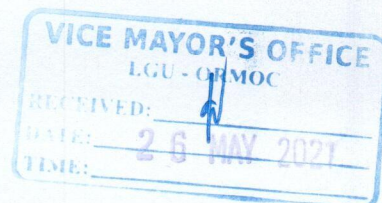


REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE
FIFTEENTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD
AT THE SANGGUNIANG PANLUNGSOD SESSION HALL,
ORMOC CITY HALL BUILDING
ON MAY 25, 2021



PRESENT:

Leo Carmelo L. Locsin, Jr.
Benjamin S. Pongos, Jr.,
Roiland H. Villasencio,
Tomas R. Serafica,
Nolito M. Quilang,
Eusebio Gerardo S. Penserga,
Jasper M. Lucero,
Peter M. Rodriguez,
Vincent L. Rama,
Gregorio G. Yrastorza III,
Lalaine A. Marcos,
Esteban V. Laurente,

City Vice Mayor & Presiding Officer
SP Member, Majority Floor Leader
SP Member, 1st Asst. Majority Floor Leader
SP Member, Presiding Officer "Pro-Tempore"
SP Member, 2nd Asst. Majority Floor Leader
SP Member
SP Member
SP Member
SP Member
SP Member
SP Member
Ex-Officio SP Member, Chapter President,
Liga ng mga Barangay ng Ormoc
Ex-Officio SP Member, Chapter President,
Panlungsod na Pederasyon ng mga Sangguniang Kabataan ng Ormoc

RESOLUTION NO. 2021-142

**A RESOLUTION GRANTING AUTHORITY TO THE CITY
MAYOR, RICHARD I. GOMEZ, OR THE ACTING CITY
MAYOR TO ENTER INTO AND SIGN THE CONTRACT
TERMINATION AGREEMENT (CTA) OVER THE
CONTRACT OF LEASE (COL) EXECUTED BY THE CITY
GOVERNMENT OF ORMOC (LGU-ORMOC) AND FJN6
FOOD CORPORATION, THEREBY ALLOWING THE FJN6
FOOD CORPORATION TO PRE-TERMINATE THE SAID
COL SUBJECT TO THE PAYMENT OF LIQUIDATED
DAMAGES EQUIVALENT TO TWO (2) MONTHS OF
RENTAL RATE.**

WHEREAS, an indorsement was forwarded to this august Body from the Office of the City Mayor, dated April 26, 2021, requesting for an issuance of a resolution authorizing the City Mayor or his representative to sign an agreement thereby allowing the termination of the Contract of Lease over Commercial Space A – Old Executive Building with FJN6 Food Corporation (Lessee), and/or the enactment of an Ordinance condoning liquidated damages and/or other financial obligation of the FJN6 Food Corporation, due to financial losses as consequence of the COVID – 19 pandemic. A copy of the said Contract Termination Agreement (CTA) is hereto attached as "ANNEX A" and made an integral part hereof;

WHEREAS, the Contract of Lease (COL) was made and entered into on January 07, 2020 by the City Government of Ormoc City, represented by City Mayor Richard I. Gomez, as authorized per Sangguniang Panlungsod Resolution No. 2019-145, and on March 13, 2020 by the FJN6 Food Corporation, represented by Filiberto Sainz Alquiros – President of Giligans (FJN6 Food Corporation), docketed in the Notarial Registers of Atty. Adelito M. Solibaga, Jr., dated March 13, 2020, as Doc. No. 287, Page No. 58, Book No. XVI, Series of 2020, and Atty. Naomi G. Cartagena, dated January 7, 2020, as Doc. 357, Page No. 72, Book No. XII, Series of 2020;

WHEREAS, due to the effects of COVID - 19 pandemic, quarantine restrictions and impositions of government regulations were in place to deter the spread of the virus. Pursuant to the strict protocols implemented by the City Government and the Inter-Agency Task Force (AITF), CNN Philippines reported that more than 3,000 establishments nationwide have permanently closed or cut back workforce due to the pandemic, leaving 90,000 workers jobless. Such is the case of FJN6 Food Corporation (Lessee) or widely known in the country as Giligans Restaurant with branch outlets mostly in major cities nationwide. The strict protocols also restricted the movements prompting the Lessee to request three extensions on the start of the effectivity of the COL with the corresponding dates: March 19, 2020, July 27, 2020, and October 1, 2020;

