MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

REDEVELOPMENT AGENCY MEMORANDUM

TO: Chairperson and Members of the Miami Beach Redevelopment Agency

FROM: Alina T. Hudak, City Manager

DATE: September 14, 2022

SUBJECT: **A RESOLUTION OF THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY (RDA), AMENDING RESOLUTION NO. 671-2022, RELATING TO A LEASE AGREEMENT BETWEEN THE RDA (LANDLORD) AND OPEN VISION ONE, LLC (TENANT), FOR USE OF APPROXIMATELY 4,236 SQUARE FEET OF GROUND FLOOR RETAIL SPACE AT THE ANCHOR SHOPS AND GARAGE, AS A FINE DINING RESTAURANT, LOCATED AT 1560 COLLINS AVE, SUITE NOS. 3-4 (PREMISES); SAID AMENDMENT, CORRECTING THE ESSENTIAL TERMS OF THE LEASE AGREEMENT, AS MORE PARTICULARLY SET FORTH IN THIS RESOLUTION, WHICH MODIFICATION, IN MATERIAL PART, INCLUDES AN ABATEMENT OF THE MINIMUM BASE RENT PAYMENTS FOR MONTHS TWO (2) THROUGH THIRTEEN (13) FROM THE RENT COMMENCEMENT DATE, WHILE TENANT COMPLETES THE BUILD-OUT OF THE PREMISES, ESTIMATED TO COST APPROXIMATELY $1.5 MILLION.**

BACKGROUND

On August 2021, the City, on behalf of the RDA, began marketing for lease approximately 4,236 square feet of retail space at the Anchor Shops and Garage, located at 1560 Collins Avenue, Suites 3-4, Miami Beach, Florida 33139 (the "Premises") through the services of City-approved brokerage firm, CBRE.

On May 27, 2022, the proposed lease was presented and discussed at the Finance and Economic Resiliency Committee (FERC). The Committee recommended in favor of approving a new lease with Open Vision One, LLC.

On July 20, 2022, the Chairperson and Members of the Miami Beach Redevelopment Agency adopted Resolution No. 671-2022, approving the Lease in substantial form with Open Vision One, LLC. Resolution No. 671-2022 is hereby being amended to reflect the terms outlined in the Letter of Intent. The corrections or clarifications are indicated as follows: deleted items ~~struck through~~ and inserted items underlined:

Landlord: Miami Beach Redevelopment Agency (RDA)

Tenant: Entity name: Open Vision One, LLC, a Florida limited liability company

Premises: +/- 4,236 square foot Premises located at 1560 Collins Ave,

Suites 3 - 4, Miami Beach, FL 33139

In the event, the Tenant desires to use the outdoor exterior area adjacent to a portion of the Interior Premises, Tenant shall be required to execute a Concession Agreement and the square footage allowable shall be subject to approval by the Executive Director, as well as all other required governmental approvals. The additional square footage shall be subject to the current base rent rate, ~~operating expenses~~ and applicable sales tax for the year implemented. Tenant will not be required to pay Operating Expenses in connection with the use of the Concession Area.

Term: ~~Nine (9) years and Three-Hundred Sixty-Two (362) days~~ Nine (9) years and Three-Hundred Sixty-Four (364) days

Renewal Options: None

Lease Commencement: The Lease Commencement Date will be date Landlord delivers the Premises to Tenant.

Rent Commencement: The Rent Commencement Date will be the earlier of: 1) 180 days from Lease Commencement Date; or 2) the date any portion of the Premises opens for business.

Minimum Base Rental Rate: $75.00 per rentable square foot, plus applicable sales tax

Annual Rent Increases: The base rental rate shall be increased by three percent (3%) annually.

Operating Expenses: Tenant shall pay its pro rata share of Real Property Taxes, Property Insurance and Common Area Maintenance for the Project. Tenant's pro rata share shall be determined based upon the ratio of Tenant's floor area to the total floor area of all the retail space in the project (to be further clarified in the Lease). Current estimate for NNN Costs are $14.00 per square foot.

Prepaid Rent: Tenant shall be required to pay the first month's gross rent in the amount of ~~$31,417.00~~ $33,459.11 which shall be due upon lease execution. Further rent payments will occur upon rent commencement.

