

NB 13. COLLINS PARK PERFORMING ARTS CENTER NEXT STEPS

Applicable Area:

# Attachment A

**LANDLORD:**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**TENANT:**

Miami New Drama, Inc.  
1040 Lincoln Road  
Miami Beach, Florida 33139

**DATE OF EXECUTION:**

April 18, 2022

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**COLLINS PARK CULTURAL ARTS FACILITY  
340 23<sup>RD</sup> STREET, MIAMI BEACH  
LEASE AGREEMENT**

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## LEASE SUMMARY

The following is a summary of basic lease provisions with respect to the Lease. It is an integral part of the Lease, and terms defined or dollar amounts specified in this Summary shall have the meanings or amounts as stated, unless expanded upon in the text of the Lease and its Exhibits, which are attached to and made a part of this Summary.

1. Date of Lease Execution: April 18, 2022
2. "Landlord": City of Miami Beach, in its proprietary capacity
3. Landlord 's Address:  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: Asset Manager  
  
with a copy to:  
  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: Legal Department
4. "Tenant": Miami New Drama, Inc., a Florida not for profit corporation
5. Tenant's Address:  
1040 Lincoln Road  
Miami Beach, Florida 33139  
Attention: Nicholas Richberg  
  
with a copy to:  
  
Stearns Weaver Miller, P.A.  
150 W. Flagler Street  
Miami, FL 33130  
Attention: Peter D. Lopez, Esq.
6. Premises (Section 1.1): 340 23<sup>rd</sup> Street,  
Miami Beach, Florida 33139  
(As shown on **Exhibit "B-1"**; and which may also be referred to herein and in the Lease as the "Premises")
7. Rentable Area of Premises (Section 1.1): Approximately 16,000 rentable square feet (as shown in **Exhibit "B-1"**).
8. "Permitted Use" of Premises (Section 3.1): The use of the Premises shall be solely and exclusively (i) as a theater for its not-for-profit cultural presentations, productions of live theatrical performances and uses ancillary thereto, including its administrative and business functions and rehearsal, costume and set

design facilities for performances as further provided in the Lease and (ii) such other uses as are contemplated pursuant to the terms of this Lease, including without limitation (a) those activities contemplated pursuant to **Section 1.6** with respect to the Benchmark Performance Standards, (b) the operation of a café as contemplated pursuant to **Section 3.2**, (c) those activities contemplated pursuant to **Section 3.6** with respect to the Community Benefits, (d) those activities and events contemplated pursuant to the use of the Premises by Landlord pursuant to **Section 3.7**, and (d) a cultural lobby/lounge/gallery subject to the terms of this Lease.

9. Term of Lease (Section 1.1):

Initial term of five (5) years ("Initial Term").

"Lease Commencement Date": The earlier of Tenant's beneficial occupancy of the Premises or the issuance of the certificate of occupancy for the Buildout Improvements (as hereafter defined).

"Expiration Date": Five (5) years after the last day of the first full calendar month after the Lease Commencement Date.

"Renewal Options": Two (2) options to renew the Lease for a period of five (5) years each at the option of the Tenant, and one (1) option to renew the Lease for a period of five (5) years at the option of Landlord and upon mutual agreement of the Parties (each, a "Renewal Term" and together with the Initial Term, the "Term"), each subject to the terms hereof.

10. "Minimum Rent" (Section 2.1):

\$1.00 annually, plus applicable sales tax.

11. Security Deposit:

None.

12. Renewal Term Minimum Rent:

\$1.00 annually, plus applicable sales tax.

13. Insurance (Section 7.1):

Tenant shall, at its sole expense, maintain any insurance which may be reasonably required by Landlord including Commercial General Liability, Property All Risk Coverage, Workers' Compensation; and Liquor Liability Coverage.

14. "Governmental Approvals":

All permits, approvals, certificates of occupancy, notifications, certifications, registrations, authorizations and other rights and privileges that are required by any Governmental Authority.

15. "Governmental Authority":

Any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of

any of them, with jurisdiction over the Property or the Premises.

16. "Governmental Requirements":

Any law, enactment, statute, code, order, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, or other similar requirement of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued, affecting the Property or the Premises, the construction of the Buildout Improvements and/or operation of the Facility.

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease"), dated the 18 day of April, 2022, is made by and between the City of Miami Beach, Florida, a municipal corporation ("Landlord"), and Miami New Drama Inc., a Florida not for profit corporation (the "Tenant" and together with Landlord, each, a "Party" and collectively, the "Parties").

### **RECITALS:**

A. The Landlord is the fee simple owner of that certain real property (the "Property") known as the "Collins Park Parking Garage" containing land, a municipal parking garage and appurtenances and certain retail space located at 340 23<sup>rd</sup> Street, City of Miami Beach, Miami-Dade County, Florida as more particularly described in **Exhibit "A,"** attached hereto and made a part hereof (the "Project"). The Landlord is the fee simple owner of the Property and the Project.

B. Landlord and Tenant desire to enter into this Lease for a portion of the Project comprised of approximately 16,000 square feet of retail space located on the ground floor of the Project, including interior space and additional exterior terrace areas, including the to-be-constructed Buildout Improvements, as more particularly described in **Exhibit "B-1"** and **Exhibit "B-2"** attached hereto and made a part hereof (such space, together with the Buildout Improvements, the "Premises" or the "Facility").

**NOW, THEREFORE,** in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

### **ARTICLE 1. GRANT AND TERM.**

1.1 **Grant.** In consideration of the performance by Tenant of its obligations under this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, for the Term, the Premises. A site plan showing the description and location of the Premises is attached hereto and made a part hereof as **Exhibit "B-1."**

1.2 **Term.** This Lease is effective as of the Date of Lease Execution, as specified in the Lease Summary, following Landlord's City Commission's approval of this Lease, subject to and contingent upon the City's appropriation of sufficient funds for the Buildout Improvements. The initial term of possession of this Lease shall be for a period of five (5) years commencing on the Lease Commencement Date and expiring on the Expiration Date, each as specified in the Lease Summary (the "Initial Term"), unless sooner terminated as provided in this Lease.

1.3 **Renewal Terms.** Tenant shall have two (2) options (each, a "Tenant Renewal Option") to renew the Initial Term of the Lease for additional periods of five (5) years each. Subject to Tenant's exercise of its Tenant Renewal Options in accordance herewith, the Landlord shall have one (1) option (a "Landlord Renewal Option" and together with each Tenant Renewal Option, each, a "Renewal Option" and collectively, the "Renewal Options") to renew the Term of this Lease for one additional period of five (5) years and subject to mutual agreement of the Parties. Except with respect to the Renewal Options, each Renewal Term shall be on the same terms and conditions as the Initial Term.

(a) **Tenant Renewal Options.** Tenant may exercise each Tenant Renewal Option by sending Landlord's City Manager or designee written notice not less than nine (9) months and not more than twelve (12) months prior to the expiration of the then-current Term; provided that Tenant's exercise of the second Tenant Renewal Option shall be subject to Tenant's exercise of the first Tenant Renewal Option. Upon Tenant's exercise of a Tenant Renewal Option, this Lease and Tenant's tenancy hereunder shall be deemed extended without the execution of any further instrument. Notwithstanding the foregoing, in the event Tenant failed to meet its Benchmark Performance Standards for the Lease Year immediately preceding the applicable Renewal Term (subject to the occurrence of any Force Majeure Events), Landlord's City Manager may elect, upon written notice

to Tenant within sixty (60) days after receipt of Tenant's written notice electing to exercise a Tenant Renewal Option, not to accept such exercise; provided, however, that if Landlord fails to provide timely written notice of its election not to accept Tenant's exercise of a Tenant Renewal Option, then Landlord shall conclusively be deemed to have waived its right to do so solely with respect to that Tenant Renewal Option.

(b) Landlord Renewal Option. Tenant may request that Landlord exercise the Landlord Renewal Option by sending Landlord's City Manager or designee written notice not less than nine (9) months and not more than twelve (12) months prior to the expiration of the then-current Term. Upon receipt of Tenant's written request, Landlord's City Manager, in its sole and absolute discretion, may exercise the Landlord Renewal Option upon written notice to Tenant within ninety (90) days after receipt of Tenant's written request, and if Landlord fails to respond within such ninety (90) day period, Landlord shall conclusively be deemed not to have exercised Landlord Renewal Option and this Lease shall terminate as of the last day of the then-current Term. Upon Landlord's exercise of the Landlord Renewal Option, this Lease and Tenant's tenancy hereunder shall be deemed extended without the execution of any further instrument.

(c) As conditions to the exercise of each Renewal Option, (i) Tenant must be in good standing as a not-for-profit corporation in compliance with applicable provisions of the City Code for the City of Miami Beach, Florida (the "City Code"), (ii) no Event of Default shall then be continuing, and (ii) unless otherwise waived by City Manager in writing, Tenant shall have satisfied the applicable Benchmark Performance Standards for the Lease Year immediately preceding the applicable Renewal Term.

1.4 Condition of the Premises. Subject to the completion of the Buildout Improvements and Landlord's payment of the Landlord's Contribution, as expressly set forth in **Exhibit "B-2,"** attached hereto and made a part hereof, Tenant acknowledges and agrees that it is accepting possession of the Premises in their **AS-IS WHERE-IS** condition and that, except with respect to the Buildout Improvements, Landlord has no other obligation to furnish, render, or supply any money, work, labor, material, fixture, equipment, or decoration or make any other contribution with respect to the Premises. Upon the expiration of five (5) business days following the Lease Commencement Date, the Premises shall be conclusively deemed to be accepted by Tenant unless Tenant shall have given Landlord written notice of any asserted defects in the Premises.

1.5 Impact Fees. Landlord is solely responsible for any and all utility and/or other impact fees and connection fees, charges, and/or deposits as may be required in connection with the Buildout Improvements.

1.6 Benchmark Performance Standards. Tenant shall cause the Facility to host the following (each, the applicable "Benchmark Performance Standards"); provided, however, Tenant shall not be in default for failure to satisfy the following Benchmark Performance Standards unless such failure continues for two (2) consecutive Lease Years:

(a) during the first twelve (12) full calendar months following the Lease Commencement Date (inclusive of the first partial calendar month, if any, such period being "Lease Year 1", with each successive twelve (12) full calendar month period thereafter being a "Lease Year"), at least: (i) 125 cultural or community activations (collectively, "Events"); (ii) 25,000 patrons (inclusive of virtual patrons for hybrid events) (collectively, "Patrons"); (iii) 150 students; (iv) 75 seniors; (v) 50 pro bono nonprofit/community rental hours; and (vi) 500 discounted tickets;

(b) during Lease Year 2: at least (i) 150 Events; (ii) 30,000 Patrons; (iii) 175 students; (iv) 80 seniors; (v) 50 pro bono nonprofit/community rental hours; and (vi) 500 discounted tickets;

(c) during Lease Year 3: (i) 175 Events; (ii) 35,000 Patrons; (iii) 200 students; (iv) 85 seniors; (v) 55 pro bono nonprofit/community rental hours; and (vi) 500 discounted tickets;

(d) during Lease Year 4: (i) 200 Events; (ii) 40,000 Patrons; (iii) 225 students; (iv) 90 seniors; (v) 55 pro bono nonprofit/community rental hours; and (vi) 500 discounted tickets;

(e) during Lease Year 5 (and thereafter including during each Lease Year during any Renewal Terms): (i) 220 Events; (ii) 45,000 Patrons; (iii) 250 students; (iv) 95 seniors; (v) 60 pro bono nonprofit/community benefit rental hours; and (vi) 500 discounted tickets.

Prior to any Renewal Term, the Benchmark Performance Standards may be adjusted based on the mutual agreement of the Parties. In addition to Landlord's rights with respect to Tenant's exercise of any Renewal Terms, Tenant's failure to achieve the Benchmark Performance Standards for two (2) consecutive Lease Years shall be an Event of Default (as hereafter defined). The Benchmark Performance Standards in this **Section 1.6** shall be subject, in each case, to the occurrence of any Force Majeure Event (as hereafter defined).

## ARTICLE 2. RENT.

2.1 Covenant to Pay. Tenant covenants and agrees to pay to Landlord an annual rental of One Dollar (\$1.00) ("Minimum Rent"), together with all applicable Florida sales tax thereon, commencing on the Lease Commencement Date and thereafter on each anniversary thereof until the expiration of the Term, without prior demand. Tenant shall make all other payments of rent and other charges due hereunder ("Additional Rent"), together with applicable Florida sales tax thereon, within ten (10) days after written demand. All payments of Additional Rent shall be payable by Tenant to Landlord at Landlord's address indicated on the Lease Summary. Tenant agrees that its covenant to pay rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement, or reduction whatsoever. It is the intent of Landlord that it is to receive Minimum Rent, and any Additional Rent due hereunder, as net, free and clear of all costs and charges arising from, or relating to, the Premises.

2.2 Operation and Programming Expenses. Tenant shall be solely responsible for the operation and programming expenses of the Facility, including utilities, technology, media and communications subscriptions (cable, internet, phone, security), maintenance expenses (except as otherwise provided in Section 6.2 of this Lease), and applicable taxes (sales taxes, use/excise taxes, personal and ad valorem applicable to the Premises and Tenant's business therein) as further described herein, and Landlord shall have no obligation to contribute towards any such expenses in any manner whatsoever except as otherwise expressly provided in Section 6.2 of this Lease.