WHEREAS, as COVID - 19 cases are progressive, more restrictions and strict protocols have been in place in order to avoid massive COVID - 19 surge and keep the majority of the population safe from virus transmission. It was in this moment that the Lessee witnessed the dramatic downturn of their business as they could only manage to open 20 out of the 120 branches nationwide. To keep the business afloat, the Lessee decided to focus their operation on the remaining branches that seemingly able to withstand the effects of the pandemic and suspend their plans on opening new branches. Hence, in a letter addressed to Mayor Richard I. Gomez on March 5, 2021, the Lessee beseeched for consideration with a prayer to rescind the COL with the LGU - Ormoc on the Lease of the Old Executive Building - Commercial Space A. The Lessee, in their letter, noted that that the pandemic has adversely affected their business impelling them to close 25 restaurants due to financial losses and that following the implementation of the Enhanced Community Quarantine in the National Capital Region, another 25 branches have been crippled which forced them to shut down;

WHEREAS, in its legal opinion, dated April 14, 2021, the City Legal Officer remarked Ordinance No. 001, series of 2019, allows pre-termination of contract by the Lessee on the condition that the Lessee has to pay the liquidated damages equivalent to two (2) months of current rental rate. The Ordinance provides:

"Section 17. The LESSEE shall be granted the right to pre-terminate the lease contract at any time during the contract period for any valid reason whatsoever, including recurring business losses arising from the operations of the business. Provided that, the LESSEE shall serve upon the LESSOR written notice of not less than sixty (60) days from the pre-termination date. Provided, further, that the LESSEE shall pay to the LESSOR an amount equivalent to TWO (2) MONTHS current rental rate as liquidated damages" (underline for emphasis)

WHEREAS, the City Legal Officer further remarked that the extension of the commencement of effectivity of the contract is within the discretion of the Local Chief Executive considering that Ordinance No. 001 only provides for the maximum lease period and does not indicate the commencement date of the contract and that the inability of the Lessee to commence execution of the contract of lease due to the effects of the pandemic is justified by Article 1174 of the Civil Code, to wit:

"Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."

WHEREAS, the President of FJN6 FOOD CORPORATION, Filiberto Sainz Alquiros, expressed their agreement to the provisions of the CTA and that they are amendable to pay the liquidated damages equivalent to two (2) months of rental rate to expedite the process of termination;

WHEREAS, the subject Contract Termination Agreement clearly and plainly encapsulates the terms and conditions of the agreement of the parties thereto;

WHEREAS, this Sanggunian, upon thorough review, finds that the Contract Termination Agreement is not contrary to law, public policy, contracts, morals and public order and that it is not injurious to the City of Ormoc and is therefore, most deserving of this august body's prompt and favorable consideration;

WHEREFORE, on motion of SP Member Nolito M. Quilang, acting Chairman of the Committee on Laws and Ordinances and SP Member Roiland H. Villasencio, Chairman of the Committee on Public Properties, severally seconded by SP Members Tomas R. Serafica, Vincent L. Rama, Jasper M. Lucero, Gregorio G. Yrastorza III, Lalaine A. Marcos, Esteban V. Laurente and Joan Marbie C. Simbajon; be it

RESOLVED, AS IT IS HEREBY RESOLVED, to pass A RESOLUTION GRANTING AUTHORITY TO THE CITY MAYOR, RICHARD I. GOMEZ, OR THE ACTING CITY MAYOR TO ENTER INTO AND SIGN THE CONTRACT TERMINATION AGREEMENT (CTA) OVER THE CONTRACT OF LEASE (COL) EXECUTED BY THE CITY GOVERNMENT OF ORMOC (LGU-ORMOC) AND FJN6 FOOD CORPORATION, THEREBY ALLOWING THE FJN6 FOOD CORPORATION TO PRE-TERMINATE THE SAID COL SUBJECT TO THE PAYMENT OF LIQUIDATED DAMAGES EQUIVALENT TO TWO (2) MONTHS OF RENTAL RATE;

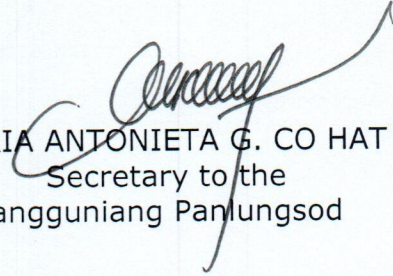
ADOPTED, May 25, 2021.

RESOLVED, FURTHER, that a copy of the final notarized Contract Termination Agreement (CTA) be submitted to this Sanggunian for its information and files;


RESOLVED, FINALLY, to furnish copies of this resolution each to the City Mayor of Ormoc Richard I. Gomez, the City Administrator, Mr. Vincent L. Emnas; the City Legal Officer, Atty. Josephine A. Mejia- Romero; the City Planning & Development Office; the City Engineering Office; the City General Services Office; the City Treasurer; the City Accountant; the Office of the Building Official; Mr. Filiberto S. Alquiros, of FJN6 Food Corporation; the City Local Government Operations Officer-DILG; and all other offices concerned.

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the above resolution.


