

**AMENDMENT NO. 1 TO LEASE AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH
AND
SOBE TOSCANA, LLC**

This Amendment No. 1 (Amendment) to Lease Agreement, dated May 25, 2018 (Lease), by and between the **CITY OF MIAMI BEACH**, a municipality 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 **SOBE TOSCANA, LLC**, a Florida limited liability company, having its principal place of business at 22 Washington Avenue, Miami Beach, FL 33139 (Tenant), is entered into this _____ day of _____, 2021.

RECITALS

WHEREAS, pursuant to Resolution No. 2017-29941, the City and Tenant entered into a Lease on August 9, 2017; and

WHEREAS, said Lease having an initial term of five (5) years, commencing August 1, 2017, and ending July 31, 2022, with one (1) option of four (4) years and nine (9) months; and

WHEREAS, the Tenant communicated to the City their expansion within the adjacent Restaurant at 816 Commerce Street space; and

WHEREAS, prior to expiration of the initial term, the Tenant expressed an interest to exercise the sole renewal term for a period of four (4) years and nine months; and

WHEREAS, on _____, 2021 the Mayor and City Commission adopted Resolution No. 2021-_____, approving Amendment No.1 to the Lease, approving the sole renewal of the Lease and further modifying the Termination for Convenience clause, 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 City hereby approves the sole renewal option of the Lease, commencing August 1, 2022 and ending May 31, 2027, based upon Tenant's agreement to pay the Renewal Rent.

(b) Section 2.3 of the Lease is hereby modified as follows:

2.3 Termination for Convenience.

This Lease may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of sixty (60) days prior written notice to Tenant. Notwithstanding the foregoing, the City shall not exercise this Termination for Convenience ~~within the first three (3) years of the Term.~~ without prior formal consent from the City Commission.

In the event of termination by the City pursuant to this subsection, Tenant herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Tenant for any indirect, incidental, special, lost profits or consequential damages.

(c) This Lease is amended to add a new Section 3.1.3 (Renewal Rent)

3.1.3 Renewal Rent.

Base Rent for the renewal term, commencing on August 1, 2022 and expiring on May 31, 2027, based upon the total leasable space of 2,216 square feet, shall be as follows:

Months of Term	PSF	Monthly Base Rent	Base Rent Priod
August 1, 2022 -July 31, 2023	\$ 26.50	\$ 4,893.67	\$ 58,724.00
August 1, 2023 -July 31, 2024	\$ 27.30	\$ 5,040.48	\$ 60,485.72
August 1, 2024 -July 31, 2025	\$ 28.11	\$ 5,191.69	\$ 62,300.29
August 1, 2025 -July 31, 2026	\$ 28.96	\$ 5,347.44	\$ 64,169.30
August 1, 2026 -May 31, 2027	\$ 29.83	\$ 5,507.86	\$ 66,094.38

(1) A new Section 35 (Inspector General Audit Rights) is hereby added to the Lease, as follows:

35. Inspector General Audit Rights.

35.1 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.

35.2 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.

- 35.3 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.
- 35.4 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.
- 35.5 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 Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- (a) If this Agreement 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

- (b) The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- 35.6 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 Agreement.
- 35.7 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.

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.

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:

CITY OF MIAMI BEACH

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR TENANT:

SOBE TOSCANA, LLC.

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date