2.3 Applications for Grants. Tenant covenants and agrees to use commercially reasonable efforts to apply for the Florida Division of Cultural Affairs Cultural Facilities Grant; provided, however, that Landlord acknowledges and agrees that given the application cycle for such grants, Tenant may not be able to apply for such grant prior to the Date of Lease Execution and in such event Tenant shall apply for such grants in the next applicable application cycle. Notwithstanding the foregoing, Tenant, as a local cultural organization, may apply for Cultural Arts Council grants, and may pursue other grant opportunities offered by the City of Miami Beach, in its governmental capacity (the "City"), for programming at the Facility; provided, however, that in recognition of Landlord's significant contributions to Tenant by making the Premises available to Tenant at the agreed upon Minimum Rent and providing the Landlord Contribution towards the funding of the Buildout Improvements, Tenant shall not apply for any City grants related to the Buildout Improvements and or to improve, maintain or operate the Facility.

2.4 Payment of Personal Property Taxes; Sales Tax Reports. Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises and to the use of the Premises by Tenant or such other occupant. Tenant shall provide Landlord with copies of Tenant's sales tax reports provided to the State of Florida, as and when such reports are provided to the State.

2.5 Rent Past Due. If any payment due from Tenant shall be overdue more than five (5) days, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due from Tenant shall remain overdue for more than fifteen (15) days, in the sole discretion of Landlord, such amount may accrue interest in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month (eighteen (18%) percent per annum) of the delinquent amount, such charge to be computed for the



entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord.

2.6 Landlord's Lien. To secure the payment of all rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property owned by Tenant and now or hereafter acquired (including fixtures, equipment, chattels, and merchandise) which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Any property which is the subject to the Landlord's lien as provided herein shall not be removed therefrom without the written consent of Landlord's City Manager until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid; provided, Tenant may operate its business in the ordinary course and provided that no Event of Default has occurred and is continuing, Tenant may replace and substitute Tenant's personal property and unattached, movable trade fixtures with items of like quality and condition from time to time and the removal of merchandise from the Premises by customers of Tenant shall not be a default under this section. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises are located. To the extent permitted by applicable law, this Lease shall constitute a security agreement under Article 9 of the Florida Uniform Commercial Code. Upon written request from Tenant, Landlord agrees to subordinate Landlord's lien and security interest granted pursuant to this **Section 2.6** to the lien and security interest of any lender providing financing to Tenant for Tenant's personal property and unattached, movable trade fixtures located in the Premises. Notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges and agrees that all personal property, furniture, finishings, fixtures and equipment (collectively, "**FF&E**") paid for by Landlord as part of the Landlord Contribution and delivered to Tenant as part of the Premises, is and shall remain the sole property of Landlord to be maintained by Tenant in good condition and repair at all times during the Term and Tenant shall not remove same without the prior written consent of Landlord's City Manager, which consent may be granted or withheld in the sole discretion of Landlord's City Manager. Landlord shall have the right to periodically take an inventory of Landlord-owned FF&E.

### ARTICLE 3. USE OF PREMISES.

3.1 Permitted Use. The Premises shall be used solely and exclusively for the Permitted Use, as described in the Lease Summary. The public space of the Facility shall be used primarily as a venue for cultural entertainment, education, exhibitions, lectures and uses ancillary thereto. Subject to the prior written approval of Landlord (such approval not to be unreasonably withheld, delayed or conditioned) and subject to the Prohibited Uses in **Section 3.5** below, the Tenant may activate portions of the Facility through contractual arrangements with outside vendors for retail or other commercial uses that are ancillary and complementary to the cultural component of the Facility. Tenant shall carry on its business on the Premises in a reputable manner and shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which could reasonably be expected to result in a nuisance, hazard, or breach of any provision of this Lease or any applicable Governmental Requirement or Governmental Approval; provided, however, that Landlord acknowledges that the Permitted Use operated in accordance with all applicable Governmental Requirements shall not, in and of itself, be deemed to constitute a nuisance hereunder. Tenant shall comply with all applicable Governmental Requirements and observe all reasonable rules and regulations established by Landlord from time to time for the Premises. The rules and regulations in effect as of the date hereof are attached to and made a part of this Lease as **Exhibit "C."** Landlord will provide a copy of any amendments to the rules and regulations at least seven (7) days prior to the effective date of any such amendments.

#### 3.2 Café; Compliance with Legal Requirements.

(a) Tenant, at its sole cost and expense, shall be solely responsible for obtaining, or shall cause its food service vendors (including the operator of the restaurant or café, if any, within the Facility (the "Café")) to obtain, the requisite alcoholic beverage license that may be required if alcoholic beverages shall be

served in connection with the operation of the Facility and all other applicable Governmental Approvals required for sale and service of food. Tenant shall comply with all applicable Governmental Requirements and Governmental Approvals related to sale and service of food and alcohol. The Premises shall be used and occupied in such manner so as not to contravene any present or future Governmental Requirements or other laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders, and requirements of all Governmental Authorities having jurisdiction over any street, road, avenue, or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in or under the Premises (including any of the foregoing relating to handicapped access or parking, the local building codes, and the laws, rules, regulations, orders, ordinances, statutes, codes, and requirements of any applicable Fire Rating Bureau or other body exercising similar functions), the temporary and/or permanent certificates of occupancy issued for the Premises as then in force, and any and all provisions and requirements of any property, casualty, or other insurance policy required to be carried by Tenant under this Lease. If due to Tenant's use of the Premises, repairs, improvements, or alterations are necessary to comply with any of the foregoing, Tenant shall pay the entire cost thereof. Notwithstanding the foregoing, in no event shall Tenant be required to cause (i) any portion of the Project, other than the interior portions of the Premises, to comply with any applicable Governmental Requirements, or (ii) the Buildout Improvements, as originally constructed, to comply with any applicable Governmental Requirements, except to the extent that any applicable Governmental Requirements change from and after then date upon which the Buildout Improvements are completed.

(b) To the extent permitted by all applicable Governmental Requirements including any Miami-Dade County Governmental Requirements and the City's Sidewalk Café Ordinance (as same may be amended from time to time), then subject to City approval and compliance with such Governmental Requirements, Tenant shall be entitled to use an outside area adjacent to and fronting the portion of the Premises described in **Exhibit "B-1"** hereto (and as further determined by the City's Public Works Director) for use as an outdoor sidewalk café. Tenant acknowledges that any such outdoor seating area must be approved, and subject to annual renewal (for purposes of seating for and serving of Tenant's customers) by the City pursuant to the City's Sidewalk Café Permit procedures and as may be required by Miami-Dade County, and shall **not** be as a matter of right under the Lease. Further, any such Sidewalk Café Permit will be issued as a revocable license consistent with other sidewalk café permits in the City, and there will be the standard fees and costs associated with that Permit (in addition to the rent and other charges described in this Lease). The installation and maintenance of the outdoor seating area shall be subject to the obligations imposed upon Tenant in this Lease with respect to Tenant's use and occupancy of the Premises, including this Article 3 and Article 6 of this Lease.

3.3 Sponsorship; Naming Rights; Signs. Tenant shall have the right to erect interior signage in recognition of individual(s) or corporate sponsors or donors, including banners. Any naming for exterior signage, including any sponsorship or donor names, shall be subject to approval as required by the City's naming ordinance, as codified in Chapter 82, Article VI, Section 82-501 through 82-505 of the City Code, as amended from time to time. In no event shall any naming rights be conferred on any corporate sponsor or donor for any period of time that exceeds the then-current Term unless the agreement establishing such naming rights terminates if this Lease is terminated. Tenant shall be permitted to install exterior and interior signage at the Premises; provided that all signage and advertising, whether or not related to approved naming, shall comply with signage standards established by the City Code, including Chapter 138 thereof, and comply with all applicable building codes, and any other municipal, County, State, and Federal laws, including the design review and permitting process for any sign and/or graphic image. In no event may any approved interior or exterior signage include the names of any company selling the following types of products: guns, tobacco/vape, adult, and cannabis/medical marijuana. Any naming recognition shall be subject to reconsideration in the event of any criminal conviction, allegation or similar misconduct on the part of the corporate sponsor or donor. If a sign or advertisement is deemed offensive or inappropriate (as determined by the Landlord in its reasonable discretion), Landlord may, in its proprietary capacity, require removal of the advertisement or sign.

3.4 Days and Hours of Operation.

(a) During the first two (2) Lease Years during the Initial Term, Tenant shall open and operate the Facility (excluding the Café) a minimum four (4) days per week and Tenant shall cause the Café to be

open at least six (6) days per week and generally during hours consistent with other similar café operations within the vicinity of the Facility. Thereafter throughout the remainder of the Term, including any Renewal Terms, Tenant shall open and operate the Facility (excluding the Café) a minimum of six (6) days per week and Tenant shall cause the Café to be open six (6) days per week and generally during hours consistent with other similar café operations within the vicinity of the Facility. Notwithstanding the forgoing, the day of the closure of the Café and the day of closure of the remainder of the publicly accessible areas of the Facility shall not fall on the same day, and accordingly, either the publicly accessible areas of the Facility or the Café shall be open seven (7) days per week. The operation requirements in this **Section 3.4** shall be subject, in each case, to the occurrence of any Force Majeure Event (as hereafter defined) and closures for reasonable periods for repairs, maintenance, and alterations.

(b) All events and all uses of the Facility shall conclude prior to 2:00 a.m. unless otherwise approved by Landlord's City Manager in writing; provided, however, that Tenant's employees and/or contractors may be permitted to remain at the Facility after 2:00 a.m. in the event that same is necessary for purposes of loading in or dismantling a production, cleaning the Facility after a performance, or similar functions so long as Tenant's activities at the Facility during this time do not disrupt or negatively impact the surrounding neighborhood. In the event of such disruption, Landlord's City Manager or his/her designee shall have the right to strictly enforce the requirement to close the Facility prior to 2:00 a.m.

**3.5 Prohibited Uses.** The restrictive covenants contained in this **Section 3.5** are intended and designed to bind Landlord and Tenant and their respective successors and assigns, and shall be binding upon and run with the Premises throughout the Term. Notwithstanding any provision of this Lease to the contrary, Tenant shall not use the Premises nor permit them to be used for any of the following purposes (each, a "Prohibited Use"): (a) stand-alone bars (provided that the Café operator may provide a theater concession stand-alone bar and/or any temporary stand-alone bar operated in connection with any applicable permitted activation of the Facility, provided the stand-alone bar shall only serve alcohol 1.5 hours before theatrical performances, during intermission of theatrical performances, and one hour after theatrical performances, and the bar shall only be geared towards guests, participants, patrons and performers of the theatrical performances); (b) pawnshops and second-hand dealers of precious metals/precious metals dealers; (c) accessory outdoor bar counters except in compliance with local law; (d) tobacco/vape dealers; (e) check cashing stores; (f) medical cannabis dispensaries (medical marijuana dispensaries); (g) convenience store; (h) grocery stores; (i) occult science establishments; (j) pharmacy stores; (k) souvenir and t-shirt shop; (l) tattoo studios; (m) for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (n) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire; (o) as an auction or flea market; (p) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale; (q) a business primarily used for an order office, mail order office, or catalogue store; (r) any business in which Tenant or any Sublessee (as hereafter defined) is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices; (s) amusement centers (as defined in § 33.1 of the Code of Miami-Dade County or its successor provision); (t) coinbox entertainment (pinball, video games, moving pictures operated by coins); (u) casino gambling or games of chance or reward (provided, however, that the sale of State of Florida lottery tickets shall not be prohibited); (v) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is immoral or disreputable (including "adult entertainment establishments" and "adult" bookstores) or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private); (w) medical facilities and offices; (x) the sale of firearms; (y) tattoo parlors, fortune tellers, psychics, palm readers, body piercing shops; (z) printing or duplicating other than as an incidence to the operation of some other business; (aa) the sale of religious artifacts and books; (bb) places of worship; (cc) political offices; (dd) military recruiting; (ee) consular, legation or any other offices of foreign governments; (ff) tire sales; (gg) the sale of animals or birds of any kind and/or products of a nature typically sold in pet shops; (hh) offices for the practice of veterinary medicine; (ii) the sale of major appliances as a primary business; (jj) housing or sleeping quarters; and (kk) in any manner that will violate any certificate of occupancy or certificate of use for the Premises, or which will violate any laws, ordinances, or other rules or regulations applicable to the Premises. Immediately upon its discovery of any Prohibited Use, Tenant shall notify Landlord in writing and take all reasonably necessary steps,

legal and equitable, to compel discontinuance of such business or use including, if necessary, the removal from the Premises of any subtenants, licensees, invitees or concessionaires.

3.6 Community Benefits. Tenant to provide Community Benefits as attached to and made a part of the Lease as **Exhibit "D"**. Prior to any Renewal Term, Community Benefits may be adjusted based on the mutual agreement of the Parties. In addition to Landlord's rights with respect to Tenant's exercise of any Renewal Terms, Tenant's failure to provide the Community Benefits for two (2) consecutive Lease Years shall be an Event of Default (as hereafter defined). The provision of Community Benefits in this **Section 3.6** shall be subject, in each case, to the occurrence of any Force Majeure Event.

3.7 Use by Landlord. Notwithstanding any provision of this Lease to the contrary or any participation in the City's Community Benefit Fund, Landlord shall have the right to utilize the Facility, excluding the Café, up to four (4) times per Lease year, subject to availability and with reasonable notice to the Tenant, for such purposes including, but not limited to, recreational programs sponsored by the City, public meetings, training classes, City-sponsored special events, receptions, and other public purposes as deemed necessary by the City, without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses (including reasonable expenses incurred by Tenant in order to open and make the Premises available in connection with a City use thereof) shall be paid by the City. Landlord acknowledges and agrees that any and all uses performed by City shall comply with applicable Governmental Requirements.

