

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by and between the **CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and the **NEW WORLD SYMPHONY, INC**, a Florida not-for-profit corporation, (hereinafter referred to as "NWS" or "Tenant").

### 1. City's Contribution/Demised Premises.

#### 1.1 City Contribution.

Pursuant to that certain Amendment no. 1, Video and Audio System Agreement, dated \_\_\_\_\_ (as amended, the "Audio System Expansion Agreement"), by and between NWS and the City, NWS and the City have partnered in order to expand the audio video system at the City's SoundScape Park, by providing outdoor living rooms, with the City funding the audio system, in an amount not to exceed \$572,000, and NWS funding the video component (collectively, the "Expansion Project"). As part of the video component of the Expansion Project under the Audio System Expansion Agreement, NWS will be providing two (2) portable pop up LED screens, which need to be stored in a climate-controlled facility. The City has agreed to construct a storage facility (the "Facility"), pursuant to Section 6 of this Agreement, at the Pennsylvania Avenue Garage (the "Garage"), owned by the City, having a physical address of 1661 Pennsylvania Avenue, Unit 2, Miami Beach, Florida, 33139. The space encompasses three (3) standard parking spaces and one (1) ADA parking space on the ground floor of the Garage in the location set forth on Exhibit "A", attached hereto. The ADA parking space will be relocated to another section of the Garage. The City will pay the parking fees associated with the parking spaces being permanently occupied, based upon the current parking rates, as may be modified from time to time, in the initial annual amount of \$4,800.00.

#### 1.2 The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises, located on the ground floor of the Garage, identified as Unit 2 of the Pennsylvania Garage Condominium (the "Condominium"), hereinafter referred to as the "Demised Premises", described as follows:

A Facility, having approximately \_\_\_\_\_ square feet of space, located within Unit 2 of the PENNSYLVANIA GARAGE CONDOMINIUM, as recorded in Official Records Book 28080, at Page 4536, of the Public Records of Miami-Dade County, Florida, as more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

### 2. Term.

#### 2.1 Tenant shall be entitled to have and to hold the Demised Premises commencing on the date when the City Manager advises Tenant, in writing, that the construction of the Facility has been completed and the keys are delivered to Tenant (the "Possession Date"). The Agreement shall have an initial term of five (5) years, commencing on the Acceptance Date (as defined in Section 6.1) (the "Lease

Commencement Date"). For purposes of this Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1<sup>st</sup> day of month that is the same as for the first full month of the initial contract year and ending on the last day of the last month that is the same as the last full month for the initial contract year. The first contract year shall include any partial month in which the Possession Date occurs. Tenant shall not occupy the Demised Premises at any time prior to the Possession Date.

- 2.2 Provided Tenant is in good standing and free from default(s) under Section 15 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional four (4) year renewal term under the same terms and conditions of this Agreement. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf). The initial term and any approved renewal term shall be referred to herein as a "Term".

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

- 2.3 Termination for Convenience. The City may also, through its City Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Tenant of such termination; which shall become effective a year following receipt by Tenant of such notice. Following such termination for convenience, the City and Tenant shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement, except with respect to any duties and obligations which are intended to survive termination of the Agreement, including, without limitation, the indemnification provisions of the Agreement.

In the event that the City exercises this termination for convenience provision, the City Manager, in the City Manager's sole discretion, and without an obligation, may provide Tenant with an alternate facility for the storage of the modular LED screen video walls.

- 2.4 Construction of Facility Contingency. This Agreement shall be contingent upon the City completing the City Improvements; therefore, Tenant shall not have any leasehold interest in the Demised Premises until the Possession Date. In the event that the City is unable to construct the City Improvements within one (1) year, due to funding issues or any other unanticipated factors, the City may terminate the Agreement, by giving written notice to Tenant of such termination; which shall become effective upon receipt by Tenant of such notice. Following such termination, the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

3. Rent.

Tenant's payment of Rent, as defined in this Section 3, shall commence upon the Lease Commencement Date (the "Rent Commencement Date") and, thereafter, on each first day of each subsequent contract year. Base Rent and Additional Rent may be individually or collectively referred to as Rent.

3.1 Base Rent:

Throughout the Term herein, the Base Rent for the Demised Premises shall be One and 00/100 (\$1.00) Dollar per year, payable in advance, on the first day of each contract year.

3.2 Additional Rent:

Taxes. Concurrent with the payment of the Base Rent, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes (in accordance with Section 9), imposed, levied or assessed against the Demised Premises. Additional Rent shall be due within fifteen (15) days from receipt of a bill from the City.