Minimum Base Rent Abatement: The Minimum Base Rent payment shall be abated for months two (2) through thirteen (13) from the Rent

	Commencement Date ("Minimum Rent Abatement Period"); however, Tenant shall be obligated to pay Operating Expenses during the Minimum Rent Abatement Period.
Percentage Rent:	Six percent (6%) over the Natural Breakpoint of $5,295,000 for year one and resets again each subsequent Lease Year, based upon the Base Rent for each subsequent Lease Year. Natural Breakpoint means the Annual Base Rent for the Lease Year divided by six percent (6%).
Security Deposit:	The amount of $66,918.22 (subject to Landlord's review of Tenant's financials and credit report) shall be due upon execution of the Lease documents, in addition to first month's rent.
Guarantor:	Full personal guaranty shall be required by all owners and spouses.
Financial Statements:	This proposal is subject to Landlord's review and approval of Tenant's financial statements.
Utilities:	Tenant shall be responsible for the cost of its utilities (electricity, trash removal, and water and sewer expenses)
Construction Allowance:	Tenant shall accept the premises in "**AS-IS**" condition and shall perform any necessary work at its sole cost and expense, including the installation of DERM-approved grease traps.
Signage:	Tenant shall have the ability to install exterior signage above its space, subject to the approval of Landlord in its proprietary and regulatory capacities.
Use:	Tenant shall use the Leased Premises solely for the purpose of operating a fine dining restaurant; and will be permitted to sell liquor for on-premises consumption so long as Tenant obtains all the necessary licenses and approvals from the governing municipalities; provided that the primary use of the Premises cannot be a lounge bar or primarily serve Cuban or Latin cuisine.
Agency Disclosure:	Danny Diaz with CBRE, INC. represents the Landlord and Michael Litsky / Ombretta Mancini with Keyes Commercial shall represent the Tenant in this transaction. Landlord shall pay a commission to CBRE in accordance with the Listing Agreement.
Conditions:	The terms and conditions of the letter of intent are subject

to approval by the Miami Beach Redevelopment Agency. The Letter of Intent is non-binding upon either party, and may be modified or withdrawn by the Landlord, without notice, at any time. Only a fully executed and delivered Lease Agreement, which shall be negotiated in good faith by both parties, shall serve as a binding agreement in this regard.

ANALYSIS

The proposed lease provides for a base rental rate of $75.00 per square foot, plus estimated operating expenses of $14.00 per square foot or $377,004 annually. The base rent will be increased by three percent (3%) annually. The proposed rent structure over the term of the lease will bring the City an estimated $3.7 million. It is also crucial to note that Tenant will be making a large investment with a floor-to-ceiling redesign of the Premises as they convert a formal retail space to a new, fine dining venue at Tenant's expense of approximately $1.5 million.

The July 20, 2022, City Commission agenda item contained the following errors or omission which are being corrected via an Amendment to Resolution 671-2022:

1) Correction: the term of the lease should be for nine (9) years and three hundred and sixty-four (364) days, instead of nine (9) years and three hundred and sixty-two (362) days;
2) Omission: Tenant's obligation to pay Minimum Base Rent will be abated for months two (2) through thirteen (13) from the Rent Commencement Date, or until such time as Tenant opens for business, whichever occurs first, while tenant completes the build-out of the Premises, estimated to cost approximately $1.5 million, and secures all regulatory permits needed to operate the restaurant.; and
3) Correction: the draft Lease Agreement and agenda item reflected, that in the event Tenant desired to use the exterior area, adjacent to a portion of the Premises, for outdoor seating (Concession Area), Tenant would be required to execute a Concession Agreement and pay for use of the Concession Area, based upon the same Minimum Base Rent Tenant paid for use of the Premises under the Lease Agreement; Operating Expenses; and applicable sales tax for the year implemented; however, Tenant will not be required to pay Operating Expenses in connection with the use of the Concession Area.

FISCAL IMPACT

The proposed lease represents a fiscal impact of $101,202.75 in broker fees, to be paid in two installments of $50,601.37 each in FY 2023. Funding for this necessary service fee has been appropriated in the following account: 465-1995-000312.