3.8 Environmental Provisions.

(a) Tenant shall not knowingly incorporate into, use, or otherwise place or dispose of at the Premises (or allow others to incorporate into, use, or otherwise place or dispose of at the Premises) any Hazardous Materials, as hereafter defined, unless (i) such Hazardous Materials are for use in the ordinary course of business (i.e., as with office or cleaning supplies), (ii) notice of and a copy of the current material safety data sheet is provided to Landlord for each such Hazardous Material (except for Hazardous Materials used by Tenant in the ordinary course of business (i.e., as with office or cleaning supplies)), and (iii) such materials are handled and disposed of in accordance with all applicable governmental laws, rules, and regulations. If Landlord or Tenant ever has knowledge of the presence at the Premises of Hazardous Materials which affect the Premises, such Party shall notify the other thereof in writing promptly after obtaining such knowledge. For purposes of this Lease, "Hazardous Materials" shall mean: (a) petroleum and its constituents; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises, or the operations thereon.

(b) If Tenant or its employees, agents, invitees, sublessees, licensees, concessionaires, contractors or assigns (each, a "Permittee") shall ever violate the provisions of subsection (a), above, then Tenant, at Tenant's sole cost and expense, shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable Governmental Requirements and repair any damage to the Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord, provided that such work shall commence not later than thirty (30) days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's contractors approved in writing in advance by Landlord, such approval not to be unreasonably withheld. Tenant shall notify Landlord of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision and shall keep Landlord regularly and reasonably apprised of the status of such work; and Landlord shall have the right to require

reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Premises is otherwise closed (i.e., holidays) if reasonably required for the protection of other tenants or occupants of the Project.

(c) Tenant agrees to defend, indemnify and hold harmless Landlord against any and all claims, costs, expenses, damages, liability, and the like, which Landlord may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this **Section 3.8**, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant or its Permittees (other than the City solely in connection with the City's use of the Premises pursuant to Section 3.7 hereof). Tenant's liability under this **Section 3.8** shall survive the expiration or earlier termination of this Lease.

(d) **LEED**. The Project was designed and constructed to meet the standards and requirements for sustainability and resilience codified in Chapter 133, City of Miami Beach Code of Ordinances, entitled "Sustainability and Resiliency", as may be amended from time to time. In addition, the Project building has been designed and constructed in accordance with the standards outlined in LEED Certification for Core and Shell version 4. The City pursued LEED Certification for Core & Shell version 4 at the Gold Level and Parksmart Certification 2.0 at the Gold Level. As such, all design criteria related to the Buildout Improvements identified in **Exhibit "B-2"** must, and Tenant shall cause all such design criteria to, comply in all material respects with the high performance and construction criteria outlined in **Exhibit "B-5"** during space build-out, future work, and ongoing operation and maintenance, and Landlord may make some adjustments to such criteria, recognizing that a portion of the Premises consists of theatrical space, provided in all cases that such LEED Certification for the Project is maintained.

#### ARTICLE 4. **ACCESS AND ENTRY.**

4.1 **Right of Examination.** Landlord, through its City Manager and/or such other individuals as he/she may designate, in his/her reasonable discretion, from time to time, shall be entitled at all reasonable times and upon reasonable notice (but no notice is required in emergencies) to enter the Premises to (i) examine them if Landlord reasonably believes that Tenant is not complying with any of its obligations hereunder or (ii) make such repairs, alterations, or improvements thereto as Landlord is required to perform under the Lease or considers necessary in order to comply with Governmental Requirements or in the event of an emergency and in furtherance thereof to have access to underfloor facilities and access panels to mechanical shafts and to check, calibrate, adjust, and balance controls and other parts of the heating, air conditioning, ventilating, and climate control systems. Landlord reserves to itself (and others acting on behalf of Landlord including, without limitation, Landlord's City Manager and/or such individuals as he/she may designate, in his/her reasonable discretion, from time to time) the right to install, maintain, use, and repair pipes, ducts, conduits, vents, wires, and other installations leading in, through, over, or under the Premises and for this purpose, Landlord may take materials into and upon the Premises which is required therefor. Tenant shall not unduly obstruct any pipes, conduits, or mechanical or other electrical equipment so as to prevent reasonable access thereto. Landlord reserves the right to use all exterior walls and roof area. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.2 **Right to Show Premises.** Landlord and its agents (including, without limitation, Landlord's City Manager and such other individuals as he/she may designate, in his/her reasonable discretion, from time to time) shall have the right to enter the Premises at all reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Premises and, during the last twelve (12) months of the Term, to show them to prospective tenants. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.3 **Books and Records; Audit Rights; Reporting.** Tenant shall prepare true and complete records and accounts with respect to its operations at the Premises, including with respect to all services and programs

Tenant provides at the Facility. All records and accounts for any Lease Year shall be maintained at the Premises for a period of five (5) years after the end of such Lease Year. Landlord and its representatives shall have the right, at any reasonable time and under reasonable circumstances, to audit and examine such records and accounts. For the same period of time Tenant shall also retain copies of all sales and occupation tax returns covering its and its Sublessee's operations at the Premises, and any other governmental tax or other return which shows Tenant's or any Sublessee's sales therein and shall upon demand deliver a photographic copy thereof to Landlord. From and after the Date of Lease Execution and annually within 15 days after filing with the Internal Revenue Service, Tenant shall provide Landlord with a copy of Tenant's filed 990 tax form. Tenant shall also provide City with annual program reports, detailing information relating to the Community Benefits and Benchmark Performance Standards, including but not limited to total number of participants, total number of Events, and total public benefits provided, such as free or discounted tickets, and the like). Notwithstanding anything contained herein, to the extent permitted by applicable Governmental Requirements, Landlord shall not require Tenant to deliver copies of any Proprietary Information to Landlord, but upon request by Landlord, Tenant shall make any such Proprietary Information available for inspection by Landlord. As used herein, "Proprietary Information" shall mean any contracts, agreements, books, records or other documents (i) regarding Tenant's employment matters, (ii) regarding programming and artistic events which contain information which Tenant deems to be proprietary, (iii) relating to trade secrets, (iv) relating to donors and/or benefactors, (v) relating to naming rights, or (vi) which by their express terms are required to be maintained confidential by Tenant; provided, however, Proprietary Information is not intended to, does not and shall not include any such documents required by the Landlord's City Manager in his or her reasonable discretion to confirm Tenant's satisfaction and performance of the Benchmark Standards, the Community Benefits and/or the obligations of the Key Individuals in accordance with this Lease.

#### 4.4 Public Records Act.

(a) Tenant shall comply with, the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes, as may be amended from time to time ("Public Records Act"). Records copied by Landlord, if any, shall be subject to the requirements of the Public Records Act. To the fullest extent permitted by law, Landlord shall protect from disclosure any Proprietary Information or other records that are confidential and exempt from disclosure under Florida law; provided, however, that nothing herein shall preclude Landlord or its employees from complying with the disclosure requirements of the Public Records Act, and any such compliance shall not be deemed an event of default by Landlord under this Lease.

(b) The term "public records" shall have the meaning set forth in Section 119.011(12) of the Florida Statutes, which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(c) Pursuant to Section 119.0701 of the Florida Statutes, if the Tenant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Tenant shall:

(1) Keep and maintain public records required by the City to perform the service;

(2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Lease Term and following termination of this Lease if the Tenant does not transfer the records to the City;

(4) Upon termination of this Lease, transfer, at no cost to the City, all public records

in possession of the Tenant or keep and maintain public records required by the City to perform the service. If the Tenant transfers all public records to the City upon termination of this Lease, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon termination of this Lease, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(d) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Tenant of the request, and the Tenant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Tenant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) A Tenant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

(e) CIVIL ACTION.

(1) If a civil action is filed against Tenant to compel production of public records relating to this Lease, the court shall assess and award against the Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the Tenant unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Tenant has not complied with the request, to the City and to the Tenant.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Tenant at the Tenant's address listed on its contract with the City or to the Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Tenant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(f) **IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

(g)

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV  
PHONE: 305-673-7411**

4.5 Inspector General Audit Rights.

(a) Pursuant to Section 2-256 of the City Code, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(b) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

(c) Upon ten (10) days written notice to the Tenant, the Tenant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Tenant and its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(d) The Inspector General shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(e) The Tenant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) (if any) and performance of this Lease, for examination, audit, or reproduction, until three (3) years after termination of this Lease or for any longer period required by statute or by other clauses of this Lease. In addition:

(1) If this Lease is completely or partially terminated, the Tenant shall make available records relating to the performance hereof until three (3) years after any resulting final termination settlement; and



(2) The Tenant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Lease until such appeals, litigation, or claims are finally resolved.

(f) The provisions in this Section shall apply to the Tenant, its officers, agents, employees, subcontractors and suppliers. The Tenant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Tenant in connection with the performance of this Lease.

(g) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Tenant or third parties.

#### ARTICLE 5. KEY INDIVIDUALS; BOARD MEMBER; PROMOTION OF CITY

5.1 Key Individuals. Each of Mr. Michel Hausmann and Mr. Nicholas Richberg (each, a "Key Individual") has been instrumental in the success of Tenant's programming, and each Key Individual's participation as part of Tenant's organization is an integral and primary consideration for Landlord's decision to approve and enter into this Lease with Tenant. Accordingly, each Key Individual shall be and remain actively involved in the operation, management, and artistic direction of the Tenant and shall devote a substantial majority of his business time in such efforts during the Term. In the event that (i) either of the Key Individuals is no longer a director of, or employed by, the Tenant; or (ii) one or more of the Key Individuals are not devoting a substantial majority of his business time in such efforts, Tenant shall notify Landlord of such event (a "Key Individual Event"), and if no replacement Key Individual has been identified by Tenant and approved by the City Manager (such approval not to be unreasonably withheld, delayed or conditioned) within one hundred and eighty (180) days after the occurrence of such Key Individual Event, Landlord shall have the right to terminate this Lease for convenience in accordance with Section 10.6 hereof.

5.2 Board Member. Landlord's City Manager or his/her designee shall serve as a voting member of Tenant's board of directors ("Tenant's Board"), with Landlord's City Manager having the option to designate one (1) additional representative to serve as a non-voting member of Tenant's Board. The Landlord's appointees to the Tenant's Board shall have all the same rights afforded to other members of Tenant's Board.

#### 5.3 Promotion of City; Tenant Headquarters; Colony Theater.

(a) In recognition of the City's foundational support of Tenant, the Tenant shall promote the City's cultural partnership with Tenant on Tenant's website, on digital and social media, at performances, and in all collateral material where corporate sponsors or donors are referenced. Tenant shall include "Miami Beach" in Tenant's logo as may be refined and updated from time to time.

(b) At all times during the Term, including any Renewal Terms, Tenant shall maintain its main administrative offices and principal performance venue within the City of Miami Beach, with reasonable flexibility for special events or tour performances outside of the City of Miami Beach. In all appropriate materials, platforms, and correspondence with the media and the public, Tenant shall market itself as being "headquartered" or "based" in the City of Miami Beach. As part of Tenant's commitment to be "headquartered" in the City of Miami Beach for the Term, and in furtherance of the Parties' mutual desire to ensure the Tenant's continued activation and operation of the Colony Theater, the Parties agree to extend the term of the management agreement for the Colony Theater by and between the Landlord and Tenant (the "Management Agreement") to align with the Term, including any Renewal Terms, and following the City Commission's approval of this Lease, the Parties shall amend the Management Agreement to evidence such extension. Any uncured material event of default under the Management Agreement shall constitute an Event of Default under this Lease, and any uncured material Event of Default under this Lease shall constitute a material event of default under the Management Agreement.

## ARTICLE 6. OPERATING EXPENSES, MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 Maintenance and Repairs by Tenant. Tenant, at its sole cost and expense, shall clean, repair and maintain the Premises to a standard consistent with a first-class theatrical performance arts center and in accordance with **Section 3.8(d)** above, with the exception only of those repairs which are the obligation of the Landlord pursuant to **Section 6.2** below. Without limiting the foregoing, but subject to Landlord's right to elect to exercise its rights under **Section 4.1**, Tenant is specifically required to maintain and make repairs to (i) the portion of any pipes, lines, ducts, wires, or conduits contained within the Premises, subject to Landlord's obligation to maintain and repair the HVAC (as defined below) serving the Premises pursuant to **Section 6.2**; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass); provided that any replacements thereof not resulting from any act or omission of Tenant or any Permittee or the failure of Tenant to perform its obligations under this Lease, all structural, functional and exterior/interior barrier aspects thereof shall be the obligation of Landlord pursuant to **Section 6.2** below; (iii) Tenant's signage; (iv) the Premises when repairs to the same are necessitated by any act or omission of Tenant or any Permittee (other than City), or the failure of Tenant to perform its obligations under this Lease; and (v) all or any portion of the FF&E, including without limitation, the Landlord-owned FF&E constructed as part of the Buildout Improvements. Tenant shall further be required to utilize diligent, good faith efforts to maintain, in a clean and orderly manner, the exterior frontage of the Premises, including the sidewalk and stairs thereon, in a manner consistent with similarly situated commercial establishments. All repairs and maintenance performed by Tenant shall be performed by contractors or workmen designated or approved in writing in advance by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed, in a good and workmanlike manner, and in accordance with all applicable Governmental Requirements and Governmental Approvals. At the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in good condition and repair, reasonable wear and tear excepted. Tenant shall also furnish, maintain, and replace all nonfunctioning or damaged electric light bulbs, tubes, and tube casings located within or serving the Premises at Tenant's sole cost and expense. Tenant shall be responsible for all trash removal for the business operations at the Premises, including, without limitation, that Tenant shall keep all wet garbage under refrigeration.

