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March 13, 2023

Via electronic mail only to: Jbarker@providenceri.gov

City of Providence
Attn: Jillian H. Barker, Esq.
Senior Assistant City Solicitor
444 Westminster Street
Providence, Rhode Island 02903

Re: Skyline at Waterplace, LLC

Dear Assistant City Solicitor Barker:

I am in receipt of your letter sent on behalf of the City of Providence (“City”) dated February 28, 2023 concerning the Lease Agreement by and between Skyline at Waterplace, LLC (“Skyline”) and the City (the “Lease”) for the premises located at 1 Finance Way, Providence, Rhode Island. I will have a follow up response to your letter in short order but, for now, I will address Skyline’s alleged default of the Lease for non-payment of rent claimed by the City.¹

The City alleges that Skyline is in arrears for outstanding rent in the amount of \$63,165.31 which covers the months August 2022 through February 2023. Skyline disagrees with the City’s position on several fronts. First and foremost, rent did not accrue nor was it due and owing for the months August 2022 through January 2023. As referenced in your letter, the parties entered into a Third Amendment to Lease. That particular amendment abated the rent for thirty-two (32) months starting December 1, 2019 through and including July 31, 2022. Had the parties not further amended the Lease, I agree that the rent payments would have restarted on August 1, 2022.

However, the Lease was further amended with a Fourth Amendment to Lease which extended the rent abatement for an additional six (6) months (from August 1, 2022 through January 31, 2023). That Fourth Amendment to Lease was drafted by the City and circulated by you in a letter to me dated June 16, 2022. There is no issue concerning the City’s authority in the granting of an additional rent abatement as, according to the four (4) corners of the Fourth Amendment to Lease, “on October 20, 2020, the Board of Park Commissioners authorized the Superintendent of parks, Wendy Nilsson to negotiate rent abatements for Covid-19 related impacts and closures”.²

¹ I will address the City’s other claims relating to “Reasons other than non-payment of Rent” at a later date.

² The minutes of the October 20, 2020 meeting of the Board of Park Commissioners duly reflect the carte blanche authority granted to Superintendent Nilsson which she exercised in granting the lease amendment which was followed up by the City’s Law Department preparing and circulating the Fourth Amendment to Lease (which I note had no conditions attached).

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See Fourth Amendment to Lease at pg. 1. The same Lease amendment goes on to state that “**the City of Providence acknowledges the financial impact the Covid-19 pandemic has had on Skyline’s ability to profit**”. Id.

The language of the latest lease amendment was not window dressing. Of the wide array of businesses impacted by the pandemic, Skyline’s business was at the tippy top of most impacted given the nature of its business as a large events venue. As we all know, these facilities were essentially closed down for an extended period of time pursuant to various unprecedented Executive Orders issued by the Governor of the State of Rhode Island and were amongst the last of locations allowed to fully open.

In granting the Fourth Amendment to Lease, the City fully acknowledged and was appreciative of “the financial impact the Covid-19 pandemic has had on Skyline’s ability to profit”. To go a step further (since Skyline had no part in drafting the Fourth Amendment to Lease), not only did Skyline not have the ability to profit but its doors were shuttered for an extended period of time meaning it had no income at all. Moreover, even when it was allowed to gradually open pursuant to Executive Orders issued by the State, Skyline still could not fully operate its business as intended and permitted under the Lease. Finally and most importantly, the State’s extended restrictions on Skyline (and other like places of operation) fell smack within the 32 month rent abatement period. Starting in month 4 (March 2020) of the rent abatement period, Skyline was forced to shutdown due to the worldwide pandemic and remain closed or virtually closed for a very long period of time.

I understand the City may claim that the Fourth Amendment to Lease was not signed and therefore is invalid. My response is very simple, The only thing that is invalid here is with this purported legal position. Quite frankly, it is a frivolous legal position which ignores the law and the facts. Skyline had requested a much longer rent abatement due to the pandemic. The City agreed to extend the rent abatement for a much shorter period of time at 6 months. It was the City that prepared the lease amendment. It was the Board of Park Commissioners who cloaked Superintendent Nilsson with the authority to grant Skyline relief under the Lease. The extended period is for 6 months (not more than 1 year if the City wants to review the Statute of Frauds). See R.I.G.L. § 9-1-4. Equally important, the City has acknowledged as much that the Fourth Amendment to Lease was in effect through its actions and omissions especially over the last nine (9) months.³

³ This letter is not intended to constitute Skyline’s complete and exhaustive legal position on the Fourth Amendment to Lease. Skyline reserves all legal rights and defenses in the event it is required to bring an action against the City for the return of the money in question as well as other breaches of the Lease committed by the City over the full term of the Lease.

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Notwithstanding the foregoing, Skyline has opted to tender the rent in question (*i.e.*, the 6 month period for August 2022 through January 2023) together with the rent due for February 2023 and March 2023. To this end, enclosed here find a cashier's check in the amount of \$72,295.89 made payable to the City of Providence. As you will read in the memo section of the check, Skyline has written: "*Skyline at Waterplace – Under Protest!*" To be clear, the portion of the check being paid under protest is the rent the City claims is past due for the 6 month window covering the period August 1, 2022 through January 31, 2023.⁴ The balance of the check represents rent due the City for February 2023 and March 2023.⁵

By tendering all rent (disputed and undisputed), my client has cured any potential event of default under the Lease for non-payment of rent. However, I want to be crystal clear that my client intends to take legal action against the City for return of the disputed rent monies, plus statutory interest and attorney's fees if the City refuses to acknowledge the validity of the Fourth Amendment to Lease and reconcile the rent dispute. The City has no defense to the very lease amendment it agreed to, prepared and honored for six (6) months.⁶

Thank you for your attention to this matter.

Respectfully submitted,

Michael J. Lepizzera, Jr.
Michael J. Lepizzera, Jr.

cc: Hand delivered with Cashier's Check to:

Providence Parks Department
Dalrymple Boathouse
1000 Elmwood Avenue
Providence, RI 02907

⁴ My calculation shows that \$54,134.00 of the total check is attributable for the 6 month period in question.

⁵ The City provided me a rent balance of \$63,165.31 for the period August 2022 through February 2023. My calculation for this same time period is slightly less at \$63,156.33 (a difference of \$8.98 in favor of the City). I had my client pay the extra \$8.98 for now which can be reconciled at a later date.

⁶ The City did not notify Skyline once during the period in question that rent was due and owing. No such notice was given since the parties were operating under the Fourth Amendment to Lease.