

[Date , 2024]

Ocean Terrace Streetscape, LLC
1035 N. Miami Ave, #201
Miami, FL 33136
Attn: Jared Green

Dear Jared,

This letter (“Agreement”) shall serve to detail the terms for your commission of a sculpture (the “Sculpture”) by Atelier Prune Nourry (“Artist”) for display in a five-acre public greenspace (the “Park”) being developed by Ocean Terrace Streetscape, LLC as part of its Ocean Terrace redevelopment project. Ocean Terrace Streetscape, LLC and its permitted assigns under this Agreement shall collectively be referred to as “OTH”.

The Sculpture

1. The Sculpture shall have an approximate size of 25’ 7” x 7’ 4” and be comprised of a structure supporting contiguously placed, carved Siporex blocks that are covered in a finish coat and silicate protective layer to form a single work of art. The Sculpture will be substantially similar to the model and artwork submitted to and approved by the City of Miami Beach Art in Public Places Committee (“AIPP”), as such approval and requirements are communicated by OTH to Artist. The preliminary artwork and additional specifications for the Sculpture are attached hereto as Appendix A. OTH acknowledges that as a result of the artistic and manufacturing processes the Sculpture may have non-material differences from the approved model. All of the terms and conditions of this Agreement, including the payment obligations, shall apply regardless of any such non-material differences. Notwithstanding the foregoing, Artist shall fabricate and install the Sculpture in substantial conformity with the approved model and may not deviate from the approved model without written approval of OTH (and potentially AIPP, if the City determines that additional review by AIPP shall be required).

2. The Siporex blocks for the Sculpture and the supporting structure shall be produced in the United States (Artist and OTH shall mutually agree on an alternate plan if needed). The blocks shall be assembled on the supporting structure on site at the Park under the direction and supervision of the Artist. Following the assembly, Artist will direct and supervise the application of the finish coat and protective layer. Completion of the Sculpture at the Park will take approximately seven (7) days. The entire process of fabricating and installing the Sculpture is estimated to take approximately six (6) months following approval of the models and artwork, with an expected (but not guaranteed) completion prior to Art Basel Miami 2024. The parties shall mutually agree to a schedule for completion of the model and artwork, approval by the City, fabrication of the structure and blocks, shipment, and installation.

3. For clarity, the Sculpture includes solely the half head depicted in the preliminary artwork. The Sculpture does not include, and Artist is not responsible for any other element depicted or

implied in the artwork, including but not limited to any trees or other vegetation, the pond, the underwater foundation on which the Sculpture sits, and the depicted bench.

Obligations of OTH

4. OTH shall be solely responsible for and shall pay all costs required for:
 - a. Obtaining the approval from AIPP for the Sculpture;
 - b. Obtaining all other permits and approvals required for the construction of the Park (including but not limited to the construction of the pond, foundation for the Sculpture, and bench), and the installation of the Sculpture (including but not limited to the application of the finishing and protective coats);
 - c. Furnishing all supplies, materials, equipment for the sculpture and its production.
 - d. Packing and shipment of the supporting structure and Siporex blocks from the production facility to the site in Miami Beach, storage until installation occurs, and delivery and unloading of the structure and blocks at the Park for installation;
 - e. Construction of the Park, including but not limited to the pond, the foundation for the Sculpture, and the bench;
 - f. Access to the Park during the period required to install and finish the Sculpture, subject to reasonable rules regarding access in connection with ongoing construction of the Park and adjacent project and coordination with such construction progress, with the understanding that insufficient access may delay and/or increase the cost of the Sculpture;
 - g. Reasonable travel and hotel accommodations for Artist and one (1) representative of Artist to supervise installation and finishing of the Sculpture at the Park (all costs require prior approval by OTH);
 - h. The provision of a sufficient number of contractors with experience in the installation of artwork and/or other works comprising similar care to install the Sculpture and apply the finishing and protective coats; and
 - i. All site, workplace, and worker safety at the Park and all other locations the Sculpture or its components are shipped or stored.

5. In addition to the foregoing, if any unveiling of the Sculpture or official opening of the Park is scheduled, OTH shall provide reasonable travel and hotel accommodations for the Artist to attend (all costs require prior approval by OTH).