6.2 Maintenance and Repairs by Landlord. Landlord, at its sole cost and expense, shall repair, maintain and replace the structure of the Premises and, to the extent necessary for Tenant's Permitted Use, the Project, including the foundation, roof, exterior walls and exterior windows, and all major building systems, including electrical, plumbing and fire and life safety systems serving the Premises up to the point of connection to the Premises and all heating and air conditioning equipment ("HVAC") serving the Premises (which shall include, without limitation, a preventive maintenance HVAC service contract providing for service no less than quarterly. Tenant will promptly notify Landlord in writing of any necessary repairs that are the obligation of Landlord hereunder; provided that any emergency repairs need not be in writing but as soon as practicable, Tenant shall deliver a written copy of such notice to Landlord. Landlord shall not be responsible for any damages caused to Tenant by reason of failure of any equipment or facilities serving the Premises, or the Project or delays in the performance of any work for which the Landlord is responsible to perform pursuant to this Lease. Notwithstanding any provision of this Lease to the contrary, if any part of the Premises or the Project is damaged or destroyed or requires repair, replacement, or alteration as a result of the act or omission of Tenant or any Permittee (other than City solely in connection with the City's use of the Premises pursuant to Section 3.7 hereof) or any failure by Tenant to perform its obligations under this Lease, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord within ten (10) days after written demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may re-enter the Premises and proceed forthwith to have the repairs or replacements made and pay the costs thereof. Within ten (10) days after written demand, Tenant shall reimburse Landlord for the cost of making the repairs. If Tenant notifies Landlord in writing of repairs which are required to be performed by Landlord pursuant to the terms hereof, Landlord shall promptly undertake to commence to repair same, and Landlord will use commercial reasonable efforts to cause minimum interference to Tenant's use and enjoyment of the Premises to the extent reasonably practicable. If, in an emergency, it shall become necessary to make promptly any repairs to the HVAC serving the Premises that are required to be made by Landlord, and Landlord is unable to make such repairs promptly after notice to Landlord's City Manager or

his/her designee, then provided such repairs do not affect the structure or the life safety and other building systems of the Project, Tenant may proceed forthwith to have the repairs made by Landlord's designated HVAC contractor (or if such designated contractor is unavailable, then another HVAC contractor pre-approved by Landlord) and pay the costs thereof, and thereafter, subject to Landlord's approval of the costs thereof, which approval will not be unreasonably withheld, Landlord shall promptly reimburse Tenant for the reasonable, documented out of pocket cost of making the repairs. If Landlord and Tenant, each acting reasonably, are unable to agree whether and to what extent (if any) the documented, out of pocket costs paid by Tenant were reasonable, Landlord and Tenant shall cooperate in good faith to select an experienced, independent HVAC contractor to make such determination, and upon its determination of whether and to what extent (if any) such costs were reasonable, Landlord shall promptly reimburse Tenant for such reasonable costs.

6.3 Approval of Tenant's Alterations. No alterations (including, without limitation, improvements, additions, or modifications to the Premises) shall be made or permitted to be made by Tenant to the Premises without Landlord's prior written approval, which, as to structural alterations or alterations to life safety or other building systems or alterations visible from the exterior of the Premises may be withheld in Landlord's sole and absolute discretion and with respect to all other such alterations with the reasonable approval of Landlord. Any alterations by Tenant shall be performed at the sole cost of Tenant, by contractors and workmen approved in writing in advance by Landlord's City Manager, which approval shall not be unreasonably withheld, in a good and workmanlike manner, and in accordance with all applicable Governmental Requirements and Governmental Approvals. Notwithstanding the foregoing, interior, nonstructural alterations which do not require a building permit and are not visible from the exterior of the Premises may be made without Landlord's City Manager's consent, but Tenant shall notify Landlord's City Manager in writing prior to making any such alterations.

6.4 Removal of Improvements and Fixtures. All Buildout Improvements and any other leasehold improvements and fixtures (other than unattached, movable trade fixtures which can be removed without damage to the Premises) shall at the expiration or earlier termination of this Lease become Landlord's property. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Tenant is not in default under this Lease; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements (except for the Buildout Improvements installed by Landlord prior to the Lease Commencement Date) and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to such removal. Tenant shall at its own expense repair any damage caused to the Premises or the Project by such removal. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant but at Tenant's sole cost and expense.

6.5 Liens. Except to the extent of the Building Improvements which shall be performed by Landlord pursuant to and in accordance with the terms of the **Exhibit B-2** attached hereto up to the amount of Landlord's Contribution, Tenant shall promptly pay for all materials supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Premises, or the Project, or against Landlord's or Tenant's respective interests therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Premises, or the Project (solely with respect to work done in respect of the Premises by, through, or under Tenant) is recorded and not discharged by Tenant as above required within fifteen (15) days following written notice to Tenant, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises or the Project shall be subject to any lien for improvements made by Tenant in or for the Premises, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the requirements of this Section.

6.6 Utilities. Tenant shall pay to Landlord, or as Landlord directs, all gas, electricity, water, and other utility charges applicable to the Premises, as separately metered. In addition, Tenant's electrical equipment and lighting shall be restricted to that equipment and lighting which individually does not have a rated capacity and/or

design load greater than the rated capacity and/or design load of the Premises. If Tenant's consumption of electrical services exceeds either the rated capacity and/or design load of the Premises, then Tenant shall remove the equipment and/or lighting to achieve compliance within ten (10) days after receiving written notice from Landlord, or such equipment and/or lighting may remain in the Premises, so long as (a) Tenant shall pay for all costs of installation and maintenance of submeters, wiring, air-conditioning, and other items required by Landlord, in Landlord's City Manager's reasonable discretion, to accommodate Tenant's excess design loads and capacities; and (b) Tenant shall pay to Landlord, within thirty (30) days after rendition of a bill, the cost of the excess consumption of electrical service at the rates charged to Landlord by Florida Power & Light, which shall be in accordance with any applicable laws.

## ARTICLE 7. INSURANCE AND INDEMNITY.

7.1 Tenant's Insurance. Tenant shall, throughout the Term (and any other period when Tenant is in possession of the Premises), maintain at its sole cost and expense, the following insurance:

(a) Worker's Compensation Insurance as required by Florida Statute 440, and Employer Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. Should the Tenant be exempt from this Statute, the Tenant shall hold the City harmless from any injury incurred during performance of the Contract. The exempt Tenant shall also submit (i) a written statement detailing the number of employees for whom it is not required to carry Workers' Compensation insurance or (ii) a copy of a Certificate of Exemption.

(b) Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

(c) All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

(d) Host Liquor Liability Insurance on an occurrence basis, including property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence. (Required if Tenant is supplying alcohol. If Caterer/other Tenant is selling and/or serving alcohol, then Liquor Liability is required with same limit, along with Liquor License for such Caterer/other Tenant)

(e) Builder's risk insurance during the course of construction of any alterations by Tenant in accordance with this lease, issued in the name of Tenant, its contractor(s) and Landlord as their interests may appear, in amount(s) not less than 100% of the insurable value of such alterations, covering perils on an "all risk" basis, including damage by water, flood, tornado, hurricane and earthquake. Policy(ies) must clearly indicate that underground structures (if applicable) and materials being installed are covered. Notwithstanding the foregoing, the builder's risk insurance with respect to the Buildout Improvements shall be the responsibility of Landlord's general contractor pursuant to the terms of the GMP Agreement (as defined on Exhibit B-2 attached hereto).

(f) Any other form of insurance which Landlord, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent tenant would insure, but in any event not less than that carried by comparable establishments in Miami-Dade County, Florida; provided, however, that Landlord shall not require any additional insurance to the extent such insurance is required solely as a result of Landlord's use of the Premises pursuant to Section 3.7 hereof.

All policies referred to above shall:

- i. be carried by insurers licensed to do business in Florida and reasonably acceptable to Landlord's City Manager. Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA);
- ii. be in a form reasonably satisfactory to Landlord's City Manager;
- iii. be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord;
- iv. contain an undertaking by the insurers to notify Landlord by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services;
- v. with respect to **Section 7.1(c)**, contain replacement cost, demolition cost, and increased cost of construction endorsements;
- vi. Certificates of insurance on Landlord's standard form or, if required by Landlord's City Manager, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Landlord's City Manager prior to the Lease Commencement Date and thereafter, promptly upon request.

**CERTIFICATE HOLDER MUST READ:**

CITY OF MIAMI BEACH

c/o EXIGIS Insurance Compliance Services

P.O. Box 4668 – ECM #35050

New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at: [Certificates-miamibeach@riskworks.com](mailto:Certificates-miamibeach@riskworks.com)

- vii. If Tenant fails to take out or to keep in force any insurance referred to in this **Section 7.1**, or should any such insurance not be approved by Landlord, and Tenant does not commence and continue to diligently cure such default within two (2) business days after written notice by Landlord to Tenant specifying the nature of such default, then such event shall be an immediate Event of Default hereunder, and Landlord shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Landlord shall be paid by Tenant to Landlord as Additional Rent without prejudice to any other rights or remedies of Landlord under this Lease.
- viii. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises or the Project.
- ix. City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies arising out of work or operations performed on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed in the form of an endorsement to the contractor's insurance.

**7.2 Loss or Damage.** Tenant acknowledges that the Landlord will be performing any maintenance and repairs required of Landlord hereunder. Landlord shall not be liable to Tenant or any Permittee (other than the City solely in connection with the City's use of the Premises pursuant to Section 3.7) for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Premises, or damage to property of Tenant or of others located in the Premises, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Project, or from the street or any other place or by dampness, or by any other cause whatsoever, except to the extent resulting from the gross negligence or willful misconduct of Landlord, its employees, agents or contractors.

**7.3 Indemnity.** Tenant indemnifies Landlord and holds it harmless from and against any and all loss (including loss of Minimum Rent and Additional Rent payable in respect to the Premises), claims, actions, damages, liability, and expense of any kind whatsoever (including reasonable attorneys' fees and costs at all

tribunal levels) arising from (a) any occurrence in, upon, or at the Premises, or (b) the occupancy, use, or improvement by Tenant or any Permittee of the Premises or the Project, or (c) occasioned wholly or in part by any act or omission of Tenant or any Permittee, except to the extent caused (x) by the gross negligence or willful misconduct of Landlord or its employees, agents or contractors, or (y) solely by Landlord's use of the Premises pursuant to Section 3.7 hereof.

7.4 Waiver of Subrogation. Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto or the Project, or any improvements to any of the aforesaid, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are or could or should be insured against under the terms of standard fire and extended coverage insurance policies required to be maintained by Tenant in this Lease, regardless of whether such standard fire and extended coverage insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees. Tenant shall obtain from its insurers, under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained by it at any time during the Term hereof insuring or covering the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of Tenant have against the Landlord, and Tenant shall indemnify, defend, and hold harmless Landlord against any loss or expense (including reasonable attorneys' fees and costs at all tribunal levels) resulting from the failure to obtain such waiver.

## ARTICLE 8. DAMAGE AND DESTRUCTION.

8.1 Damage to Premises. Tenant acknowledges that if the Premises are partially or totally destroyed due to fire or other casualty, any repairs to or rebuilding of the damaged portions of the Premises will be performed by Landlord but, in any event, only to the extent that Landlord is required to repair or rebuild the Premises to the condition Landlord was required to turn over the Premises to Tenant as of the Lease Commencement Date and to the extent Landlord maintains insurance, only to the extent of available insurance proceeds. Upon being notified that the repairs have been substantially completed, Tenant shall diligently perform all other work required to fully restore the Premises for use in Tenant's business, in every case at Tenant's cost and without any contribution to such cost by Landlord. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable.

### 8.2 Termination for Damage.

(a) Notwithstanding Section 8.1, if damage or destruction which has occurred to the Premises as a result of fire or other casualty is such that, in the sole reasonable opinion of Landlord's City Manager, such reconstruction or repair cannot be completed within one hundred twenty (120) days (subject to extensions for the time required to prepare plans for reconstruction, to obtain building permits, to receive distribution of insurance proceeds, and to complete the likely contract bidding process and all other similar relevant factors, but not to exceed an additional one hundred (120) days)), Landlord may, at its sole option, terminate this Lease on notice to Tenant given within thirty (30) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

(b) In addition, if Landlord undertakes the reconstruction or repair, and does not complete same within one (1) year after the date of the fire or other casualty (subject to extensions for the time required to prepare plans for reconstruction, to obtain building permits, to receive distribution of insurance proceeds, and to complete the likely contract bidding process and all other similar relevant factors, but not to exceed an additional one hundred twenty (120) days), then Tenant shall have the right to terminate this Lease by written notice to Landlord's City Manager delivered within thirty (30) days after the expiration of such one year period (as so extended), whereupon both Parties shall be relieved of all further obligations hereunder, except as otherwise expressly set forth herein.

## ARTICLE 9. ASSIGNMENT, LEASES, AND TRANSFERS.

### 9.1 Transfers by Tenant.

(a) Tenant shall not enter into, consent to, or permit any Transfer, as hereafter defined, without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole and absolute discretion for any reason or for no reason; provided that Landlord shall not unreasonably withhold its consent in connection with any Permitted Sublease (as hereafter defined). For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; a sublease of all or any part of the Premises; any concession, license or other right of occupancy of all or any part of the Premises; any other transaction whereby the rights of Tenant under this Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; if Tenant is a corporation or a partnership or other entity, the transfer of a controlling interest in the stock of the corporation or partnership or other entity interests, as applicable; and any agreement to do any of the foregoing. Any Transfer or agreement to Transfer in violation of this **Section 9.1** shall be an immediate Event of Default by Tenant hereunder and shall be null and void and of no force and effect.

(b) The term of any Transfer agreement, including without limitation any Permitted Sublease, shall not exceed Initial Term; provided, however, that such Transfer agreement may provide for renewal or extension terms which shall become effective upon any Renewal Term in accordance with this Lease. Tenant shall not amend, modify or terminate any Transfer agreement without the prior written consent of Landlord's City Manager, which consent may be granted or withheld in his/her sole and absolute discretion with respect to any Transfer agreement other than a Permitted Sublease, for which consent will not be unreasonably withheld.