3.3 Intentionally Omitted.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach  
Revenue Manager  
1700 Convention Center Drive, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Use and Possession of Demised Premises.

5.1 The Demised Premises shall be used by the Tenant as a storage facility for modular LED screen video walls and for any other component related to the Expansion Project. No additional uses shall be permitted unless agreed to by the parties and memorialized in writing in the form of an amendment to the Agreement. The Demised Premises may be accessed by Tenant 24 hours and seven days per week. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

5.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 15 or, restrain such improper use by injunction or other legal action.

6. Improvements.

6.1 City Improvements.

The City agrees to construct a storage Facility on the Demised Premises, including an air conditioning unit and a separately installed electric meter to serve the Demised Premises exclusively (valued by the parties at an amount not to exceed

One Hundred Eighty Thousand and 00/100 (\$180,000.00) Dollars, as more particularly described in Exhibit "B", attached hereto and incorporated herein (the "City Improvements"). The City will be responsible for the preparation of and cost of the architectural and engineering plans for the City Improvements. The City will use reasonable efforts to complete the City Improvements as soon as practical, but makes no warranties or representations as to the expected construction time that it will take to complete. The City may substitute materials or modify the building plans, as the City, in its sole judgment and discretion, determines is necessary or desirable. The plans for the City Improvement shall be subject to the approval of Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. As a condition precedent to the Possession Date, Landlord shall deliver the Demised Premises to Tenant (i) with the City Improvements substantially completed (i.e. completed except for minor punch list items), as evidenced from a Certificate of Completion or Certificate of Occupancy from the City's Building Department, and substantially in accordance with the plans approved by Tenant; (ii) with a watertight roof and structure and with all exterior doors and windows in good working order and condition; and (iii) with all building systems, including without limitation, electrical, A/C and fire suppression systems serving the Demised Premises in good working order and condition (collectively, the "Acceptance Date"). Tenant shall have ten (10) days from the Possession Date ("Inspection Period") to advise Landlord, in writing, of any punch list items; otherwise Tenant shall be deemed to have accepted the Demised Premises in "As Is" condition. Landlord will review the punch list items and determine, in its reasonable discretion, which punch list items are required to complete the Work. Landlord will have ninety (90) days to complete the Landlord approved punch list items. Tenant shall not be able to use the Demised Premises until the Acceptance Date. For the sake of clarity, the parties understand that NWS will not purchase the modular LED video walls and any related equipment unless the City completes the City Improvements.

6.2 As of the Acceptance Date, Tenant accepts the Demised Premises in their "**AS IS**" condition. Tenant shall not be permitted to further improve the Demised Premises without the City Manager's written consent. Any Tenant requests for additions or alterations to the Demised Premises ("Tenant Improvements") shall require Tenant to first submit plans for such improvements to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any approved Tenant Improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of any approved Tenant Improvements shall be the sole cost and responsibility of Tenant.

6.3 Notwithstanding Subsection 6.2, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any Tenant Improvements made by Tenant to or in the Demised Premises (unless the City Manager agrees in writing that the Tenant Improvements need not be removed) shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility,



and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition as of the Acceptance Date of this Agreement.

- 6.4 The requirements in Subsection 6.2 for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 6.4 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Two Thousand Five Hundred (\$2,500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

7. City's Right of Entry.

- 7.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.
- 7.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.
- 7.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

8. Tenant's Insurance.

- 8.1 Worker's Compensation Insurance as required by Florida, with Statutory limits and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 8.2 Commercial General Liability Insurance on an occurrence basis, including products and completed operations, contractual liability, property damage, bodily injury and personal & advertising injury for vehicles while in the Tenant's care, custody and control with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate
- 8.3 Property Insurance against all risks of loss to any tenant improvements or betterments, including tenant's personal property, at full replacement cost with no coinsurance penalty provision.

8.4 **Additional Insured Status**

The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Tenant.

8.5 **Waiver of Subrogation**

Tenant hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of the Tenant may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

8.6 **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

8.7 **Verification of Coverage**

Tenant shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to the Possession Date. However, failure to obtain the required coverage prior to the work beginning shall not waive the Tenant's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8.8. **Special Risks or Circumstances**

The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8.9 **Certificate Holder**

**CITY OF MIAMI BEACH  
c/o INSURANCE TRACKING SERVICES  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139**

8.10 Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

8.11 **Loss or Damage.** Tenant acknowledges that the City will be performing any maintenance and repairs required of the City hereunder. The City shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Demised Premises or damage to property of Tenant or of others located on the Demised Premises or elsewhere in the Unit, 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 the City.