Obligations of Artist

6. Artist shall be responsible for the following:
 - a. Performing all services necessary for the design and fabrication of the Sculpture, including those necessary for installation of the Sculpture (but excluding the surrounding fountain, foundation and plinth for the Sculpture) and application of the finish coat and protective layer. Such services shall be performed in a professional manner and in strict compliance with all terms and conditions of this Agreement.
 - b. Inspecting the Park prior to the transportation and installation of the Sculpture. Artist shall notify OTH in writing of any adverse conditions that may impede or otherwise impact the installation of the Sculpture and which require resolution before proceeding with any portion of the services or installation of the Sculpture. Artist shall provide such notice within a reasonable

amount of time so as to allow OTH to properly coordinate any necessary corrections and not create any delays to the construction schedule.

c. Virtually attending public information meetings with the general public (if required by AIPP and subject to Artist's reasonable availability and time difference) and virtually attending design and construction coordination meetings with OTH, general contractor, architect and other parties, as appropriate and subject to Artist's reasonable availability and time difference, to communicate about the Sculpture and to ensure appropriate integration and/or installation of the Sculpture.

d. Participating, as necessary, in the preparation of applications and such documents and design data as may be required to procure approvals from all such governmental authorities that have jurisdiction over the construction of the Park and installation of the Sculpture. Artist, her assistants, or assigned subcontractors shall participate virtually in any necessary meetings, submissions, resubmissions and negotiations with such authorities, subject to Artist's reasonable availability and time difference, and Artist shall respond to comments by such authorities in a timely manner to adhere to the agreed-upon schedule.

e. Coordinating the transportation and installation of the Sculpture in consultation with OTH.

f. Supervising, directing, and approving the installation of the Sculpture and the application of the finish coat and protective layer.

g. Providing OTH with a maintenance manual with a description of all material and products utilized in the Sculpture and the required care and upkeep involved.

h. Being available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

i. If any personal appearance of Artist is required for any meeting above, OTH shall pay for Artist's reasonable travel and hotel accommodations (subject to OTH's prior approval) unless the timing can be coordinated with another visit Artist has planned to the Miami area. Travel origination will only be from Paris, France or New York, NY unless otherwise agreed to by OTH.

7. Upon completion and installation of the Sculpture, Artist shall be responsible for obtaining written final approval from OTH. If OTH finds the Sculpture acceptable, the requirements of the Agreement with regard to design, fabrication, and installation of the Sculpture satisfied, and all conditions of the permits and regulatory agencies fulfilled, final acceptance shall be given by OTH.

Payment

8. In consideration for the production and installation of the Sculpture, in addition to OTH's other obligations under this Agreement, OTH hereby agrees to pay Artist the amount of thirty-one thousand two hundred dollars (\$31,200 USD) in addition to any pass-through expenses at cost as agreed to in writing by OTH and Artist. OTH acknowledges that because this is Artist's first commission in the United States, Artist has significantly discounted its customary fee for a Sculpture of this size.

9. This amount is payable as follows:

- a. Upon signing: \$10,000;
- b. Upon completion of the structure and blocks: \$10,000; and
- c. Upon obtaining written final approval from OTH : \$11,200

10. All payments due under this Agreement will be remitted to:
Bank information:
Prune Nourry BNC
IBAN: FR76 3006 6100 0500 0204 9410 229
BIC: CMCIFRPP
Bank CIC Paris Opéra Bourse, 28 avenue de l'Opéra, 75002 Paris, France
Bank: 30066 / Office: 10005 / Account: 00020494102 / Key: 29

OTH shall pay any fees imposed by its bank to make any payment. Interest at the rate of one percent (1%) per month shall accrue and be due on any amounts which are not paid within thirty (30) days from being due. OTH shall reimburse Artist for all costs it incurs to collect any amounts due under this Agreement, including reasonable attorneys' fees, collection agency fees and court costs. All payments are exclusive of any applicable taxes (none foreseen).

Artist's Representations and Warranties

11. Artist represents and warrants that:
- a. The Sculpture is solely the result of the artistic effort of Artist;
 - b. Except as otherwise disclosed in writing to OTH, the Sculpture is unique and original and does not infringe upon any copyright or the rights of any person;
 - c. The Sculpture (or duplicate thereof) has not been accepted for sale elsewhere;
 - d. Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Sculpture or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
 - e. The Sculpture is free and clear of any liens from any source whatsoever;
 - f. These representations and warranties shall survive the termination of this Agreement.