(c) If an Event of Default has occurred and is continuing, Landlord may collect rent or other payments from the transferee of any Transfer, including without limitation, any Permitted Sublease, and apply the net amount collected to the rent or other payments required to be paid pursuant to this Lease but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding Tenant, other than as satisfaction of the obligation of Tenant with respect to which such collected amount is applied. Notwithstanding any Transfer, including without limitation any Permitted Sublease, Tenant shall not be released from any of its obligations under this Lease.

(d) Landlord, in its sole and absolute discretion, may require, as a further condition to Landlord's consent to any Transfer, that the transferee pay fair market rent for the use of such portion of the Premises transferred to the transferee thereunder.

(e) Tenant shall conditionally assign all of its right, title and interest in and to all subleases, licenses, concessions or other occupancy agreements for any portion of the Premises including without limitation all Permitted Subleases (collectively, "Subleases" and each, a "Sublease" and each non-Tenant counterparty thereto, a "Sublessee") to Landlord, which assignments shall provide that in the event of any termination of this Lease, Landlord, in its sole and absolute discretion, may, upon written notice to the applicable transferee, assume such Sublease and thereafter, the Sublease shall continue in full force and effect as if a direct agreement between Landlord and such transferee, such transferee will recognize and attorn to Landlord as its landlord under the applicable Sublease without any further action on the part of either Landlord or such transferee, and such transferee will continue to perform all of its obligations, including payment of rent, which shall be paid to Landlord, in accordance with such Sublease. If Landlord elects to succeed to the interest of Tenant under any such Sublease, Landlord will not be (i) liable for damages for any act or omission of Tenant, (ii) liable for any security deposit paid by the transferee and not actually received by Landlord, (iii) subject to any offsets or deductions that such transferee may have against Tenant, (iv) bound by any installment of rent, additional rent, or other sum that such transferee paid more than one (1) month in advance of the due date to Tenant, or (v) bound by any amendment or modification of any Permitted Sublease made without the prior written consent of Landlord, which consent will not be unreasonably withheld, or (vi) bound by any amendment or modification to any Sublease other than a Permitted Sublease made without the written consent of Landlord's City Manager, which consent may be

granted or withheld in his/her sole and absolute discretion.

(f) Tenant shall not grant any purchase money security interest in its furniture, fixtures, and equipment in the Premises, without prior written consent of the Landlord's City Manager, which consent will not be unreasonably withheld.

9.2 Permitted Subleases. Tenant will be permitted to Transfer less than all of the Premises pursuant to a sublease, license or concession agreement consistent with the Permitted Use and on economic and other terms and conditions approved by Landlord's City Manager or his/her designee in advance in writing for the operation of the Café (the "Permitted Sublease"), which consent will not be unreasonably withheld. Without limiting the foregoing, the Permitted Sublease shall be at a fair market rental rate. In determining the terms of the Permitted Sublease, the rental rate and other terms and conditions shall be comparable to the rental rates and other terms and conditions being offered to other similar food service establishments located in the vicinity of the Facility (as adjusted to account for market conditions which may vary for facilities located on a main street located within the City of Miami Beach (e.g., Collins Avenue)).

9.3 Below Market Concessions. Notwithstanding the terms of **Section 9.1(d)** above, but subject to the prior approval of Landlord's City Manager or his/her designee, which approval will not be unreasonably withheld:

(a) Tenant may offer one long-term concession or other for profit activation of not more than 250 square feet of the Premises to Books & Books at below market rates, the term of which shall be not less than the then-current Term, and following the expiration or earlier termination of such concession or activation by Books & Books, any future long-term concessionaire or other for profit activation at a below market rental rate shall be subject to the prior written approval of the Landlord's City Manager in his/her sole discretion.

(b) Tenant may offer other concessions or for profit activations of a portion of the Premises at below market rates provided such uses are ancillary and complementary to the cultural activations and/or programming within the Facility and the terms thereof are limited to less than 30 days; provided that such terms may be extended up to 90 days upon prior written approval from the City Manager or his/her designee, which approval will not be unreasonably withheld.

9.4 Taxes. In the event that ad valorem taxes or non-ad valorem assessments are assessed by the Miami-Dade County Tax Appraiser on the Facility by reason of this Lease or by reason of any uses and/or activities of Tenant, its Permittees or any transferees, upon or in connection with the Facility, Tenant shall pay or cause to be paid prior to delinquency, all such taxes and assessments; provided, however, that the foregoing shall not preclude Tenant from passing such costs along to the applicable transferees operating within the Facility.

## ARTICLE 10. DEFAULTS; REMEDIES; TERMINATION.

10.1 Events of Default. An event of default by Tenant shall be deemed to have occurred hereunder, if and whenever (each, an "Event of Default"): (i) any Minimum Rent is not paid when due whether or not any notice or demand for payment has been made by Landlord and such failure continues five (5) days after written notice from Landlord; (ii) any other Additional Rent is in arrears and is not paid within ten (10) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of rent) and Tenant fails to remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease) after receipt of written notice from Landlord, or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Tenant fails to immediately commence to remedy and thereafter proceed continuously and diligently to remedy such breach; (iv) any Transfer or agreement to Transfer in violation of this Lease; (v) subject to the occurrence of any Force Majeure Event, any failure by Tenant to satisfy the applicable Benchmark Performance Standards for two (2) consecutive Lease Years; (vi) subject to the occurrence of any Force Majeure Event, any failure by Tenant to satisfy the applicable Community Benefits for two (2)



consecutive Lease Years (vii) any failure by Tenant to maintain its tax-exempt organization status as a not for profit corporation that exists for charitable or educational purposes; (viii) Tenant files a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent or shall file any petition or answer seeking Tenant's reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under Title 11 of the United States Code entitled "Bankruptcy," as amended or any other present or future law relating to insolvency, or shall seek or consent to or acquiesce in the appointment in connection with any of the foregoing of the trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises; or (ix) the operations by Tenant in the Premises shall be closed by governmental or court order that is directed solely at the Tenant or any Permittee (other than the City solely in connection with the City's use of the Premises pursuant to Section 3.7) and is for a cause related solely to the activities of the Tenant or such Permittee in the Premises; provided, however, that the foregoing shall not apply to any governmental order imposed by the City as a result of any change by the City in Governmental Requirements which would prohibit the Permitted Use (or any part thereof) within the Premises.

10.2 Remedies. After the occurrence and during the continuance of any Event of Default hereunder, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Landlord, through its City Manager, shall have the following rights and remedies, which are cumulative and not alternative:

(a) Landlord may terminate this Lease by notice to Tenant and retake possession of the Premises for Landlord's account, or may terminate Tenant's right to possession of the Premises without terminating this Lease. In either event, Tenant shall then quit and surrender the Premises to Landlord. If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Tenant's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder, except for losses or damages to the extent caused by the Landlord, its employees, agents or contractors.

(b) Landlord may enter the Premises as agent of Tenant to take possession of any property of Tenant on the Premises, to store such property at the expense and risk of Tenant or to sell or otherwise dispose of such property in such manner as Landlord may see fit without notice to Tenant. Re-entry and removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Landlord shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(c) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (a) above, Tenant shall remain liable (in addition to accrued liabilities) to the extent legally permissible for all rent and all of the charges Tenant would have been required to pay until the date this Lease would have expired had such cancellation not occurred, except for losses or damages to the extent caused by the Landlord, its employees, agents or contractors.

(d) Tenant's liability for rent shall continue notwithstanding re-entry or repossession of the Premises by Landlord. In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereof may adjudge as reasonable attorneys' fees with respect to any successful lawsuit or action instituted by Landlord to enforce the provisions of this Lease.

(e) Landlord, at sole option, may elect to exercise its rights under any conditional assignment of Subleases and/or relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable, in its sole and absolute discretion. Landlord shall be under no obligation to relet or to attempt to relet the Premises, except as expressly set forth below.

(f) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (a) above, and Landlord so elects, the rent hereunder shall be accelerated and Tenant shall pay Landlord damages in the amount of any and all sums which would have been due for the remainder of the Term (reduced to present value using a discount factor equal to the stated prime lending rate on

the date of Tenant's default by Landlord's then existing mortgagee or, if there is no mortgagee, by Citibank, N.A., New York). Following payment in full by Tenant of such discounted sum promptly upon demand, Landlord shall use good faith efforts to relet the Premises.

(g) Landlord, at its sole option, may remedy or attempt to remedy any default of Tenant under this Lease for the account of Tenant and to enter upon the Premises for such purposes. No notice of Landlord's intention to perform such actions need be given Tenant unless expressly required by this Lease. Landlord shall not be liable to Tenant for any loss or damage caused by the reasonable acts of Landlord in remedying or attempting to remedy such default and Tenant shall pay to Landlord all expenses incurred by Landlord in connection with remedying or attempting to remedy such default. Any expenses incurred by Landlord shall accrue interest from the date of payment by Landlord until repaid by Tenant at the highest rate permitted by law.

(h) As an additional inducement to and material consideration for Landlord agreeing to this Lease, Tenant agrees that in the event of an Event of Default under **Section 10.1(viii)** which subjects Landlord to any stay in the exercise of Landlord's rights and remedies under this Lease, including the automatic stay imposed by section 362 of the United States Bankruptcy Code (individually and collectively, "Stay"), then Tenant irrevocably consents and agrees to the Stay being lifted and released against Landlord, and Landlord shall thereafter be entitled to exercise all of its rights and remedies against the Tenant under this Lease. Tenant acknowledges that it is knowingly, voluntarily, and intentionally waiving its rights to any Stay and agrees that the benefits provided to Tenant under the terms of this Lease are valuable consideration for such waiver. Notwithstanding the foregoing, in the event that Tenant seeks to assume and assign this Lease pursuant to section 365 of the Bankruptcy Code it will be required to provide to the City adequate assurance of future performance which shall include evidence that the Key Individuals shall continue to comply with the requirements of **Section 5.1** hereof.

10.3 Costs. Tenant shall pay to Landlord on demand all costs incurred by Landlord, including reasonable attorneys' fees and costs, incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, whether or not suit is brought, and if suit is brought, then for all services at all tribunal levels, whether such fees, costs, disbursements and expenses are incurred out of court or in any trial court, appellate or bankruptcy proceeding. In addition, upon any default by Tenant, Tenant shall be also liable to Landlord for the expenses to which Landlord may incur in re-entering the Premises; repossessing the Premises; painting, altering, or dividing the Premises; re-configuring the Premises (including, without limitation, subdividing the Premises) for any new tenant; putting the Premises in proper repair; protecting and preserving the Premises by placing watchmen and caretakers therein; reletting the Premises (including reasonable attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by Landlord.

10.4 Additional Remedies; Waiver. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and non-exclusive of each other. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default.

10.5 Default by Landlord. In the event of any default by Landlord, Tenant's exclusive remedy shall be to bring an action for damages or injunction, but prior to any such action Tenant will give Landlord's City Manager written notice specifying such default with particularity, and Landlord shall have a period of thirty (30) days following receipt of such written notice in which to cure such default; provided, however, that if such default reasonably requires more than thirty (30) days to cure, Landlord shall have a reasonable time to cure such default, provided Landlord commences to cure within such thirty (30) day period and thereafter continuously and diligently prosecutes such cure to completion. Notwithstanding any provision of this Lease to the contrary, Landlord shall not at any time have any personal liability under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Premises, and in no event shall any deficiency judgment be sought or obtained against Landlord.

10.6 Termination for Convenience. Notwithstanding any provision of this Lease to the contrary:

(a) Landlord may terminate the Lease for convenience in the event: (1) Landlord does not obtain all regulatory approvals required for the Buildout Improvements after using its good faith efforts to do so; or (2) Tenant does not deposit the Tenant Contribution Deposit (as defined in **Exhibit "B-2"**) or enter into the Approved Architect Agreement (as defined in **Exhibit "B-2"**) within the later of (i) 365 days after this Lease is approved by City Commission or (ii) 30 days after Landlord's City Commission approves the Budget for the Buildout Improvements, as further described in **Exhibit "B-2"**; or (3) Tenant fails to timely replace any Key Individual as required by this Lease; or (4) any of Landlord's policies of insurance with respect to the Facility or the Project are canceled or adversely changed as a result of Tenant's or any Permittee's (other than the City solely in connection with the City's use of the Premises pursuant to Section 3.7) use or occupancy of the Premises other than for the Permitted Use; provided that if such cancellation or adverse change can be cured by, and such insurance will remain in full force and effect upon, the payment of an additional premium, Tenant may elect to fund such additional premium within five (5) business days after notice from Landlord, and upon such timely payment, Landlord shall not have the right to terminate this Lease in connection with such cancellation or adverse change.

(b) Either party may terminate this Lease for convenience in the event Landlord's City Commission, in its sole and absolute discretion, does not budget and appropriate sufficient funds for the Buildout Improvements on or before October 1, 2024; and

(c) Tenant shall have the one-time right to terminate this Lease for convenience in the event that Tenant does not approve the GMP Agreement, including the amount of the GMP (as set forth in the schedule of values attached thereto) as further described in **Exhibit "B-2"**, which approval will not be unreasonably withheld. If Tenant has not terminated this Lease by written notice delivered to Landlord within forty-five (45) days after Tenant's receipt of the proposed final GMP Agreement (as defined in **Exhibit "B-2"**), then Tenant shall conclusively be deemed to have waived such right of termination.

