



City of Coral Gables
CITY COMMISSION MEETING
February 23, 2021

ITEM TITLE:

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.

DEPARTMENT HEAD RECOMMENDATION:

Approval

BRIEF HISTORY:

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. The lease was ratified on September 28, 1998, pursuant to Resolution No. 29598, and renewed on August 23, 2011, pursuant to Resolution No. 2011-223. 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.

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”). 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.

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. The Tenant stopped paying rent pursuant to the Lease as of August of 2016.

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.

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.

In May of 2019, the Tenant stopped paying rent once again and refused to come into compliance with the terms of the Second Amendment. In July of 2019, the tenant was served with a notice of default. 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.

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 accordingly.

Due to the 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, directed the temporary closure and/or reduced operation of certain businesses including restaurants. The COVID-19 crisis closures caused the Tenant to experience significant business interruption and financial losses. Consequently, 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. As it had done with other Tenants in City-owned property, the Landlord offered the Tenant a Third Amendment to Lease for Rent Deferment which the Tenant repeatedly rejected.

As a result, 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. During this default process, the City engaged the services of outside counsel who provided an estimate as to the cost of pursuing legal action to collect the defaulted rent (\$64,825.00), evaluated the probability of collection given the original Lease terms, which did not include any personal guaranty or any other security deposit, and opined regarding the expected significant diminishing return to the City if it opted to pursue litigation. In other words, the likelihood of success in collecting on a judgment against Tenant is exceptionally low.

Staff therefore recommends that the City Commission authorize the write-off of the receivable (Tenant’s defaulted rent- \$174,689.55) as uncollectable and the payment of the Tenant’s past-due Business Improvement District (BID) tax assessment liability (\$4,319.86) to the BID. The City Attorney is in agreement with this recommendation. This resolution directs staff not to pursue legal action to collect either the defaulted rent or the past-due BID tax assessment.

LEGISLATIVE ACTION:

Date.	Resolution/Ordinance No.	Comments
September 23, 1998	Resolution No. 29598	Approval of Lease
June 3, 1999	Resolution No. 29790	Consents to BET having a 65% interest in the Tenant entity
June 3, 1999	Resolution No. 29791	Consents to BET holding a first lien and security interest
June 21, 2001	Resolution No. 30111	Approval of Third Amendment
March 8, 2011	Resolution No. 2011-42	Authorizes 60-day extension
May 10, 2011	Resolution No. 2011-82	Authorizes 30-day extension
June 7, 2011	Resolution No. 2011-115	Authorizes 60-day extension
August 23, 2011	Resolution No. 2011-223	Approval of Lease
December 8, 2015	Resolution No. 2015-289	Approval of Lease
August 23, 2016	Resolution No. 2016-187	Approval of Lease Amendment
August 29, 2017	Resolution No. 2017-219	Approval of Lease Amendment

FINANCIAL INFORMATION: (If Applicable)

No.	Amount	Source of Funds
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N/A		
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ATTACHMENT(S):

- 1. Draft Resolution**
- 2. Outside Council’s Memorandum**