Rights and Credits

12. OTH agrees that Artist is the sole and exclusive creator of the Sculpture and is the sole and exclusive author and owner of all copyrights in the Sculpture. OTH agrees that (a) any contributions to the Sculpture by OTH or any employee, agent or subcontractor of OTH were made as "works made for hire" for Artist; (b) OTH on behalf of itself and its employees, agents and subcontractors hereby assign to Artist any and all interests any of them may have in the copyrights in the Sculpture; and (c) OTH shall never contest the validity of the copyrights in the Sculpture or Artist's ownership thereof. At its option, Artist may register its copyrights in the Sculpture. Prior to the time OTH assigns this Agreement and all right, title and interest OTH has in the Sculpture to the City of Miami Beach ("City"), OTH shall not intentionally and materially alter the Sculpture without the prior written consent of Artist. Notwithstanding the foregoing, Artist hereby waives, to the extent permitted by applicable law, all rights of paternity, integrity, attribution, disclosure, withdrawal, and any other rights that may be known as "moral rights" with respect to the use and display of the Sculpture pursuant to this Agreement. To the extent this waiver is not permitted by applicable law, Artist hereby agrees not to enforce such moral rights against OTH and its permitted successors, sublicensees, and assigns.

13. OTH shall provide and install next to the Sculpture a plaque designed by Artist to be mutually agreed upon, identifying the title of the Sculpture, which shall be provided by Artist (currently *Reflection*), and identifying the artist of the Sculpture as “Prune Nourry” and acknowledging that the Sculpture was commissioned by OTH or its parent company Ocean Terrace Holdings, LLC.

14. Upon completion and installation of the Sculpture pursuant to Section 7, OTH will be assigning this Agreement and transferring ownership of the Sculpture to the City. All terms of this Agreement shall remain consistent and all references to OTH will instead refer to the City or its assigns. Specifically, the City will only be acquiring the physical Sculpture and not the copyrights or other intellectual property rights in or to the Sculpture. Further, the Sculpture may not be intentionally and materially altered in any way without the prior written consent of Artist. Notwithstanding the foregoing, all risk of loss relating to the Sculpture will remain with OTH until Substantial Completion (as such term is defined in that certain Development Agreement dated July 31, 2019 between the City and certain affiliates of OTH, as amended) of the Park.

15. Artist grants to OTH an irrevocable license to make two-dimensional reproductions of the Sculpture for non-commercial purposes, including, but not limited to, reproductions used on its website, brochures, media publicity, exhibition catalogs, or other similar publications without the approval of or further compensation to Artist. OTH shall use best effort to identify the artist of the Sculpture as “Prune Nourry” and include a copyright notice which states “© 2024 Atelier Prune Nourry” on any such materials. No casual or inadvertent failure by OTH to comply with the credit requirements set forth above, nor any failure by third parties to so comply, shall constitute a breach of this Agreement by OTH. Without limiting the generality of the foregoing, OTH shall have no rights to sell prints, postcards, books, or other merchandise featuring the Sculpture. In the event OTH wishes to make reproductions of the Sculpture for commercial purposes, the parties shall execute a separate agreement to address the terms of the license granted by Artist and any royalty Artist shall receive.

16. Artist agrees that in all subsequent reproductions of the Sculpture, OTH will receive a credit in readable form in substantially the following form: “Commissioned by Ocean Terrace Holdings, LLC, Miami Beach, FL for the benefit of the Art in Public Places Program of the City of Miami Beach, Florida.”

17. In view of the intention that the Sculpture shall be unique, Artist shall not make any additional exact duplicate three-dimensional reproductions of the final Sculpture, nor shall Artist grant permission to others to do so, except with the written permission of OTH. However, nothing herein shall prevent Artist from creating future artworks and sculptures in Artist’s manner and style of artistic expression.

18. OTH shall not be responsible for any third-party infringement of Artist’s copyright and not responsible for protecting the intellectual property rights of Artist.

Publicity Materials

19. OTH agrees that it will cause a professional photographer to take high resolution digital photographs which accurately depict the Sculpture from different angles and will provide full resolution digital copies of such photographs to Artist. Artist agrees that such photographs shall be produced as “works made for hire” for the City; that the photographer waives any moral or artist’s rights; and the City and OTH agree that Artist shall have the perpetual, irrevocable, worldwide right to use, modify, publish, distribute, and reproduce such photographs for any purpose without any payment to or consent of OTH or any third party, provided the Artist shall comply with the credit requirements set forth in Section 16. Notwithstanding the assignment of this Agreement to the City pursuant to Section 14, OTH shall remain solely responsible for the provision of the professional photographs required to be delivered by Section 19, and the City shall be the owner of all right, title and interest in and to such photographs from the moment of creation.

