

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") dated as of April \_\_\_\_, 2024 ("Effective Date") is entered into by Miami Beach Redevelopment Agency (the "RDA") and Cubiche105, LLC ("Cubiche") (each a "Party" and all, together, the "Parties").

**WHEREAS**, the Parties entered into a Lease Agreement dated December 28, 2015 for approximately 7,130 square feet of retail space located at 1555 Washington Avenue, Suites 1-3, Miami Beach, Florida 33139 (the "Lease").

**WHEREAS**, the City has filed a complaint in the Circuit Court for the Eleventh Judicial Circuit in and for Miami Dade County, Florida in the case styled *Miami Beach Redevelopment Agency v. Cubiche 105, LLC*, Case No. 2023-025452-CA-01 seeking a commercial tenant eviction and for damages (the "Litigation").

**WHEREAS**, to avoid the costs and uncertainties of continued litigation, the Parties wish to enter into an Amendment No. 2 to Lease ("Amendment No. 2"), in the form attached to this Agreement as **Exhibit 1**, to be signed contemporaneously with this Agreement and settle the Litigation and all other claims and disputes between themselves, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the Parties agree and represent as follows.

1. **Recitals.** The recitals are adopted and incorporated in this Agreement by reference.
2. **Representation.** This Agreement is entered into voluntarily by the Parties who stipulate and agree that they are under no duress or undue influence. The Parties represent that in the execution of this Agreement, they had the opportunity to consult legal counsel of their own selection with respect to the execution of this Agreement.
3. **Lease Amendment.** The parties agree to simultaneously and contemporaneously herewith execute Amendment No. 2. Cubiche agrees to make all payments due upon execution of Amendment No. 2, as provided therein, simultaneously with the execution of this Agreement and this Agreement shall not become effective unless and until such payments are made.
4. **Mutual Releases.**
  - a. The RDA hereby waives and irrevocably remises, releases, acquits and forever discharges Cubiche and its affiliates, subsidiaries, agents, and attorneys from any and all claims, causes of action, demands, rights, damages, costs, losses, expenses, compensation and obligations which exist or which may hereafter accrue, whether known or unknown, whether foreseen or unforeseen, whether matured or not mature, whether discovered or undiscovered, and the consequences thereof, having resulted, resulting or to result from (i) all matters or disputes which have been or

could have been alleged by the RDA in the Litigation and (ii) any and all claims for attorney's fees (including paralegal fees) and costs in any way related to the Litigation.

Cubiche hereby waives and irrevocably remises, releases, acquits and forever discharges the RDA, and its affiliates, subsidiaries, agents, and attorneys, including without limitation the City of Miami Beach, from any and all claims, causes of action, demands, rights, damages, costs, losses, expenses, compensation and obligations which exist or which may hereafter accrue, whether known or unknown, whether foreseen or unforeseen, whether matured or not mature, whether discovered or undiscovered, and the consequences thereof, having resulted, resulting or to result from (i) any liability arising out of the Lease, including all matters or disputes which have been or could have been alleged by Cubiche in the Litigation and (ii) any and all claims for attorney's fees (including paralegal fees) and costs in any way related to the Litigation;

5. ***Dismissal with Prejudice.*** Within five (5) business days from the latest to occur of (a) the date of execution of this Agreement, (b) the date of execution of the Lease Amendment or (c) the date Cubiche pays the RDA all amounts to be paid at the time Amendment No. 2 is executed, the Parties will file a joint stipulation of dismissal with prejudice of the Litigation with each party to bear their own attorneys' fees and costs and with the court in such proceedings to reserve jurisdiction to enforce the terms of this Agreement.
6. ***Choice of Law and Venue.*** The Parties agree that this Agreement will be construed and enforced in accordance with the laws of the State of Florida. Venue for any proceeding arising out of this Agreement shall lie exclusively in the Eleventh Judicial Circuit in and for Miami Dade County, Florida.
7. ***Prevailing Party Fees and Costs.*** In any action to enforce, interpret, or seek damages for violation of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs in connection with such efforts.
8. ***Waiver.*** No failure to enforce terms or conditions of this Agreement by any of the Parties shall constitute a waiver of any right to assert any of the terms and conditions of this Agreement.
9. ***Severability of Provisions.*** If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.
10. ***Construction.*** Each Party hereto has participated in the negotiation and drafting of this Agreement, and there shall not be any presumption that the provisions of this Agreement shall be construed strictly against one or the other Party hereto.
11. ***No Oral Modification.*** No term of this Agreement may be modified, amended, supplemented, or waived in any way except in a writing that is signed by the Parties.

12. **Entire Agreement.** This Agreement, together with the Schedules, Exhibits, and releases referenced in it, constitute the final and complete statement of the agreement of the Parties on the subject matter hereof. There are no agreements, understandings, or representations relied on by the parties hereto with respect to the subject matter hereof other than those included in this Agreement.
13. **Intentionally deleted.**
14. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns, and any corporation, partnership or other entity into or with which any Party hereto may merge, consolidate or reorganize.
15. **Cooperation.** Each Party hereto shall cooperate and take such actions, and execute such other documents as may reasonably be requested by another Party in order to carry out the provisions of this Agreement.
16. **Authority to Execute.** All signatories hereto represent and warrant that they have authority to execute this Agreement and thereby bind the party that they purport to represent, and further represent and warrant that this Agreement constitutes a valid, legal and binding agreement of each Party, and is enforceable against each such party in accordance with its terms.
17. **Counterparts.** This Agreement may be executed in multiple counterparts, and may be executed by facsimile, e-mail or pdf formats, and as so executed shall constitute one and the same agreement. The execution and delivery of this Agreement by either facsimile or electronic mail in PDF format shall be binding on the Party who so executes and on whose behalf the document is transmitted.
18. **Captions.** The captions and headings contained in this Agreement are for convenience and reference only, and shall not be deemed to be construed as limiting or modifying in any manner the provisions of this Agreement.
19. **Electronic Signature.** The Parties hereby consent and agree that they may execute this Agreement and the documents contemplated to be executed in connection herewith by electronic signature, unless otherwise provided by law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year indicated below each of their respective signatures.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO SETTLEMENT AGREEMENT AND RELEASE]

MIAMI BEACH REDEVLEOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

CUBICHE 105, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_