (the "Early Access Agreement" or "EAA") to grant access to the Developer to the Site and to certain other areas, including certain portions of the Facility, so that the Developer may perform certain pre-construction activities (the "Early Work") that would accelerate the timeline for construction of the Hotel Project. The Early Access Agreement further requires the City and the Developer to reasonably cooperate with each other so that the Developer's activities under the Early Access Agreement do not materially interfere with the loading dock or other ongoing operations at the Facility; and the Developer agreed to indemnify the City for, among other things, Live Nation's expenses associated with Material Disruptions.; and

WHEREAS, on February 4, 2022, in accordance with Sections 2(a) and 11(g) of the Third

Amendment, the City provided formal notice to Live Nation advising of the City's intent to recapture possession of the Rehearsal Room on June 1, 2022 and of the expected commencement of construction of the Facility Improvements and Hotel Project. Subsequently, on February 8, 2022, the City hand delivered formal notice to Live Nation confirming the construction commencement date of June 1, 2022; and

WHEREAS, the impact and benefits of commencing construction on June 1, 2022 have been contemplated; and

WHEREAS, in anticipation of the construction of the Facility Improvements and Hotel Project, and the foreseeability that Material Disruptions are unavoidable during the Early Work, Live Nation, the City and the Developer believe that a temporary closure of the Facility (the "Closure") will be a safer, more efficient and more cost-effective manner for the Developer to expedite such portions of the Early Work as will most impact the Facility and its operations and would be likely to cause Material Disruptions ("Closure Early Work"); and

WHEREAS, commencement of the Early Work on June 1, 2022 would allow the vertical construction of the Hotel Project to occur a year sooner (currently targeted for spring 2023), and for the expediting of the Facility Improvements stipulated in the Third Amendment; and

WHEREAS, the Third Amendment did not contemplate a temporary closure, so a Fifth Amendment to Management Agreement is necessary to set forth the City's and Live Nation's respective rights and obligations during the Closure; and

WHEREAS, the Developer has agreed, pursuant to an amendment of the Early Access Agreement (the "EAA Amendment") to be executed by the Developer and the City concurrently with the execution of the Fifth Amendment, to clarify the Developer's responsibility to pay for Live Nation's expenses associated with the Closure (the "Reimbursable Expenses"); and

WHEREAS, the Fifth Amendment outlines the financial and operational adjustments related to the Closure and the process for the Developer's reimbursement to Live Nation of the Reimbursable Expenses; and

WHEREAS, pursuant to the EAA Amendment, the Developer shall indemnify the City from and against any liability arising out of Developer's failure to pay the Reimbursable Expenses and other amounts to be paid by the Developer to Live Nation pursuant to the EAA Amendment

WHEREAS, the Administration recommends approving the Fifth Amendment to the Agreement and approval of the EAA Amendment to clarify the Developer's existing responsibility to pay for Live Nation's costs and expenses resulting from the temporary closure of the Fillmore.

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 approves a fifth amendment to the Management Agreement between the City of Miami Beach and Live Nation Worldwide, Inc., to provide for the closure of the Fillmore Miami Beach at the Jackie Gleason Theater during the construction and development of the Miami Beach Convention Center Hotel; with said fifth amendment including: (1) the terms, dates, and length of closure of the Jackie Gleason Theater, (2) extension of the first renewal term, as provided for in the initial management agreement between the parties, (3) adjustments to Live Nation's financial obligations to the City during the closure, (4) provisions for reimbursements by MB Mixed Use Investment, LLC and (5) pre-approval of the second 5-year extension term so long as there is no default during the remainder of the first renewal term; and authorizes the City Manager and City Attorney to take the necessary and appropriate steps to finalize the fifth

amendment; and further authorizes the Mayor and City Clerk to execute the fifth amendment to the Management Agreement upon form approval by the City Attorney; and hereby further approve a first amendment to the Early Access Agreement between the City of Miami Beach and MB Mixed Use Investment, LLC to clarify the Developer's existing responsibility to pay for Live Nation's costs and expenses resulting from the temporary closure of the Fillmore; and authorizes the City Manager and City Attorney to take the necessary and appropriate steps to finalize the first amendment; and further authorizes the Mayor and City Clerk to execute the first amendment to the Early Access Agreement upon form approval by the City Attorney.

PASSED and **ADOPTED** this ____ day of _____ 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

5-23-22

Date