

FIRST AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT

This First Amendment ("Amendment") to Lease entered into as of this ____ day of _____, 2015, by and between the City of Coral Gables, a Municipal Corporation ("Landlord" or "City"), Azul and Company, Inc., ("Tenant") and Maria J. De Caires and Oscar Murphy, a married couple ("Guarantors").

WITNESSETH:

WHEREAS, the parties entered into the Settlement and Release Agreement dated May 5, 2015 ("Agreement") with regard to settlement of a commercial lease for 4520 Ponce De Leon Boulevard, Coral Gables, FL ("Premises"); and

WHEREAS, the parties wish to amend the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals: The above recitals are true and correct, and are hereby incorporated by reference.
2. Defined Terms. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Agreement.
3. Payments and Obligations. Paragraph 2 of the Agreement is hereby amended to add the following subsection i:
 - i. The Premises is not currently configured to meet the need for the City's planned use. Therefore, as part of the Settlement between the parties, the Tenant agrees it will provide construction management services and retain a general contractor to renovate the interior of the Premises subject to the following:
 - The City shall be responsible, at its sole cost and expense, for the preparation of all plans and specifications for the build out (the "Plans");
 - Tenant shall enter into a construction contract by and between the Tenant and a duly licensed Florida general contract (the "General Contractor") for construction pursuant to the Plans;
 - City shall have reasonable approval over selection of the General Contractor, and shall have approval in its sole discretion over the cost of build out, so that the City may elect not to proceed if it does not approve the cost;
 - Pursuant to the construction contract, the General Contractor shall warrant and guaranty that the General Contractor shall repair, replace or correct any defective work or materials, which are discovered and brought to the attention of the General Contractor in writing within a

period of one (1) year from the date of the final certificate of occupancy is issued;

- The City shall have the rights to approve the sections in the contract with the General Contractor relating to change orders, schedule, insurance, bonding, warranties and other sections that survive completion of the construction;
- The construction contract shall provide that any claims for additional costs and/or time shall be made within three (3) days after the occurrence of the event or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the General Contractor before proceeding to execute any additional or changed work. The failure of the General Contractor to give such notice shall constitute a waiver of any claim for additional compensation and/or time.
- Once approved by the City, any modification of the agreement with the General Contractor will require prior written approval of the City;
- Once a schedule is prepared for the build out, the Tenant shall agree with the City upon outside dates and time of delivery, and time shall be of the essence with regard to the agreed upon schedule;
- Tenant at its sole cost and expense shall be responsible for obtaining all permits and public approvals required for the build out;
- Tenant agrees by executing this Agreement that it represents it has visited the Premises and is familiar with site and local conditions;
- Tenant shall obtain a temporary certificate of occupancy no later than three months after construction commences so that the City can occupy the space for its intended use excepting such minor matters typically referred to as punch-list items that do not interfere with or diminish the City's access, occupancy, possession, use or enjoyment of the Premises for its intended use and purposes;
- Tenant shall select the means and methods of construction. Only adequate and safe procedures, methods, structures and equipment shall be used;
- Tenant shall be responsible for safety of the job site during construction;
- Tenant shall restore and repair, at its sole cost and expense, any damage to the property or adjacent to the property that has been damaged as a result of the construction, whether such properties are publicly or privately owned;
- Tenant shall deliver to the City any "as built" surveys, copies of temporary certificates of occupancy and final certificates of occupancy, and shall assign all applicable warranties to the City;
- Tenant shall carry on any construction, maintenance or repair activity to completion with diligence in the shortest time reasonably possible under the circumstances;
- Tenant shall at all times enforce discipline and good order among its employees, the contractor and its employees, and the subcontractors and its employees at the job site.

- Subsequent to the commencement of construction and until the build out has been completed, Tenant shall keep the City apprised of progress on a monthly basis;
- After substantial completion, as determined by the architect, the architect shall perform an inspection of the Premises at a reasonable time established by the Tenant and the City for the purpose of preparing a list of items that the architect in good faith determines fail to substantially conform to the construction contract and/or the Plans. Such list shall be in writing to be signed by Tenant, the General Contractor and the architect. The General Contractor shall have until thirty (30) days thereafter to correct any non-conforming work.
- Tenant will comply with all applicable laws, codes, ordinances or regulations now or hereafter in force applicable to the work to be done, performed or carried on by Tenant under this Agreement.
- Tenant shall be entitled to a management fee not to exceed 10%, to be paid upon receipt of a final Certificate of Occupancy for the Premises.

4. Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, the Professional shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of Professional, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and Professional's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Professional (or any subconsultant or any person or organization directly or indirectly employed by Professional) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of Professional to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Professional to debarment from consideration for future award of city contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Professional, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Professional or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity,

established by Florida Statutes, case law, or any other source of law. This provision shall survive termination of this Agreement.5. Survival. All provisions of this Lease intended by their terms to survive expiration or earlier termination shall survive including, but not limited to all indemnification obligations contained herein.

6. Sovereign Immunity. The Tenant acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Tenant against the City other than claims arising out of this Agreement. Specifically, the Tenant acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Tenant acknowledges that it has no right and will not make claim based upon any of the following:

- (a) Claims based upon any alleged breach by the City of Implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- (b) Claims based upon negligence or any tort arising out of this Agreement;
- (c) Claims upon alleged acts or inaction by the engineer, the project manager, any city employee or agent of the City;
- (d) Claims based upon an alleged waiver of any of the terms of this Agreement. The Tenant affirms that the provisions regarding notice to claims, and the requirement for a written change order cannot be waived and further, without timely notice of a claim or a written change order as required in this Agreement, the Tenant shall not be entitled to additional compensation or an extension of the schedule. Such claims for additional compensation or extensions of the time are waived if the Tenant has not given all required notices and obtained a written a change order when required.

7. Public Records. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Tenant acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Tenant also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Tenant agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

8. All other terms, covenants, and conditions of the Lease not otherwise amended by these presents are hereby confirmed and ratified.

IN WITNESS WHEREOF, the parties have executed this amendment as of the date first mentioned above.

ATTEST:

CITY OF CORAL GABLES

By: _____
Walter Foeman, City Clerk

By: _____
Craig E. Leen, City Attorney

Date: _____, 2015

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

City Attorney's Office

WITNESSES:
By: _____
Name: _____

AZUL AND COMPANY, INC.
By: _____
Maria Jose De Caires, President

By: _____
Name: _____

Date: _____, 2015

WITNESSES:
By: _____
Name: _____

Maria J. De Caires, Guarantor

By: _____
Name: _____

Date: _____, 2015

WITNESSES:
By: _____
Name: _____

Oscar Murphy, Guarantor

By: _____
Name: _____

Date: _____, 2015