MARIA ANTONIETA G. CO HAT
Secretary to the
Sangguniang Panlungsod

ATTESTED:


LEO CARMELO L. LOCSIN, JR.
City Vice Mayor & Presiding Officer

CONTRACT TERMINATION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This *Contract Termination Agreement*, made and entered into this ____ day of _____ at _____, by and between:

THE CITY GOVERNMENT OF ORMOC, a local government unit organized and existing under and by virtue of Philippine laws, with postal address at the Ormoc City Hall, Barangay Cogon, Ormoc City, represented herein by the City Mayor, **RICHARD I. GOMEZ**, hereinafter referred to as the LESSOR;

- and -

FILIBERTO SAINZ ALQUIROS, of legal age, Filipino, the representative of FJN6 FOOD COPORATION a juridical entity organized and existing under and by virtue of Philippine laws, with principal place of business at 121- A Pinatubo Street, Brgy. Barangka Ilaya, Mandaluyong City, hereinafter referred to as the LESSEE;

WITNESSETH, THAT:

WHEREAS, the parties are bound by a Contract of Lease executed by the LESSOR on January 7, 2020 and by the LESSEE on March 13, 2020;

WHEREAS, since the execution of the Contract of Lease, the LESSEE did not take possession of the LEASED PREMISES, identified as Commercial Space A of the two-storey structure formerly known and utilized as the Executive Building located at and bounded by Iñaki Larrazabal Avenue, Navarro Street, and Burgos Street, with an area of THREE HUNDRED EIGHTY FOUR POINT TWENTY FOURTEEN (384.2014) SQUARE METERS;

WHEREAS, the LESSEE sought a total of three extensions on the start of the effectivity of the Contract of Lease, as follows:

- a. To August 1, 2020 in a letter dated March 19, 2020;
- b. To October 1, 2020 in a letter dated July 27, 2020; and
- c. To February 1, 2021 in a letter dated October 1, 2020;

WHEREAS, In a letter dated March 5, 2021, the LESSEE has asked to terminate the Contract of Lease due to business and economic losses and the need to reorganize existing operations still brought about by the spread of the COVID-19 infection;

WHEREAS, in a letter addressed to the Local Chief Executive, the City Legal Officer opined that, "The inability of the lessee to commence the execution of the contract is due to the pandemic that may constitute a fortuitous event under Article 1174 of the Civil Code which expresses that: *"Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."* An appreciation of the applicable circumstances indicate that the lessee may be exempt from its obligations under the Contract of Lease as the (a) the cause of the breach of the obligation is independent of its will; (b) the occurrence of the pandemic was both unforeseeable or unavoidable; (c) the pandemic has rendered it impossible and impracticable for the lessee to fulfill its obligation in a normal and timely manner; and (d) the lessee is free from any participation in, or aggravation of the injury to the LGU Ormoc."

NOW, THEREFORE, for and in consideration of the foregoing promises and of the mutual covenants and agreements hereinafter set forth, the LESSOR and the LESSEE hereby covenant and agree as follows:

- A. Effective, _____, the Contract of Lease executed by the LESSOR on January 7, 2020 and by the LESSEE on March 13, 2020 is hereby terminated and both are absolved of any and all rights and obligations arising out of the Contract, subject to the provisions of exiting Ordinance(s) and applicable law(s);
- B. Within _____ from the execution of this agreement, the LESSOR shall deliver the sum equivalent to two (2) months rent by way of liquidated damages and in accordance with Section 17 of Ordinance No. 001 (Series of 2019);
- C. The parties acknowledge by this Agreement that the consideration provided and received by each other is fair, just and reasonable and that no further consideration, compensation or obligation will be due, payable or owing with regard to the Contract as of the execution date of this Agreement;
- D. By this Agreement the parties release each other from any and all claims, causes of action, demands and liabilities of whatever nature which either Party had in the past, has now or may have in the future arising from or related to the Contract.

IN WITNESS WHEREOF, the PARTIES have hereunto set their hands on the date and in the place above-stated.

CITY GOVERNMENT OF ORMOC
LESSOR

FJN6 FOOD COPORATION
LESSEE

By:

RICHARD I. GOMEZ
City Mayor

FILIBERTO S. ALQUIROS

Signed in the presence of:

ACKNOWLEDGEMENT

BEFORE ME, a Notary Public, for and in _____, personally appeared the following persons with their respective competent proof/s of identification:

RICHARD I. GOMEZ	
FILIBERTO S. ALQUIROS	

the duly-authorized signatories-parties to the foregoing Contract of Lease consisting of two (2) PAGES, including the page on which this Acknowledgement appears, and they acknowledged to me that the said agreement and the provisions therein were executed of their own free and voluntary act and deed.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2021.