20. OTH shall have the right to use the name, likeness and biographical information of Prune Nourry in connection with the Sculpture and its customary publicity materials, including but not limited to any interviews with Prune Nourry or other persons, and any photographs or audiovisual recordings documenting the “making of” the Sculpture, all of which shall be produced as “works made for hire” for the City, the unveiling of the Sculpture, or the opening of the Park. OTH shall provide Artist with high resolution digital copies of all such materials and all outtakes. OTH and the City agree that Artist shall have the perpetual, irrevocable, worldwide right to use, modify, publish, distribute, and reproduce such materials for any purpose without any payment to or consent of OTH or any third party. Notwithstanding the assignment of this Agreement to the City pursuant to Section 14, OTH shall remain solely responsible for the obligation to provide any photographs or audiovisual recordings documenting the “making of” the Sculpture to Artist pursuant to this Section 20, and the City shall be the owner of all right, title and interest in and to such photographs and audiovisual recordings from the moment of creation.

Exhibition, Repair and Relocation

21. OTH agrees that the Sculpture shall be exhibited to the public as installed by Artist without obstruction for a continuous period of no less than three (3) years commencing on the public opening of the Park, provided, if OTH determines that the Sculpture must be removed or relocated to ensure it is not damaged or to address any public safety concerns, the Sculpture may be removed or relocated before the expiration of such three (3) year period.

22. If at any time after such exhibition OTH wishes to remove or relocate the Sculpture to another location, OTH shall notify Artist in writing upon adoption of a plan of alteration of the location, which may result in the Sculpture being destroyed, distorted, or modified. Artist shall be granted the right of consultation regarding the removal or relocation of the Sculpture. If the Sculpture cannot be successfully removed or relocated as determined by OTH in its sole discretion, Artist may disavow the Sculpture or have the Sculpture returned to Artist at Artist’s expense. The Sculpture may be removed or relocated or destroyed by OTH should the Artist and OTH not reach mutual agreement on removal or relocation of the Sculpture after a period not to exceed ninety (90) days after written notice to Artist. During the ninety (90) day period, the parties shall engage in good faith negotiations concerning the Sculpture’s removal or relocation.

23. If at any time the Sculpture requires repair or restoration, aside from any regular upkeep and maintenance or damage resulting from an act of force majeure, such repair or restoration shall be provided solely by Artist pursuant to a separate agreement to be mutually agreed which compensates Artist for such work.

24. In the event of changes in building codes or zoning laws or regulations that cause the Sculpture to be in conflict with such codes, laws, or regulations, OTH may authorize the removal or relocation of the Sculpture without Artist's prior permission.

25. If OTH reasonably determines that the Sculpture presents imminent harm or hazard to the public, other than as a result of OTH's failure to maintain the Sculpture under this Agreement, OTH may authorize the removal of the Sculpture without prior approval of Artist.

Insurance

26. OTH shall provide insurance covering (a) the shipment, installation and completion of the Sculpture including but not limited to any injury to any person or any damage to the Park on which policy Artist and the City shall be additional insureds; and (b) any damage to or destruction of the Sculpture at any time from delivery of the structure and blocks through Substantial Completion of the Park.

Transfer, Resale and Royalty

27. Excluding solely a grant of the Sculpture to the City or other affiliated entities, any transfer or sale of the Sculpture, whether by contract, operation of law, or otherwise, may only be made with the prior written consent of Artist, which shall not be unreasonably withheld. Any attempted transfer or sale without such consent shall be null and void. The Sculpture may only be transferred or sold as a single, unified work of art for its exhibition as a single, unified work of art and only if it is to be relocated for public display at a setting similar to the Park.

28. The assignment of this Agreement and transfer of ownership of the Sculpture to the City upon completion of the Park has been pre-approved by Artist. No other grant, transfer or sale of the Sculpture shall be approved or valid unless the grantee/transferee/buyer agrees to assume and be bound by all of OTH's obligations under and all of the terms and conditions of this Agreement.

Death or Disability of Prune Nourry

29. If before the completion of the Sculpture, Prune Nourry dies or becomes disabled such that she can no longer perform work on the Sculpture, then OTH and Artist shall discuss in good faith the current status of the Sculpture. Any continuing work on the Sculpture shall be subject to the approval of Artist in its sole and absolute discretion. There shall be no refund of amounts paid by OTH.