#### ARTICLE 11. ESTOPPEL CERTIFICATE; SUBORDINATION.

11.1 Estoppel Certificate. Within ten (10) days after written request by Landlord's City Manager, Tenant shall deliver in a form supplied by Landlord, an estoppel certificate to Landlord as to the status of this Lease, including whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements); the amount of Minimum Rent and Additional Rent then being paid and the dates to which same have been paid; whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof; and any other matters pertaining to this Lease as to which Landlord shall reasonably request such certificate. Landlord, and any prospective purchaser, lender, or ground lessor shall have the right to rely on such certificate.

11.2 Subordination; Attornment. This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Premises, from time to time in existence against the Premises, whether now existing or hereafter created, and if requested by any successor owner, Tenant shall attorn to and become a tenant thereof; provided, however, that the foregoing is expressly conditioned upon Tenant receiving from the party or parties in whose favor such subordination or attornment is made a written and executed non-disturbance agreement, in a form reasonably acceptable to Tenant, agreeing to recognize Tenant's rights under the Lease and agreeing not to disturb Tenant's use, enjoyment and possession of the Premises or the Project so long as Tenant is not in default under the terms of the Lease after the giving of any required notice and the expiration of any applicable cure or grace periods of any terms and conditions of this Lease. Any such subordination and/or attornment shall not require any further instruments to evidence same; provided, however, upon request, Tenant shall execute and deliver an instrument or instruments confirming the terms of this section.

## ARTICLE 12. CONDEMNATION.

12.1 Total or Partial Taking. If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable for the purposes leased hereunder, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay rent and other charges up to the Taking Date, with appropriate credit by Landlord of any rent or charges paid for a period subsequent to the Taking Date. In the latter event, Minimum Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Premises taken.

12.2 Award. All compensation awarded or paid upon a total or partial taking of the Premises including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant, and Tenant shall have no claim to any such award based on Tenant's leasehold interest; provided, however, if the City is the condemning authority and the Premises are taken for purposes other than the health and safety of the public, Tenant shall have the right to seek compensation for the value of the leasehold estate based on the then-remaining Initial Term and the first two Renewal Terms, as applicable, which value shall not exceed the unamortized value of the sum of the actual Tenant Contribution and Tenant's out of pocket costs of FF&E installed in the Premises that is not removable without substantial damage to such FF&E or has de minimis value if removed from the Premises. Nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant and for Tenant's moving expenses; provided, however, that (except as otherwise set forth in the preceding sentence) no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee and Tenant may not prosecute any claim for leasehold value.

## ARTICLE 13. GENERAL PROVISIONS.

13.1 Force Majeure. Whenever a period of time is herein prescribed for the taking of any action by either Party, such Party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, pandemic, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of such Party (each, a "Force Majeure Event"), including the time following the Force Majeure Event that may be required to restore the Facility and/or remediate any delay, damage, loss, failure or inability to perform directly as a result of such Force Majeure Event. In no event will a Force Majeure Event extend or toll the time for any payments of money due under this Lease. Any party claiming a delay as a result of a Force Majeure Event shall give the other party written notice of such Force Majeure Event within five (5) business days after the occurrence thereof, and failure to provide timely notice as set forth herein shall be a waiver of any claim by a party for delay resulting from an alleged Force Majeure Event. Notwithstanding anything to the contrary set forth in this Lease, Landlord and Tenant acknowledge and agree that the COVID-19 pandemic does not and shall not constitute a Force Majeure Event absent the imposition of any governmental restrictions in the nature of a prohibition or moratorium after the Effective Date.

13.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises as a Tenant from month to month at a monthly Minimum Rent payable in advance on the first day of each month equal to the then-prevailing market rent (as determined by Landlord and for which Landlord, in its discretion, may engage an independent appraisal firm to determine at Tenant's sole cost and expense), and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a month-to-month tenancy.

13.3 Waiver; Partial Invalidity. If Landlord excuses or condones any default by Tenant of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any provision of this Lease is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the Parties as though the illegal or unenforceable provision had never been included in this Lease.

13.4 Recording. Neither Tenant nor anyone claiming by, through or under Tenant shall record this Lease or any memorandum hereof in any public records without the prior written consent of Landlord in the sole and absolute discretion of Landlord's City Manager or his/her designee. If any recording is made in violation hereof, Tenant shall immediately terminate such recording of record, and if Tenant fails to do so within five (5) days after Landlord's written request, Landlord may do so without any action by Tenant and charge the costs thereof to Tenant as Additional Rent.

13.5 Notices. Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed (i) if to Landlord, at the address: set forth in the Lease Summary; and (ii) if to Tenant, at the Premises or, prior to Tenant's occupancy of the Premises, at the address set forth on the Lease Summary. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then forty-eight (48) hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier.

13.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators, and permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII. If there is at any time more than one Tenant or more than one person constituting Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them.

13.7 Captions and Section Numbers. The captions, section numbers, article numbers and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance of this Lease.

13.8 Interpretation. The words "hereof," "hereto," "hereunder," and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. The words "include," "including" and words of similar import shall be construed as if followed by the phrase "without limitation." This Lease shall be read with all changes in number (plural or singular) and gender as may be appropriate or required by the context. Any reference to Tenant includes, when the context allows, the employees, agents, invitees, and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. This Lease has been fully reviewed and negotiated by each Party and its counsel and shall not be more strictly construed against either Party.

13.9 Entire Agreement; Governing Law; Time. This Lease and the Exhibits and Riders, if any, attached hereto are incorporated herein and set forth the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements or understandings between them. This Lease and its Exhibits and Riders may not be modified except by agreement in writing executed by Landlord and Tenant. This Lease shall be construed in accordance with and governed by the laws of the State of Florida. Time is of the essence of this Lease.

13.10 No Partnership. The Parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship. Accordingly, notwithstanding any provision of this Lease to the contrary, nothing in this Lease, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this section shall survive expiration of the Term.

13.11 Quiet Enjoyment. If Tenant pays rent and other charges and fully observes and performs all of its obligations under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

13.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that except as set forth in the Lease Summary, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord recognizes the broker(s) specified in the Lease Summary as the sole broker(s) with whom Landlord has dealt in this transaction and agrees to pay any commissions determined to be due said broker(s).

13.13 Radon Notice. Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any building, or a rental agreement for any building:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

13.14 Execution. This Lease has been submitted for discussion purposes only and shall not be deemed an offer by either Party to the other to enter into this Lease. This Lease shall become effective only upon the execution and delivery of this Lease by the Parties hereto and approval by Landlord's City Commission.

**13.15 TRIAL BY JURY. LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

13.16 Reference to "Approvals" or "Consent," etc. Except when expressly provided otherwise, all references in this Lease to the terms "approval," "consent," and words of similar import shall mean "reasonable written approval" or "reasonable written consent" and shall include the provision that such consent or approval shall not unreasonably conditioned or delayed. Tenant acknowledges and agrees that the exercise by Landlord of its rights pursuant to Section 13.19 hereof does not and shall not constitute an unreasonable condition or delay under this Lease.

13.17 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Any such counterpart shall constitute one and the same instrument.

13.18 No Conflicts of Interest. No member, official, representative, or employee of Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official, representative or employee participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, official, elected representative or employee of the City shall be personally liable to Tenant, any Permittee or any transferee or any successor in interest to any of them in the event of any default or breach by Landlord or for any

amount which may become due to Tenant, any Permittee, or any transferee or any successor to any of them or pursuant to any obligations under the terms of this Lease.

13.19 City Manager's Delegated Authority. Notwithstanding any provision in this Lease to the contrary, nothing herein shall preclude Landlord's City Manager from seeking direction from or electing to have the City Commission determine any matter arising out of or related to this Lease, including any approval or consent contemplated under this Lease, any proposed amendment or modification to this Lease or any separate agreement relating to the Premises or otherwise referenced in this Lease.

13.20 Subdivision. Landlord, in its discretion, may elect at any time during the Term to subdivide the Project or Property and/or create a condominium thereon, and Tenant agrees to cooperate with Landlord in connection therewith, including executing and delivering any applicable instruments or agreements.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the day and year first above written.

LANDLORD

Signed, sealed, and delivered  
in the presence of:


  
\_\_\_\_\_

Print Name: Adrian Chamberlin

  
\_\_\_\_\_

Print Name: Samantha Leon

ATTEST

By:   
\_\_\_\_\_ City Clerk



**APR 18 2022**

**CITY OF MIAMI BEACH, FLORIDA**, a Florida  
municipal corporation

By:   
\_\_\_\_\_

Name: Dan Gelber

Title: Mayor

Approved for form and legal sufficiency

By:   
\_\_\_\_\_ City Attorney

TENANT

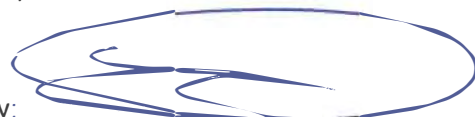
Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_

Print Name: MICHEL HAUSMANN

Print Name:

**MIAMI NEW DRAMA, INC.**, a Florida not for profit  
corporation

By:   
\_\_\_\_\_

Name: NICHOLAS RICHBERG

Title: MANAGING DIRECTOR

EXHIBITS:

- Exhibit "A": Legal Description
- Exhibit "B-1": Site Plan and Location of Premises
- Exhibit "B-2": Buildout Improvements
- Exhibit "B-3": Mandatory Design Elements
- Exhibit "B-4": Required Contract Language
- Exhibit "B-5": Energy Saving Binding Provisions
- Exhibit "C": Rules and Regulations
- Exhibit "D": Community Benefits



**EXHIBIT "A"**

Legal Description of the Property

**To Be Included**

**EXHIBIT "B-1"**

Site Plan of Premises and Location of Premises within the Project

**To Be Included**

## EXHIBIT "B-2"

### Buildout Improvements

TENANT ACKNOWLEDGES AND AGREES THAT IT IS EXPRESSLY ACCEPTING POSSESSION OF THE PREMISES IN THEIR "AS IS" "WHERE IS" CONDITION EXCEPT FOR THE BUILDOUT IMPROVEMENTS DESCRIBED IN THIS EXHIBIT "B-2" ATTACHED TO AND MADE A PART OF THE LEASE.

1. Buildout Improvements. The Buildout Improvements shall consist of a 200-seat black box theater, including all applicable theatrical equipment to be utilized by Tenant in connection with Tenant's use of the Premises, a cultural lobby/lounge/gallery, general use areas, rehearsal space, costume studio, office space for Tenant, a stand-alone Café that may be operated independently and securely from the rest of the Facility, whether or not the rest of the Facility is open for business, and general purpose studio as further described in the Approved Plans (collectively, the "Buildout Improvements").

2. Landlord Contribution. Landlord shall be responsible for the funding of the construction services, permitting, selection of the contractor, and the construction of the Buildout Improvements including the oversight of construction activities; provided, however, that the City's total available funding and budget for construction of the Buildout Improvements shall not exceed Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000.00) (the "Landlord Contribution"). Landlord shall utilize a Construction Manager at Risk with Guaranteed Maximum Price ("GMP") delivery method for the construction of the Buildout Improvements. Any costs of constructing the Buildout Improvements in excess of the Landlord Contribution shall be borne solely by Tenant. Landlord shall not initiate any change orders increasing the GMP except to the extent required by City Code.

3. Design Services and Tenant Contribution. Tenant shall be responsible for the selection and funding of the design and the design professionals, including the architect (the "Architect") and engineer, and all architectural and engineering fees related thereto, in connection with the Buildout Improvements, including funds for the acquisition of equipment for the theatrical performance or rehearsal space to the extent not covered by the Landlord Contribution, which total amount the Tenant expects will cost approximately Two Hundred Fifty Thousand Dollars (\$250,000.00), but regardless of the actual amount, Tenant will be solely responsible for all such sums, which Tenant will raise through grants and/or donations (such sums, the "Tenant Contribution"). **IN NO EVENT SHALL LANDLORD BE RESPONSIBLE TO FUND ANY PORTION OF THE DESIGN SERVICES OR ANY OTHER EXPENSES OF ANY KIND IN EXCESS OF THE LANDLORD CONTRIBUTION.** All design professionals engaged by Tenant shall be licensed in the State of Florida and maintain insurance in amounts reasonably acceptable to Landlord. Tenant's agreement with the Architect shall be subject to Landlord's reasonable approval and shall contain the required contract language attached as **Exhibit "B-4"** to this Lease (such Landlord-approved agreement, the "Approved Architect Agreement"). All actions taken or caused to be taken by the Architect hereunder shall be pursuant to the Approved Architect Agreement. Tenant shall enter into the Approved Architect Agreement within the later of (a) 365 days after approval of this Lease by the City Commission or (b) 30 days after the City Commission's approval of the budget for the construction of the Buildout Improvements (the "Budget"). Landlord may terminate this Lease for convenience in the event Tenant fails to timely enter into the Approved Architect Agreement. The approved Budget shall not exceed the amount of the Landlord Contribution. The parties acknowledge and agree that the Budget does not include costs incurred by Tenant pursuant to the Approved Architect Agreement.

4. Tenant Contribution Deposit. Within the later of (a) 365 days after approval of this Lease by the City Commission or (b) 30 days after the City Commission's approval of the Budget, to secure Tenant's obligation to make the Tenant Contribution, Tenant shall deposit the sum of \$250,000.00 (the "Tenant Contribution Deposit") with an escrow agent reasonably acceptable to Landlord to be held in escrow and which may be disbursed only in accordance with this Section 4 of this **Exhibit "B-2"**. Tenant shall have the right to draw against the Tenant Contribution Deposit, on a monthly basis, based upon draw requests from Tenant and signed by the Architect certifying to Landlord that such costs are due or will become due within the next 30 days pursuant to the terms the Approved Architect Agreement, as hereafter defined. The draw request shall be accompanied by lien waivers or releases of lien from the persons or entities performing the services referred to therein. Landlord may terminate this Lease for convenience in the event Tenant fails to timely deposit the Tenant Contribution Deposit with such escrow agent.