CONCLUSION

The City Manager recommends amending Resolution No. 671-2022, said Amendment to the Resolution, correcting the essential terms of the Lease Agreement, which modification,

in material part, includes: 1) the term of the lease should be for nine (9) years and three hundred and sixty-four (364) days; 2) an abatement of the Minimum Base Rent payments for months two (2) through thirteen (13) from the Rent Commencement Date, while Tenant completes the build-out of the Premises, estimated to cost approximately $1.5 million; and 3) Tenant would be required to execute a Concession Agreement and pay for use of the Concession Area, based upon the same Minimum Base Rent Tenant paid for use of the Premises under the Lease Agreement. Tenant will not be required to pay Operating Expenses in connection with the use of the Concession Area.

Exhibits:

Resolution

RESOLUTION NO._____

A RESOLUTION OF THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY (RDA), AMENDING RESOLUTION NO. 671-2022, RELATING TO A LEASE AGREEMENT BETWEEN THE RDA (LANDLORD) AND OPEN VISION ONE, LLC (TENANT), FOR USE OF APPROXIMATELY 4,236 SQUARE FEET OF GROUND FLOOR RETAIL SPACE AT THE ANCHOR SHOPS AND GARAGE, AS A FINE DINING RESTAURANT, LOCATED AT 1560 COLLINS AVE, SUITE NOS. 3-4 (PREMISES); SAID AMENDMENT CORRECTING THE ESSENTIAL TERMS OF THE LEASE AGREEMENT, AS MORE PARTICULARLY SET FORTH IN THIS RESOLUTION, WHICH MODIFICATION, IN MATERIAL PART, INCLUDES AN ABATEMENT OF THE MINIMUM BASE RENT PAYMENTS FOR MONTHS TWO (2) THROUGH THIRTEEN (13) FROM THE RENT COMMENCEMENT DATE, WHILE TENANT COMPLETES THE BUILD-OUT OF THE PREMISES, ESTIMATED TO COST APPROXIMATELY $1.5 MILLION.

WHEREAS, the Miami Beach Redevelopment Agency (the "RDA") owns that certain project commonly known as the "Anchor Shops", containing a garage and ground floor retail spaces located in the area bounded by Washington Avenue and Collins Avenue, in the proximity of 16th Street; and

WHEREAS, pursuant to a Professional Service Agreement with the City of Miami Beach (the "City"), CBRE, Inc. is authorized to provide real estate brokerage services for the City, and served as the listing agent for the ground floor retail space at the Anchor Shops, located at 1560 Collins Avenue, Suite 3-4 (Premises); and

WHEREAS, as a prospective tenant for the Premises, CBRE identified Open Vision One, LLC, a Florida limited liability company (Tenant); and

WHEREAS, Tenant will be retaining Chef Soumen Banerjee, who has most recently been the Director of Culinary Development for Carnival Cruise Lines for over 23 years; and

WHEREAS, as part of lease negotiations, the Tenant provided a sample menu, marketing materials, and financial statements, which are set forth as exhibits to the City Commission Memorandum accompanying this Resolution; and

WHEREAS, subsequent to negotiations, the Tenant executed a Letter of Intent containing the essential terms and conditions outlined below:

Premises: 1560 Collins Avenue, Suite 3-4, Miami Beach, Florida 33139;

Size: Approximately 4,236 rentable square feet;

Term: Nine (9) years and Three-Hundred Sixty-four (364) days;

Renewal Options: None;

Lease Commencement Date: The Lease Commencement will be date Landlord delivers possession of the Premises to Tenant;

Rent Commencement Date: The Rent Commencement Date shall be the earlier of: (1) 180 days following the Lease Commencement Date or (2) the date any portion of the Premises opens for business;

Minimum Base Rental Rate: $75.00 per rentable square foot, plus applicable sales tax;

$317,700 per year; $26,475 per month;

Percentage Rent: Six percent (6%) over the natural breakpoint of $5,295,000 for first Lease Year, and resets again each subsequent Lease Year, based upon the Base Rent for each subsequent Lease Year;

Annual Rent Increases: The base rental rate shall be increased by three percent (3%) annually;

Operating Expenses: Tenant shall pay its pro rata share of Real Property Taxes, Property Insurance and Common Area Maintenance for the Project. Tenant's pro rata share shall be determined based upon the ratio of Tenant's floor area to the total floor area of all the retail space in the project; current estimate for NNN costs are $14.00 per square foot;

Minimum Base Rent Abatement: The Minimum Base Rent payment shall be abated for months two (2) through thirteen (13) from the Rent Commencement Date ("Minimum Rent Abatement Period"); however, Tenant shall be obligated to pay Operating Expenses during the Minimum Rent Abatement Period;