First Right on Bankruptcy or Insolvency

30. OTH agrees that it will notify Artist of any Insolvency Event within thirty (30) days of its occurrence and shall not negotiate or arrange for the sale or transfer of the Sculpture before providing such notice. Upon the receipt of notice of an Insolvency Event, Artist shall have the sole and exclusive right to arrange for the sale or transfer of the Sculpture for a period of one (1) year. Any such sale or transfer shall be subject to all of the terms and conditions of this Agreement, including but not limited to the obligation to sell the Sculpture as a single, unified work of art. An "Insolvency Event" shall mean OTH becomes insolvent or bankrupt, discontinues its business, seeks or obtains by operation of law any stay of or relief from creditors under United States bankruptcy laws or the similar laws of any other jurisdiction, appoints a receiver or liquidator or takes any action to appoint a receiver or liquidator or has any creditor take any action to have a receiver or liquidator appointed for it, or transfers any assets or makes any arrangement for the benefit of a creditor.

Limitation of Liability

31. THE AGGREGATE LIABILITY OF ARTIST IN CONNECTION WITH THE SCULPTURE, THIS AGREEMENT AND/OR ITS SUBJECT MATTER, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT, STRICT LIABILITY, NEGLIGENCE AND/OR OTHER TORT, SHALL IN NO EVENT EXCEED THE AMOUNT OF THE FEES THAT HAVE BEEN PAID TO ARTIST HEREUNDER, EXCEPT FOR CLAIMS RELATED TO COPYRIGHT INFRINGEMENT. IN NO EVENT WILL ARTIST BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR REVENUE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS FORM AN ESSENTIAL BASIS FOR THIS AGREEMENT AND SHALL SURVIVE REGARDLESS OF THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE.

Miscellaneous

32. OTH and Artist are independent contractors. No joint venture, partnership or other relationship is created by this Agreement.

33. Each party represents and warrants that the person signing below is authorized to do so and that this Agreement shall be valid and binding upon it.

34. This Agreement will be construed in accordance with the laws of the state of Florida applicable to contracts made and performed therein without regard to principles of conflict laws. The parties agree that jurisdiction and venue of any claims arising under or related to this Agreement shall be exclusive in Miami-Dade County, Florida. The parties expressly submit to jurisdiction and venue in the state and federal courts located in Miami-Dade County, Florida. The parties agree that any disputes arising from or relating to this Agreement shall be submitted to the American Arbitration Association for binding arbitration to occur in Miami-Dade County, Florida.

Under no circumstances shall the arbitrator have the authority to review or base its decision in whole or in part on its or any other person's assessment or review of the artistic merits of the Sculpture.

35. Notwithstanding the foregoing, OTH acknowledges that any use or attempted transfer or sale of the Sculpture which violates the terms and conditions of this Agreement shall cause irreparable damage to Artist that cannot be remedied with damages and, therefore, agrees that in addition to all other rights and remedies Artist shall be entitled to obtain equitable relief (including but not limited to an injunction) directly from any appropriate court or other governmental body without the posting of a bond or other surety therefor and without any proof of damages.

36. In the event of any arbitration or litigation arising out of this Agreement, the prevailing party shall be entitled to recover any and all reasonable attorneys' fees and other costs incurred in connection therewith.

37. If any term or provision of this Agreement is held invalid, such invalidity will not affect any other term or provision, and this Agreement will be interpreted as if such term or provision had never been contained in this Agreement.

38. No waiver or modification of any of the terms of this Agreement will be valid unless in writing, signed by both parties. Failure by either party to enforce any rights under this Agreement will not be construed as a waiver of such rights, and a waiver by either party of a default in one or more instances will not be construed as a continuing waiver or as a waiver in other instances.

39. All notices required under this Agreement shall be in writing and shall be given by personal delivery or reputable overnight courier service with delivery confirmed by signature of the recipient, or email addressed as hereinafter provided; provided, however, that any Notice given by email shall also be given by personal delivery or reputable overnight courier service. Notices shall be effective upon their confirmed receipt.

40. This Agreement shall be binding upon the parties hereto and upon their heirs, successors, assigns and transferees.

41. This Agreement is the entire understanding of the parties on its subject matter. Any and all representations or agreements by any agent or representative of either party to the contrary will be of no effect. This Agreement may be signed in counterparts and/or digitally, all of which taken together shall form one document.

Please sign below your agreement and acceptance of these terms.

Agreed to and accepted:

Ocean Terrace Streetscape, LLC

Atelier Prune Nourry

By: _____
Sandor Scher

By: _____
Prune Nourry

Date: _____

Date: _____

Address: _____

Address: _____

As to Sections 1, 2, 12, 19 and 20:

City of Miami Beach

By: _____

Date: _____

Address: _____

APPENDIX A

The Sculpture