5. Landlord Approvals. Tenant will cause the Architect to deliver to Landlord the design layout of the Premises for Landlord's reasonable approval and comment, in Landlord's proprietary capacity. Upon receipt of written approval from Landlord, Tenant will cause the Architect to engage with all required consultants and prepare the plans and specifications for the Buildout Improvements. The design for the Buildout Improvements shall contain the minimum design elements set forth in **Exhibit "B-3"** attached to the Lease ("Mandatory Design Elements"). Landlord and Landlord's general contractor (the "Contractor") will have the right to periodically review and reasonably approve and provide comments to the plans and specifications for the Buildout Improvements as the plans and specifications are prepared in order to develop Approved Plans (as hereafter defined). Tenant shall deliver the 30% complete plans and specifications within sixty (60) days after Landlord's appropriation of funds for the Buildout Improvements. Tenant shall deliver the 60% complete plans and specifications within sixty (60) days after Landlord's and its Contractor's review and approval of the 30% complete plans and specifications. Tenant shall deliver the 90% complete plans and specifications within sixty (60) days after Landlord's and its Contractor's approval of the 60% complete plans and specifications. Tenant shall deliver the final plans and specifications within thirty (30) days after Landlord's and its Contractor's review and approval of the 90% complete plans and specifications (such Landlord-approved plans and specifications, the "Approved Plans"). The Parties agree that Buildout Improvements will be constructed in accordance with the Approved Plans and with a design-to-budget approach based upon the approved Budget.

6. Participation. Tenant will be provided the opportunity to participate in the budget process and may retain, at its expense, a consultant to monitor the construction of the Buildout Improvements and such consultant will be invited to attend construction meetings between Landlord and the professionals engaged in connection with the Buildout Improvements.

7. Work Product. Landlord shall maintain ownership of all plans, specifications, permits, or other approvals, and any other work product developed in connection with the Buildout Improvements (the "Work Product"), along with a copy of all such Work Product, in an electronic or other format as mutually agreed upon by the Parties. Landlord may charge the Landlord Contribution for administering the planning, permitting and construction of the Project, except for fees and costs it normally charges to third parties in its regulatory capacity; provided, however, any costs related to the Architect's administration of construction of the Buildout Improvements in accordance with **Exhibit "B-4"** and the Approved Architect Agreement shall be borne by Tenant.

8. GMP Agreement. The Guaranteed Maximum Price construction contract and the schedule of values attached thereto or contained therein (collectively, the "GMP Agreement") shall: (i) contain a contingency line item equal to ten percent (10%) of the overall costs of the Buildout Improvements, and (ii) not exceed the amount of the Landlord Contribution. In no event shall the use of the contingency cause for the guaranteed maximum price ("GMP") to be exceeded, and the Contractor shall be solely responsible for all costs that exceed the GMP, without any reimbursement from Landlord. Prior to the commencement of the Buildout Improvements, Landlord shall cause the Contractor to buy-out, at a minimum, (i) each line item of the schedule of values which exceeds \$200,000.00 (and to the extent not exceeding \$200,000.00, each major trade within the schedule of values) and (ii) eighty percent (80%) of the overall project costs (schedule of values), with the cost of such bought-out line items being consistent with the approved project Budget. Tenant shall have the right to approve the GMP Agreement, including the amount of the GMP (as set forth in the schedule of values attached thereto) within forty-five (45) days after Tenant's receipt thereof by delivering written notice to Landlord within such forty-five (45) day period, which approval will not be unreasonably withheld. If Tenant fails to approve or disapprove the GMP Agreement by written notice to Landlord within such forty-five (45) day period, then Tenant shall conclusively be deemed to have approved the GMP Agreement, including the amount of the GMP.

9. Change Orders. In the event Tenant requests any change to the Buildout Improvements, Tenant shall submit such request to Landlord for Landlord's review and approval in its sole and absolute discretion; provided, however, with respect to any such change requiring a change order to the GMP Agreement, Landlord agrees not to unreasonably withhold its consent provided that either (i) after giving effect to such change order (and all prior change orders) at least twenty percent (20%) of the original contingency line item remains unallocated, or (ii) if the applicable change order (together with all prior change orders) would cause the unallocated contingency line item to fall below twenty percent (20%) of the original contingency line item, then Tenant shall have either (a) agreed to decrease the FF&E line item by the amount by which the unallocated contingency line item falls below twenty percent (20%) of the original contingency line item, which decrease shall

be reflected in the same requested change order, or (b) funded in cash to Landlord the amount by which the unallocated contingency line item falls below twenty percent (20%) of the original contingency line item; provided, however, at such time that the Buildout Improvements are 90% complete and draws for such amounts have been paid and there are sufficient amounts remaining in the Budget to pay the retainage with respect to such payments, the twenty percent (20%) shall be reduced to ten percent (10%); provided, further, at such time that the Buildout Improvements are substantially complete in accordance with the GMP Agreement and draws for all amounts due at substantial completion have been paid and there are sufficient amounts remaining in the Budget to pay any remaining retainage and all other amounts due pursuant to the GMP Agreement, the remainder of such contingency amounts shall be allocated to the FF&E line item for use by the Tenant for FF&E.

**IN NO EVENT SHALL THE LANDLORD CONTRIBUTION TO THE BUILDOUT IMPROVEMENTS OR OTHERWISE IN CONNECTION WITH THE TENANT'S USE OF THE PREMISES OR THE FACILITY EXCEED THE AMOUNT OF THE LANDLORD CONTRIBUTION OF \$4,750,000.00.**

**EXHIBIT "B-3"**

Mandatory Design Elements

**Approximately 3,300 sq. ft. 200-seat Studio theater**

**Approximately 2,000 sq. ft. Multifunctional Lounge / Bookstore activation space**

**Approximately 2,000 sq. ft. Café/Restaurant**

**Approximately 3,000 sq. ft. Community Education and Rehearsal Studio**

**Approximately 1,500 sq. ft. Costume Design Studio**

**Approximately 1,500 sq. ft. Office space**

**EXHIBIT “B-4”**

Required Contract Language

**To Be Included<sup>1</sup>**

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<sup>1</sup> To include, among other provisions, general administration of the GMP Agreement by Architect for the benefit of Landlord, including site visits, certifications of progress of work, compliance of the work with plans and specifications and certification of payments under the GMP Agreement, and to require that all design criteria related to Buildout Improvements will comply with provisions of **Exhibit “B-5”**

## **EXHIBIT “B-5”**

### Description of Landlord's Energy Saving Binding Provisions

Specific savings already claimed in **LEED v4 Core & Shell** project submission must be achieved upon tenant buildout. This includes:

Construction Activity Pollution Prevention: Create and implement an erosion and sedimentation control plan for all construction activities associated with the project. The plan must conform to the erosion and sedimentation requirements of the **2012 U.S. Environmental Protection Agency (EPA) Construction General Permit (CGP) or local equivalent**.

Indoor Water Use Reduction: To reduce aggregate water consumption and comply with what was submitted for Core & Shell only the following flow rates or less will be installed by the tenant:

- Water closets: **0.8 gpf or less**
- Lavatory faucets: **0.35 gpm or less**
- Kitchen faucets: **1.5 gpm or less**
- Urinals: **0.125 gpm or less**
- 

Water Metering: To support water management and identify opportunities of additional water savings by tracker water consumption there are 7 meters for domestic water that measures all existing plumbing fixtures, and **future tenants' fixtures**. An additional water meter measures the water usage for the irrigation system

Fundamental & Enhanced Commissioning: To support the design, construction, and eventual operation of a project that meets the owner's project requirements for energy, water, indoor environmental quality, and durability. Commissioning has been completed for any and all systems where credit has been claimed.

Minimum Energy Performance: To reduce the environmental and economic harms of excessive energy use by achieving a minimum level of energy efficiency for the buildings and its systems. This project is achieving **35% (15 points)** improvement from the baseline in the energy simulation. Tenant build-out design must include, at a minimum, the following Energy Conservation Measures:

#### **Mechanical Design:**

1. Efficient greater than 12.6 EER
2. MERV 13 filtration for any units associated with outside air.
3. HVAC system type: Direct Expansion Packaged Units with VAV air distribution
4. Supply Air Fan Power: 0.0007 kW/cfm or lower
5. Ventilation rate must follow ASHRAE 62.1-2010.

#### **Electrical Design:**

1. Specify Lighting Power Density that is 40% lower than lighting power densities prescribed in ASHRAE 90.1-2010 Energy Standard for the space types included in the tenant lease. This could be achieved by specifying LED lamps throughout.
2. Implement Daylight harvesting in the perimeter zones of retail spaces.

#### **Plumbing Design:**

1. Reference Indoor Water Use Reduction flow rates listed above.

Storage and Collection of Recyclables: To reduce the waste that is generated by building occupants and hauled to and disposed of in landfills. Collection and storage areas must include **mixed paper, corrugated cardboard, glass, plastics, metals, batteries, and mercury-containing lamps**. Tenants are required to comply.

Building Product Disclosure & Optimization – Environmental Product Declarations: To encourage the use of products and materials for which life-cycle information is available and that have environmentally, economically, and socially preferable life-cycle impacts. To reward project teams for selecting products from manufacturers who



have verified improved environmental life-cycle impacts. This project has taken credit for **35.5** weighted number of products with Environmental Product Declarations as part of the Core and Shell submission.

Building Product Disclosure & Optimization – Sourcing of Raw Materials: To encourage the use of products and materials for which life cycle information is available and that have environmentally, economically, and socially preferable life cycle impacts. To reward project teams for selecting products verified to have been extracted or sourced in a responsible manner. This project has taken credit for **\$1,074,589.02** as the total sustainable criteria value of products fulfilling responsible sourcing of raw materials and **22.7%** meets sustainable criteria value as a percentage of total materials cost.

Building Product Disclosure & Optimization – Material Ingredients: To encourage the use of products and materials for which life-cycle information is available and that have environmentally, economically, and socially preferable life-cycle impacts. To reward project teams for selecting products for which the chemical ingredients in the product are inventoried using an accepted methodology and for selecting products verified to minimize the and generation of harmful substance. To reward raw material manufacturers who produce products verified to have improved life-cycle impacts. This project has taken credit for **19.5** products meeting the material ingredient reporting requirements as part of the Core and Shell submission.

Minimum Indoor Air Quality Performance: To contribute to the comfort and well-being of building occupants by establishing minimum standards for indoor air quality (IAQ). This project is mechanically ventilated and meets **ASHRAE 62.1-2010, Sections 4-7**. Tenant will be required to adhere to ASHRAE 62.1-2010 or latest standard at the time of tenant move in.

Environmental Tobacco Smoke Control: To prevent or minimize exposure of building occupants, indoor surfaces, and ventilation air distribution system to environmental tobacco smoke the project prohibits smoking inside the building. Smoking is also prohibited outside the building **at least 25 feet from all entries, outdoor intakes, and operable windows**. Also prohibit smoking outside the property line in spaces used for business purposes. Tenants are responsible for **signage to be posted within 10 feet of all building entrances indicating the no-smoking policy**.

Low Emitting Materials: To reduce concentrations of chemical contaminants that can damage air quality, human health, productivity, and the environment. This project has achieved the threshold level of compliance with emissions and content standards for the following product categories:

- Interior paints and coatings applied on site: **100% compliance in VOC emissions and content evaluation**
- Interior adhesives and sealants applied on site (including flooring adhesive): **100% compliance in VOC emissions evaluation and 83% compliance in VOC content evaluation**
- Flooring: **100% compliance by surface area**
- Ceilings, walls, thermal and acoustic insulation: **100% compliance by surface area**
- 

Construction Indoor Air Quality Management Plan: To promote the well-being of construction workers and building occupants by minimizing indoor air quality problems associated with construction and renovation. Develop and implement an indoor air quality (IAQ) management plan for the construction and preoccupancy phases of the tenant spaces. **The plan must meet or exceed all applicable recommended control measures of the Sheet Metal and Air Conditioning, 2<sup>nd</sup> edition, 2007, ANSI/SMACNA 008-2008, Chapter 3**. Do not operate permanently installed air-handling equipment during construction unless filtration media with a **minimum efficiency reporting value (MERV) or 8 as determined by ASHRAE 52.2-2007**, with errata are installed at each return air grille and return or transfer duct inlet opening such that there is no bypass around the filtration media. Immediately before occupancy, replace all filtration media with the final design filtration media, installed in accordance with the manufacturer's recommendations.

Occupant Comfort Survey: A comfort survey will be distributed to all the employees of the project. The intent of this survey is to assess occupant comfort and understand that their needs, conditions, and suggestions in relation to the project design and operation. **100% of the employees will be asked to complete the survey at least 3 times per year. A corrective action plan will be in place to address all the comfort issues if the results**

**indicate that more that 20% of occupants are dissatisfied.** In the future the survey will also be applicable to clients of the project.

