AMENDMENT NO. 5 TO CONCESSION AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
FIRST CLASS PARKING SYSTEMS LLC.
TO PROVIDE VALET PARKING SERVICES AT THE FILLMORE AT THE JACKIE GLEASON THEATER OF THE PERFORMING ARTS, MIAMI BEACH CONVENTION CENTER, AND OTHER CITY PROPERTIES, AS MAY BE REQUIRED, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2018-11-WG

This Amendment No. 5 ("Amendment") to the Concession Agreement, dated November 27, 2018 (Agreement), by and between the **City of Miami Beach, Florida,** a municipal corporation organized 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 (the "City"), and **First Class Parking Systems LLC,** a Florida limited liability company, with offices at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181 ("Concessionaire"); is entered into this _____day of_____, 2022:

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RECITALS

WHEREAS, on July 25, 2018, the Mayor and City Commission adopted Resolution Number 2018-30399, approving the award of Request for Proposals ("RFP") No. 2018- 166-WG for valet parking services on City-owned property (the "RFP") to Concessionaire; and

WHEREAS, on November 26, 2018, the City and Concessionaire executed the Agreement with respect to the valet parking services at The Fillmore Miami Beach at Jackie Gleason Theater (the “Fillmore”), the Miami Beach Convention Center (the “Convention Center”), and other City properties, as may be required, for an initial term of one (1) year, commencing on November 1, 2018 and ending on October 31, 2019, with four (4) additional one-year renewal terms, subject to approval of the City Manager; and

WHEREAS, on November 1, 2019, the City and Concessionaire executed Amendment No. 1 to the Agreement, approving the first one-year renewal term, beginning on November 1, 2019 and ending on October 31, 2020, and modifying the financial terms as contemplated under the Agreement during each annual renewal term; and

WHEREAS, due to the impacts of the COVID-19/novel Coronavirus pandemic, the parties agreed to suspend services under the Agreement, effective April 1, 2020 ("Suspension Date") and through the date the Parking Department Director would determine that services could resume ("Suspension Period"), which agreement was memorialized in a letter agreement dated March 27, 2020; and

WHEREAS, on September 25, 2020, the City and Concessionaire executed Amendment No. 2 to the Agreement, to correct the commencement date of the Agreement to reflect October 1, 2018, and, accordingly, correct the contract year to start October 1st and end September 30th; and to clarify Section 3.2.3 of the Agreement; and

WHEREAS, Amendment No. 2 also reflected that during the Suspension Period, the Venues may require valet services, on a demand basis ("Temporary Services"), and that Concessionaire would exclusively provide such valet services from the Effective Date of Amendment No. 2 (September 25, 2020) and continuing through and including the expiration

date of the Suspension Period or January 31, 2021, whichever occurred first ("Temporary Services Period"); and

WHEREAS, during the Temporary Services Period, the Concession Fees set forth in Section 3.2 of the Agreement, including the Minimum Guarantee of $17,900 a month, the Excess Transaction Fee and Percentage of Gross Receipts (collectively, the "Concession Fees") were abated and replaced with a Concession Fee equal to twelve percent (12%) of the monthly Gross Receipts for all transactions; and

WHEREAS, the valet operations at the Convention Center and the Fillmore were Concessionaire's primary sources of revenue under the Agreement, and as of December 2020, these venues remained closed, with any future re-opening requiring a ramp up period; and

WHEREAS, on January 13, 2021, the Mayor and City Commission adopted Resolution No. 2021-31543, approving Amendment No. 3 to the Agreement; said Amendment extending the Temporary Services Period through the earlier of September 30, 2021 or such time as the Convention Center bookings resumed operations at pre-pandemic booking levels; and

WHEREAS, in March 2022, the Convention Center reported that its staffing levels were at approximately 80% and its bookings at approximately 90%, as compared to pre-pandemic levels; and

WHEREAS, due to the delays in the ramp up period for the Convention Center, Concessionaire requested that the City extend the reduced Concession Fee payments, as established in Amendment No. 3, through March 31, 2022; and

WHEREAS, although the Convention Center had not quite reached pre-pandemic booking levels by March 31, 2022, the Concessionaire agreed to resume payment of the Concession Fees which were required under the Agreement prior to the commencement of the COVID-19 pandemic for the period commencing April 1, 2022 and ending September 30, 2022; and

WHEREAS, on April 6, 2022, the Mayor and City Commission adopted Resolution No. 2022-32100, approving Amendment No. 4 to the Agreement; said Amendment modifying the concession fee payments to reflect the Concessionaire's agreement to resume payment of Concession Fees as due under the original agreement for the period commencing April 1, 2022 and ending September 30, 2022; and

WHEREAS, Live Nation Worldwide, Inc. manages the Fillmore pursuant to a Management Agreement dated June 22, 2007 between the City and Live Nation (the "Management Agreement"); and

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

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WHEREAS, on March 4, 2020, the City and the Developer entered into an early access agreement (the "Early Access Agreement") to grant access to the Developer to the Site and to certain other areas, including certain portions of the Fillmore, so that the Developer may perform certain pre-construction activities (the "Early Work") that would accelerate the timeline for construction of the Hotel Project; and

WHEREAS, on May 25, 2022, the Mayor and City Commission adopted Resolution 2022-32174, approving Amendment No. 5 to the Management Agreement pursuant to which the City and Live Nation agreed to close the Fillmore on a temporary basis to enable the Developer to execute some of the Early Work affective the Fillmore in a safer and more expeditious manner; and

WHEREAS, Concessionaire's revenues will be reduced as a result of the temporary closure of the Fillmore; and

WHEREAS, to address the anticipated reduction in Concessionaire's revenues, the City and Concessionaire desire to adjust the financial terms of the Agreement during the closure of the Fillmore; and

WHEREAS, instead of exercising its option to renew the Term of the Agreement for an additional year, the City and Concessionaire agree that the Agreement shall remain in effect on a month-to-month basis.

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NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Concessionaire hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS; CAPITALIZED TERMS.

The above recitals are true and correct and are incorporated as part of this Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Agreement.

2. MODIFICATIONS.

a. The Agreement shall remain effective beyond the expiration of the current renewal term on a month-to-month basis commencing on October 1, 2022 and ending at such time as the agreement is terminated and/or the Parties enter into a new agreement for valet parking services at City properties.

b. The Agreement is hereby amended to reduce the monthly Minimum Guarantee payment due pursuant to Section 3.2.1 by 20% from $17,900.00 to $14,320.00, such reduction to apply from October 1, 2022 until the first day of the month that occurs after the month in which the Fillmore reopens to the public for the .

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall

remain unchanged and in full force and effect. Without limiting the foregoing, none of the modifications contained in this Amendment shall be construed as a waiver or modification of the City's right to terminate the Agreement for convenience or its right to enforce any other terms or conditions of the Agreement. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

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 CITY:

ATTEST: **CITY OF MIAMI BEACH, FLORIDA**

By: _____ _____
Rafael E. Granado, City Clerk Alina T. Hudak, City Manager

_____
Date

FOR CONCESSIONAIRE:

ATTEST: **FIRST CLASS PARKING SYSTEMS LLC**

By: _____ _____
Secretary President

_____ _____
Print Name Print Name

_____
Date

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