Prepaid Rent: First month's rent, including Operating Expenses and sales tax, in the amount of $33,459.11;

Security Deposit: The amount of $66,918.22 shall be due upon execution of the Lease documents, in addition to first month's rent;

Guarantor: Full personal guaranty shall be required by all owners and spouses;

Utilities: Tenant shall be responsible for the cost of its utilities (electricity, trash removal, and water and sewer expense);

Construction Allowance: Tenant shall accept the premises in "**AS-IS**" condition and shall perform any necessary work at its sole cost and expense, including the installation of DERM-approved grease traps; and

Use: Tenant shall use the Leased Premises solely for the purpose of operating a fine dining restaurant; and will be permitted to sell liquor for on-premises consumption so long as Tenant obtains all the necessary licenses and approvals from the governing municipalities; provided that the primary use of the Premises cannot be a lounge bar or primarily serve Cuban or Latin cuisine; and

WHEREAS, subsequently, the parties also agreed, that in the event the Tenant desired to use the exterior area adjacent to a portion of the Interior Premises, Tenant would be required to execute a Concession Agreement and the additional square footage would be subject to the Minimum Base Rental rate and applicable sales tax for the year implemented; and

WHEREAS, on May 27, 2022, the City Administration presented the LOI to the Finance and Economic Resiliency Committee (FERC), and the FERC recommended in favor of approving a new lease with Open Vision One, LLC; and

WHEREAS, per the Agreement with CBRE, the City will be obligated to pay a leasing commission equal to six percent (6%) of the gross aggregate base rent over the initial five years of the lease; therefore, based on the initial five-year gross aggregate Minimum Base Rent of $1,686,712.45, a leasing commission of $101,202.75 will be split between CBRE and the Tenant's broker, Keyes Commercial; and

WHEREAS, the City will be paying 50% of the commission ($50,601.37) upon lease execution and 50% upon occupancy of the Premises and Rent Commencement; and

WHEREAS, based upon the competitive rental rate and the favorable lease terms, on July 20, 2022, the Chairperson and Members of the Miami Beach Redevelopment Agency adopted Resolution No. 671-2022, approving, in substantial form, a Lease Agreement with Open Vision One, LLC (Tenant); and

WHEREAS, the July 20, 2022, City Commission agenda item contained the following errors or omissions:

1) Correction: the term of the lease should be for nine (9) years and three hundred and sixty-four (364) days, instead of nine (9) years and three hundred and sixty-two (362) days;
2) Omission: Tenant's obligation to pay Minimum Base Rent for months two (2) through thirteen (13) from the Rent Commencement Date will be abated, while tenant completes the build-out of the Premises, estimated to cost approximately $1.5 million, and secures all regulatory permits needed to operate the restaurant; and
3) Correction: the draft Lease Agreement and agenda item reflected, that in the event Tenant desired to use the exterior area, adjacent to a portion of the Premises, for outdoor seating (Concession Area), Tenant would be required to execute a Concession Agreement and pay for use of the Concession Area, based upon the same Minimum Base Rent Tenant paid for use of the Premises under the Lease Agreement; Operating Expenses; and applicable sales tax for the year implemented; however, Tenant will not be required to pay Operating Expenses in connection with the use of the Concession Area; and

WHEREAS, the City Manager recommends amending Resolution No. 671-2022, to reflect the corrected essential terms of the Lease Agreement with Tenant, as more particularly set forth in this Resolution.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY, that the Chairperson and Members of the Miami Beach Redevelopment Agency hereby amend Resolution No. 671-2022, relating to a Lease Agreement between the RDA (Landlord) and Open Vision One, LLC (Tenant), for use of approximately 4,236 square feet of ground floor retail space at the Anchor Shops and Garage, as a fine dining restaurant, located at 1560 Collins Ave, Suite Nos. 3-4 (Premises); said amendment correcting the essential terms of the Lease Agreement, as more particularly set forth in this Resolution, which modification, in material part, includes an abatement of the Minimum Base Rent payments for months two (2) through thirteen (13) from the Rent Commencement Date, or until such time as Tenant opens for business, whichever occurs first, while Tenant completes the build-out of the Premises, estimated to cost approximately $1.5 Million.

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

ATTEST:

_____
Dan Gelber, Chairperson

_____
Rafael E. Granado, Secretary

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____
General Counsel (GNT)

9/9/2022
Date