

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2015-95

A RESOLUTION AUTHORIZING RATIFICATION OF AN AMENDMENT TO THE SETTLEMENT AGREEMENT WITH AZUL AND COMPANY, INC., MARIA J. DE CAIRES AND OSCAR MURPHY WITH REGARD TO CITY-OWNED PROPERTY AT 4520 PONCE DE LEON BLVD, CORAL GABLES, FL. (*PASSPORT RELOCATION OFFICE*)

WHEREAS, Azul and Company, Inc. (the “Tenant”), a tenant at 4520 Ponce De Leon Blvd. pursuant to a lease dated September 5, 2012 (the “Lease”), as authorized by Resolution No.2012-22, entered into a Settlement and Release Agreement with the City dated May 5, 2015 (“Agreement”), as authorized by Resolution No. 2015- 77; and

WHEREAS, under the Agreement, the business, which operates as a furniture store, general contractor and interior design company, will vacate the premises as of July 31, 2015, and the City plans to use the property for City business, which will include passport operations; and

WHEREAS, the proposed Resolution would amend the Agreement to add a subsection whereby the Tenant agrees to provide construction management services for renovation of the interior of the Premises and have full responsibility for entering into a construction contract with a duly licensed Florida general contractor (the “General Contractor”) for construction pursuant to the plans provided by the City; and

WHEREAS, staff believes that the Tenant’s unique situation will help to reduce costs and expedite the project; and

WHEREAS, under the Amendment, 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”); have reasonable approval over selection of the General Contractor, and shall have approval in its sole discretion over the cost of build out;

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

SECTION 1. That the foregoing “Whereas” clauses are 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. The Amendment to the Settlement Agreement between the City of Coral Gables, Azul and Company, Inc. and Guarantors is hereby approved (the "First Amendment to Settlement and Release Agreement") in substantially the form attached hereto as Exhibit "A".

SECTION 4. That the City Commission does hereby authorize the City Manager to execute the Amendment to the Settlement and Release Agreement with such modifications from the terms as may be approved by the City Manager and City Attorney and are necessary to implement the intent of this Resolution.

SECTION 5. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS SIXTEENTH DAY OF JUNE, A.D., 2015.

(Moved: Lago / Seconded: Quesada)

(Yeas: Slesnick, Keon, Lago, Quesada, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: C-5)

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER J. GOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



CRAIG E. LEEN
CITY ATTORNEY

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

- 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,

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