

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2021-

A RESOLUTION OF THE CITY COMMISSION AUTHORIZING THE WRITE-OFF OF THE RECEIVABLE FOR DEFAULTED RENT (\$174,689.55) AS UNCOLLECTABLE AND THE PAYMENT OF THE PAST-DUE BUSINESS IMPROVEMENT DISTRICT (BID) TAX ASSESSMENT LIABILITY (\$4,319.86) TO THE BID WITH REGARD TO THE CITY-OWNED PROPERTY LOCATED AT 278 MIRACLE MILE, CORAL GABLES, FLORIDA.

WHEREAS, the City of Coral of Coral Gables (the “Landlord”) entered into a Lease with Junkanoo Crew, Inc. d/b/a Ortanique on the Mile (“Tenant”) for the City-owned property located at 278 Miracle Mile, Coral Gables, FL (the “Premises”) on September 4, 1997, which was ratified on September 28, 1998, pursuant to Resolution No. 29598, and renewed on August 23, 2011, pursuant to Resolution No. 2011-223; and

WHEREAS, at the time of the 2011 renewal, the Tenant had a history of non-payment of percentage rent, and a payment plan was established to address the past-due obligation; and

WHEREAS, on December 5, 2015, pursuant to Resolution No. 2015-289, Landlord and Tenant entered into a new Lease that was to be effective August 17, 2016, (the “Lease”); and

WHEREAS, the Lease between the City and Tenant did not include any personal guaranty or any other security deposit as part of the Lease terms except for Landlord’s right to lien “permanent improvements, furniture, fixtures, and personal property,” in accordance with Section XXV of the lease, in case of default; and

WHEREAS, on August 23, 2016, pursuant to Resolution 2016-187, Landlord and Tenant entered into a First Amendment to Lease, authorizing a 20% reduction in rent due to the negative financial impacts suffered by the Tenant’s business during the Miracle Mile Streetscape project; and

WHEREAS, the Tenant stopped paying rent pursuant to the Lease as of August of 2016; and

WHEREAS, on August 29, 2017, pursuant to Resolution No. 2017-219, Landlord and Tenant entered into a Second Amendment to the Lease to institute a payment plan for past due rent (\$182,731.48) citing the negative financial impacts suffered by the Tenant’s business due to the Miracle Mile Streetscape project; and

WHEREAS, the Tenant continued to make payments towards rent pursuant to the Lease, as well as toward the past-due rent, but remained in default pursuant to the Second Amendment, and failed on several instances (2017-2019) to abide by the terms of the agreement; and

WHEREAS, in May of 2019, the Tenant stopped paying rent once again and refused to come into compliance with the terms of the Second Amendment; and

WHEREAS, in July of 2019, the tenant was served with a notice of default; and

WHEREAS, in August of 2019, the tenant came into compliance with the terms of the Second Amendment and continued to make payments toward past due rent; and

WHEREAS, the Tenant had also been in arrears since 2017 with respect to the Business Improvement District (BID) tax assessment. In December of 2019, the Tenant entered into a Settlement Agreement with the City and the BID for the past-due BID tax assessment in the amount of \$5,759.80 and began making payments; and

WHEREAS, due to COVID-19 pandemic health crisis (the “COVID-19 crisis”) the Governor of the State of Florida, and the Mayor of Miami -Dade County by Executive Orders, declared a State of Emergency for the State of Florida and Miami-Dade County directing the temporary closure or reduced operation of certain businesses including restaurants; and

WHEREAS, the COVID-19 crisis closures caused the Tenant to experience significant business interruption and financial losses; and

WHEREAS, as a consequence of the COVID-19 crisis, the Tenant was unable to pay rent pursuant to the Lease or make payments towards the past-due rent and the past-due BID tax assessment; and

WHEREAS, the Landlord, as it had done with other Tenants in City-owned property, offered the Tenant a Third Amendment to Lease for Rent Deferment which the Tenant repeatedly rejected; and

WHEREAS, the Tenant turned over the Premises on July 31, 2020, with most of the contents therein in accordance with the Lease but refused to come to any sort of agreement with the Landlord to establish a payment plan for the remaining past-due rent obligation and past-due BID tax assessment; and

WHEREAS, during this default process, the City engaged the services of outside counsel (the “Outside Counsel”) who provided an estimate as to the cost of pursuing legal action to collect the defaulted rent (\$64,825.00);

WHEREAS, the Outside Counsel also evaluated the probability of collection given the original Lease terms, which did not include any personal guaranty or any other security deposit; and

WHEREAS, Outside Counsel opined regarding the expected significant diminishing return to the City if it opted to pursue litigation and the exceptionally low likelihood of success in collecting on a judgment against Tenant; and

WHEREAS, based on the above, staff recommends that the City Commission authorize the write-off of the receivable for defaulted rent and past-due BID tax assessment as uncollectable; and

WHEREAS, the City Attorney agrees with staff's recommendation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are here hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That the City Commission does hereby authorize the City Manager to execute the write-off of the receivable for defaulted rent (\$174,689.55) as uncollectable and the payment of the past-due Business Improvement District (BID) tax assessment liability (\$4,319.86) to the BID.

SECTION 3. That the City Commission does hereby determine that the City Attorney should not pursue legal action to collect the defaulted rent and tax assessment liability, with such modifications to the form attached hereto as may be approved by the City Manager and City Attorney that are necessary to implement the intent of this Resolution.

SECTION 4. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-THIRD DAY OF FEBRUARY, A.D., 2021.

(Moved: / Seconded:)
(Yeas: / Nays:)
(Vote:)
(Agenda Item:)

APPROVED:

RAUL VALDES-FAULI
MAYOR

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BILLY Y. URQUIA
CITY CLERK

MIRIAM SOLER RAMOS
CITY ATTORNEY