## EXHIBIT "C"

### Rules and Regulations

1. Security. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Project, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.
2. Repair, Maintenance, Alterations, and Improvements. Tenant shall carry out Tenant's repair, maintenance, alterations, and improvements in the Premises only during times agreed to in advance by Landlord and in a manner which will not interfere with the rights of other patrons to the Project.
3. Water Fixtures. Tenant shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Tenant shall be paid for by Tenant.
4. Personal Use of Premises. The Premises shall not be used or permitted to be used for residential, lodging, or sleeping purposes or for the storage of other than de minimis personal effects or property not required for business purposes.
5. Heavy Articles. Tenant shall not place in or move about the Premises without Landlord's prior written consent any safe or other heavy article which in Landlord's reasonable opinion may damage the Premises, and Landlord may designate the location of any such heavy articles in the Project.
6. Bicycles, Animals. Except in connection with its theatrical performances and with prior written approval of Landlord's City Manager or his/her designee in his/her sole and absolute discretion, Tenant shall not bring any animals or birds into the Project and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Premises over which the Tenant has control, except in areas designated from time to time by Landlord for such purposes; provided, however, the City Manager or his/her designee will not unreasonably withhold consent to the use of domestic dogs in theatrical performances; provided, further that nothing contained herein is intended to limit service and emotional support animals entering the Premises to the extent permitted by and in accordance with all applicable Governmental Requirements.
7. Deliveries. Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, elevators, and corridors mutually agreed by the parties in connection with the design of the Buildout Improvements, and with respect to the Café or any other concessions or activations at the Premises, through such locations and at such times as may from time to time be reasonably designated by Landlord. Tenant shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Premises, or the Project, caused by any person making improper deliveries.
8. Solicitations. Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Project.
9. Signage. Tenant shall not install any signage or any advertising material anywhere within the property lines of the Building (other than as permitted in the Lease), including but not limited to, landscaped areas.
10. Refuse. Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Premises, and use its diligent, good faith efforts to keep sidewalks and driveways outside the Premises, and lobbies, corridors, stairwells, ducts, and shafts of the Premises, free of all refuse.
11. Obstructions. Tenant shall not obstruct or place anything in or on the sidewalks or driveways outside the Premises or in the lobbies, corridors or stairwells or in common areas of the Project, or use such locations

for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing caused or placed by Tenant (and unauthorized by Landlord) without notice or obligation to Tenant. Tenant shall use its diligent, good faith efforts to keep all storefront windows and the outside areas immediately adjoining the Premises, clean and free from dirt and rubbish. Tenant shall not place, suffer, or permit any obstructions or merchandise in the areas adjoining the Premises and shall not use such areas for any purpose other than ingress or egress to and from the Premises. Tenant shall not place, suffer or permit any signs, equipment, displays or inventory on the sidewalk in front of the Premises or upon the Common Area of the Building, except in compliance with local Governmental Requirements.

12. Proper Conduct. Tenant shall not conduct itself in any manner which is inconsistent with the character of the Premises, or which will impair the comfort and convenience of other patrons in the Facility. No radio, television, phonograph, or other similar devices or aerial attached thereto (inside or outside) shall be installed without first obtaining in each instance Landlord's consent in writing and if such consent be given, no such device shall be used in a manner so as to be heard or seen outside of the Premises in any manner that would violate any applicable Governmental Requirements. Tenant will not utilize any unethical method of business operation nor shall any space in the Premises be used for living quarters, whether temporary or permanent.
13. Employees, Agents, and Invitees. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.
14. Pest Control. In order to maintain satisfactory and uniform pest control throughout the Project, Tenant shall engage for the Premises and at its sole cost, a qualified pest extermination contractor or approved by Landlord, who shall perform pest control and extermination services in the Premises at such intervals as reasonably required or as may be reasonably directed by Landlord.
15. Fire Prevention. Tenant shall not do anything in the Premises or the Building, or permit anything to be done in the Premises, or bring or keep anything in or about the Premises or the Building, that will in any way increase the possibility of fire or other casualty or obstruct or interfere with the rights of, or otherwise injure or annoy, other tenants, or do anything in conflict with the valid pertinent laws, rules or regulations of any governmental authority. Tenant shall not use or keep in the Premises any flammable or explosive fluid or substance, or an illuminating material, unless it is battery powered, and UL approved. Tenant shall at all times maintain an adequate number of suitable fire extinguishers on the Premises for use in case of local fires, including electrical or chemical fires. A competent person or a recognized extinguisher servicing company should provide annual servicing for all extinguishers on the Premises. A tag should be attached indicating the month and year of maintenance and the recharge, if performed.

## EXHIBIT "D"

### Community Benefits<sup>2</sup>

On an annual basis commencing in the first Lease Year (except as otherwise set forth in this **Exhibit "D"**) and continuing throughout the Term, Tenant shall provide the following Community Benefits:

#### STUDENTS AND CHILDREN.

1. Educational programs to accompany each production and/or with a technical focus, which may include student performances, outreach, and complementary education when appropriate, including application to the STEAM PLUS program (increased performance measures to be coordinated with the Bass Museum).
2. Children's and teen summer programs and workshops will be offered to students interested in the performing arts.
3. Commencing in Lease Year 2, Winter and Spring break camps will be offered for children.
4. 500 annual free or discounted tickets to Miami Beach students at Miami Beach public schools, the actual amount of which will be counted towards satisfaction of the Benchmark Standard for discounted tickets set forth in Section 1.6 of the Lease.

#### SENIORS.

1. Partner with community organizations to provide senior-specific programming, such as theatrical classes, dance classes, exercise classes, lectures, silver sneakers programs, etc.
2. Collaborate with senior centers to facilitate access to performances and other events.
3. Make available 250 annual free or discounted tickets to Miami Beach senior citizens, the actual amount of which will be counted towards satisfaction of the Benchmark Standard for discounted tickets set forth in Section 1.6 of the Lease.

#### COMMUNITY AT LARGE.

1. Ten percent (10%) discount to all Miami Beach residents for ticketed events and fee educational programs and five percent (5%) discount to all Miami Beach Residents for fee memberships programs.
2. Participation in Free Family Sundays events by offering limited experience and access to facility including lounge area. Free Family Sundays will offer free programming and admission for the community. Scheduled for the last Sunday of the month, current cultural anchors participating include The Bass Museum and The Collins Park Association ArtScape Concert Series.
3. Programming of Collins Park Campus, including Liberty Plaza, once per quarter, with free programming for the community.
4. Commencing in Lease Year Two, participation in Culture Crawl and other cultural community initiatives developed by the city for the purpose of connecting Miami Beach residents with the cultural anchors, currently programmed once per month, from October through May on an annual basis.

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<sup>2</sup> Subject to continuing review and update

### COMMUNITY BENEFIT FUND.

The Community Benefit Fund was established in 1983 to increase residents' access to arts and culture and to provide a funding mechanism for cultural events which benefit the Miami Beach community.

1. *Rental waiver program.* Participation in the rental waiver program for up to twelve (12) events per contract year, subject to availability, for the benefit of not-for-profit organizations. Similar to the Colony Theatre, MiND agrees to continue to honor the Community Benefit Fund rental waiver grant program for up to twelve (12) events per contract year, subject to availability. MiND agrees that the rental charge for each of the 12 rentals paid by the City under this program is only available to not-for-profit organizations and shall be fixed at \$1,500.00 per performance day Monday through Thursday and \$ 2,000.00 per performance day Friday through Sunday for each event for the entire Term. Grants will cover not-for-profit rental fees for up to four (4) days per week. Rental fees do not include labor costs or equipment rentals. The City reserves the right to discontinue such rental waivers in the event revenues inadequately subsidize the program or at the City's sole and absolute discretion.
2. *Contribution to Community Benefit Fund.* Similar to the contributory funding of Live Nation, Inc. for events held at the Fillmore at the Jackie Gleason Theatre, the Collins Park Cultural Arts Facility will make financial contributions to the Community Benefit Fund based on each ticket sale. The Fund is maintained by a \$1.50 surcharge on tickets sold at The Fillmore Miami Beach. The City proposes that the contribution amount of each ticket sale to the Community Benefit Fund increase each renewal term until reaching the peak contribution in the Second Renewal Term. For example, the Initial Term will provide a per ticket contribution of \$0.50, the First Renewal Term will provide a per ticket contribution of \$1.00, and the Second Renewal Term will provide a per ticket contribution of \$1.50. Participation in the Community Benefit Fund and any contribution amounts may be negotiated by the Parties during any lease renewals.

# Attachment B

## MEMORANDUM

Date: August 5, 2024  
To: City of Miami Beach  
From: Miami New Drama  
Re: Collins Garage Lease

In anticipation of our meeting, you have requested that we identify issues in the Collins Park Cultural Arts Facility Lease Agreement between the City of Miami Beach and Miami New Drama, Inc. dated April 18, 2022 ("Lease") that need to be addressed as a result of developments which have occurred since the Lease was executed. Set forth below in no particular order are issues which we believe need to be addressed:

1. In Section 1.2, delete "subject to and contingent upon the City's appropriation of sufficient funds for the Buildout Improvements".
2. We need to address the fact that we have not applied for Florida Cultural Facilities grant and that we will do so in the next cycle.
3. Delete Section 10.6 (b).
4. In Section 1 of Exhibit "B-2", the costume design studio should be deleted.
5. In Exhibit "B-2", we suggest that the proviso portion of the first sentence of Section 2 be deleted and that the following be added as a new sentence: "The cost of the foregoing shall be funded by the \$7,760,00 amount allocated to the project from the City's 2022 General Obligation Bond."
6. In Exhibit "B-2" of the Lease, we would like to discuss Tennant taking on the responsibility for the Buildout Improvements. This will require various modifications of Exhibit "B-2".
7. In Exhibit "B-2" of the Lease, because the design team is in place, the City has reviewed and commented on the design teams' agreement, the project is funded and we have started the conceptual design phase of the project, Section 4 can be deleted. In the bold language at the bottom of the Exhibit the number should be changed to \$7,760,000.
8. In Exhibit "B-3", delete the reference to the Costume Design Studio.



**COMMISSION MEMORANDUM**

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: September 11, 2024

TITLE: REFERRAL TO THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE TO DISCUSS NEXT STEPS FOR THE COLLINS PARK PERFORMING ARTS CENTER.

**RECOMMENDATION**

The Administration recommends the Mayor and City Commission refer a discussion item to the Finance and Economic Resiliency Committee regarding next steps for the Collins Park Performing Arts Center Project and Lease term modifications requested by Miami New Drama.

**BACKGROUND/HISTORY**

On January 27, 2021, the Mayor and City Commission waived competitive bidding in favor of Miami New Drama, Inc.'s (MiND) unsolicited proposal for the approximately 16,000 square-foot ground floor space at the City-owned Collins Park Garage at 340 23rd Street. The proposal aimed to develop MiND's primary performance venue and headquarters, which includes a 200-seat black box theater, rehearsal space, dressing rooms, and administrative offices, as well as ancillary commercial uses, such as a standalone restaurant/café (the "Project").

On October 27, 2021, through Resolution No. 2021-31914, the Mayor and City Commission authorized a Ground Lease for the development and construction of the Project. MiND (Tenant) was tasked with funding and preparing the design and architectural services, while the City (Landlord) was responsible for funding and constructing all buildout improvements. At the time, the Project was unfunded, and the Resolution required MiND to raise \$250,000 within 12 months for design and architectural services (the "Tenant Contribution"). Per its terms, the Ground Lease, executed April 18, 2022, would become null and void if the City Commission did not appropriate \$4.75 million for the buildout improvements ("Landlord Contribution") by October 1, 2024.

During negotiations in 2021, estimated buildout costs totaled roughly \$4.75 million. However, in 2022, during the process of estimating project costs for the then-proposed General Obligation Bond for Arts and Culture (GOBAC), it was determined that the Project would require an allocation of \$7.67 million. On November 8, 2022, Miami Beach residents approved the \$159 million GOBAC. On July 26, 2023, the Mayor and City Commission approved Resolution No. 2023-32713, allocating \$7.67 million for the Project, thereby fulfilling the City's Lease obligation to fund the \$4.75 million Landlord Contribution.

**ANALYSIS**

Since February 2024, the Administration has met with MiND representatives to discuss the Project's status. Discussion topics have included MiND's desire to modify the Project delivery structure, MiND's engagement of a new architect, and MiND's pending obligation to fund the design and architectural services. Additionally, the City has requested MiND's collaboration in designing exterior window coverings to beautify the vacant space.



The Administration requests that the Finance and Economic Resiliency Committee (FERC) review the Project, and specifically, MiND's request to amend the Lease terms. MiND is suggesting modifications to the project management structure and the possible conversion of the dedicated General Obligation Bond (G.O. Bond) program funds into a grant for the Project buildout. Alternatively, rather than a grant, the Lease could require an amendment to allow MiND control of the construction, with City's oversight. Note that potential modifications to the Lease would be contingent upon guidance provided by bond counsel, and will be further discussed at FERC.

### **FISCAL IMPACT STATEMENT**

The City Commission has allocated \$7.67 million for the Project through the GOBAC program, as approved by the Miami Beach electorate, which exceeds the initial budgeted amount of \$4.75 million for the buildout improvements. It is unclear at this time how any proposed amendments to the Lease terms, including a conversion of the G.O. Bond funds into a grant, would further impact the City's financial commitments. A comprehensive analysis is required to evaluate these potential changes and ensure all elements align with the City's budgetary constraints, financial policies, and bond covenants.

### **Does this Ordinance require a Business Impact Estimate?** (FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

### **FINANCIAL INFORMATION**

### **CONCLUSION**

The Administration, and the community, is eager to proceed with the City's long-standing plans for the Project, which present a valuable opportunity to activate the Collins Park Cultural District with community-focused cultural programming.

The City fulfilled its contractual requirement to fund the Buildout Improvements and is otherwise in compliance with its obligations under the Lease. The Administration seeks input on addressing project modifications requested by the Tenant.

### **Applicable Area**

South Beach

### **Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?**

No

### **Is this item related to a G.O. Bond Project?**

Yes

### **Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying?** No

If so, specify the name of lobbyist(s) and principal(s):

### **Department**

Economic Development

**Sponsor(s)**

**Co-sponsor(s)**

**Condensed Title**

Ref: FERC - Collins Park Performing Arts Center Next Steps. ED