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Memorandum

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Contents Covered by Attorney-Client Privilege and Work Product Doctrine

To: Miriam Soler Ramos, Esq., B.C.S., City Attorney, City of Coral Gables
Ms. Zeida C. Sardinas, Asset Manager, Economic Development, City of Coral Gables

From: Anna Marie Gamez

Re: Junkanoo Crew Inc dba Ortanique on the Mile ("**Tenant**")
Outstanding Balance/Possible Litigation

On Friday, July 31, 2020, Tenant turned over the subject premises located at 278 Miracle Mile (the "**Premises**") along with most of the content contained therein. As of that date, there remained a claim for damages by the City in the total amount of \$499,697.08 consisting of \$174,689.55 in unpaid rent ("**Unpaid Rent**"), \$4,319.86 for BID Assessment for the years 2017 – 2019 ("**BID**"), \$500.00 fine for a false alarm ("**Fine**"), and \$320,187.67 in liquidated damages for the remainder of the lease term ("**Liquidated Damages**"). The City made demand on Tenant to pay all sums then due and owing by no later than Wednesday, August 5, 2020. However, in consideration of the Tenant's assistance with the peaceful and amicable turnover of the Premises on July 31st, the City agreed to waive its claim for Liquidated Damages, leaving Tenant's remaining obligation to the City at \$179,509.41 ("**Remaining Obligation**").

On August 14, 2020, special counsel for the City advised the Tenant of its Remaining Obligation, and requested that Tenant enter into an agreement for the payment of same. On September 10, 2020, the Tenant advised that it had no other assets or ongoing operations to permit it to enter into a plan for repayment of the Remaining Obligation.

It should be noted that the lease between the City and Tenant did not include any personal guaranty or other security for the repayment of the lease terms outside of the Premises themselves, and a lien on any personal property contained therein. The Personal Property of the Tenant was pretty outdated and had very limited value. The tenant was a single purpose entity, which only asset was the business of the restaurant doing business at the Premises. While Delius Shirley, principal of the Tenant, has other businesses that also operate restaurants or food service businesses, those are in other corporate names, unrelated to the Tenant. Moreover, the only asset that was located under the name of Mr. Shirley is his homestead held jointly with his wife. This means that even after the City is successful in obtaining a judgment for the Remaining

Obligation, the Tenant has no assets from which to collect. Meanwhile, the process of obtaining a judgment is expensive.

Based on this, while we could proceed with a complaint for damages to recover the Remaining Obligation under the Lease with Tenant, there is no likely or actual recourse at the present time.

Below please find a proposed estimate relating to a possible claim for damages against Tenant. I tried to break it down as best as possible into various areas of activity and stages of litigation to better assist you in evaluating what the relative costs may be. I also included certain disclaimers and assumptions upon which these figures are based. Please note that these are always subject to change in the event of any defensive claims by Tenant.

Thus, given the costs associated with filing suit and litigating against Tenant, and the very low likelihood of collecting what is due to the City, there is a significant expected diminishing return to the City.

Should you have any questions or wish to discuss further, please do not hesitate to contact me.

Annie

Estimated Fees & Costs of Litigation¹:

| <u>Event/Phase</u> | <u>Estimated Attorney Hours</u> | <u>Estimated Attorneys' Fees</u> | <u>Estimated Costs</u> | <u>Total</u> |
|--|---------------------------------|----------------------------------|-------------------------|--------------|
| Draft complaint | 6 | \$1,650.00 | \$750.00 | \$2,400.00 |
| Review any responsive pleadings | 4 | \$1,100.00 | 0 | \$1,100.00 |
| Draft Motions for Default/Default Final Judgment with Affidavits | 5 | \$1,375.00 | 0 | \$1,375.00 |
| Discovery on any affirmative defenses or counterclaim | 8 | \$2,200.00 | \$750.00 | \$2,950.00 |
| Settlement Negotiations /Discussions/ Documentation outside of Mediation | 10 | \$2,750.00 | 0 | \$2,750.00 |
| Mediation | 12 | \$3,300.00 | \$1,500.00 ² | \$4,800.00 |

¹ The following is an estimate based on the status of the Lease and discussions with client to date. It is also includes an assumption that AMG will perform most critical work up until preparation for trial and trial. Billable rate is: AMG - \$275. These figures can increase or decrease depending on what transpires throughout the course of litigation, and does not necessarily account for correspondence or communications with client, opposing counsel, or third-parties. **THIS IS ONLY AN ESTIMATE.**

² Mediator's Fees and any incidental costs.

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|---|----------------|--------------------------|-------------------------|--------------------|
| Depositions if Necessary, including preparation therefore | 12 | \$3,300.00 | \$2,500.00 ³ | \$5,800.00 |
| Motion Practice – Discovery & Other MISC (including hearings) | 12 | \$3,300.00 | \$500.00 ^{4b} | \$3,800.00 |
| Dispositive Motions (Summary Judgment) | 18 | \$4,950.00 | \$500.00 ⁵ | \$5,450.00 |
| Pre-trial Motions & Reports | 6 | \$1,650.00 | 0 | \$1,650.00 |
| Final Pre-trial Case Management Conference | 4 | \$1,100.00 | \$500.00 ⁶ | \$1,600.00 |
| Trial Preparation | 24 | \$13,200.00 | \$1,250.00 ⁷ | \$14,450.00 |
| Trial | 24 | \$13,200.00 ^c | \$3,500.00 ⁸ | \$16,700.00 |
| | | | | |
| | TOTALS: | \$53,075.00 | \$11,750.00 | \$64,825.00 |

³ Court reporter and transcripts, plus any incidental costs.

⁴ With a two-person trial team of AMG & Associate (exclusive of paralegals).

⁵ With a two-person trial team of AMG & Associate (exclusive of paralegals).

⁶ With a two-person trial team of AMG & Associate (exclusive of paralegals).

⁷ This includes any expert preparation time, trial exhibits/graphics.

⁸ This include the expert's fees/costs, court reporter, transcripts and incidentals.