9. **Property Taxes and Assessments.**

For the purposes of this Section and other provisions of this Agreement:

9.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

9.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months,

beginning on January 1<sup>st</sup> of each year.

- 9.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") relating to the Demised Premises or Tenant's use of the Demised Premises. In the event that the Demised Premises is assessed Property Taxes, either party may terminate the Agreement by providing the other party with thirty (30) days notice.

10. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

11. Operation, Maintenance, Repair and Utilities.

- 11.1 Tenant shall be solely responsible for the maintenance and repair of the interior of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and for repairs or maintenance which is caused as a result of the negligence of Tenant, its employees, contractors or agents.

- 11.2 The City shall be responsible for the maintenance of the roof, the exterior of the Demised Premises, all ventilation/air conditioning (VAC) equipment servicing the Demised Premises, and the structural electrical within the Demised Premises). The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition. Except with respect to the continuous operation of the air conditioner serving the Demised Premises, the City Manager or his designee, will make the determination as to whether or not a requested repair is necessary or optional. Notwithstanding the foregoing, the City will not be responsible for damages to the Demised Premises caused by the negligence and/or willful misconduct of Tenant, its employees, contractors or agents.

11.4 Tenant Responsibilities for Electricity.

Tenant is solely responsible for, and shall promptly pay when due, the electric bill for electrical usage related to the Demised Premises pursuant to the separate meter established for the Demised Premises.

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 11.4) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

- 11.5 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT (OR AS CONSTRUCTED) "AS IS" CONDITION.**

12. Governmental Regulations.

Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

13. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents or contractors, in connection with work of any character performed or claimed to have performed on said Demised Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

14. Condemnation.

14.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

14.2 Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding.

15. Default.

15.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

15.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;



- 15.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 15.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or within sixty (60) days after receipt of written notice from the City specifying the default, if such default is one which reasonably cannot be cured within thirty (30) days because of circumstances beyond Tenant's control;
- 15.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 15.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 15.1.6 Tenant shall become insolvent;
- 15.1.7 Tenant shall make an assignment for benefit of creditors;
- 15.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 15.1.9 The leasehold interest is levied on under execution.

16. Rights on Default.

16.1 Rights on Default:

In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

16.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

16.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the

City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

- 16.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 16.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 16.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the due date.
- 16.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.
- 16.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

16.2

Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a

default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

16.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 29 of this Agreement.

17. Indemnity Against Costs and Charges.

17.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

17.2 If either party shall deem it necessary to engage an attorney (including an in-house attorney) to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover all reasonable costs in connection with the prosecution of such actions, including reasonable attorney's fees.

18. Indemnification Against Claims.

18.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

18.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

18.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

18.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

18.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant

or anyone holding or claiming to hold through or under this Agreement.

- 18.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

19. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

20. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

21. Damage to the Demised Premises.

- 21.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as an "occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.
- 21.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent shall be adjusted accordingly.
- 21.3 Notwithstanding any clause contained in this Section 21, if the damage (other than Third Party Damage) is not covered by the City's insurance, then the City shall have no obligation

to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of an occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

- 21.4 Third Party Damage. If damage to the structure of the Demised Premises is caused by the negligence or intentional act of a third party (other than Tenant, its employees, contractors, or agents, or a weather related occurrence), such as a car crash or act of vandalism (collectively, "Third Party Damage"), the City agrees to be responsible for the repairs for the portions of the Demised Premises damaged by the third party which fall within the City's maintenance responsibility in Section 11.2, such as the structure of the Demised Premises. The City reserves the right to pursue the at fault party for reimbursement of said Third Party Damage costs.
- 21.5 For the sake of clarity, notwithstanding anything to the contrary in this Section 21, Tenant shall be responsible for any Third Party Damage to the Demised Premises, which falls within Tenant's maintenance responsibility under Section 11.1 including, without limitation, the personal property contained in the Demised Premises, which personal property is required to be insured under Section 8.3 of the Agreement.
22. Quiet Enjoyment.  
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.
23. Waiver.
- 23.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 23.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.
- 23.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.
24. Notices.  
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:

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

With copy to:

Director  
City of Miami Beach  
Tourism & Culture Department  
1700 Convention Center Drive  
Miami Beach, Florida 33139

TENANT:

New World Symphony  
\_\_\_\_\_  
Miami Beach, Florida 33139

With copy to:

\_\_\_\_\_  
\_\_\_\_\_

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

25. Entire and Binding Agreement.

This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

26. Provisions Severable.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

28. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

29. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand and 00/100 (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of Ten Thousand and 00/100 (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of Ten Thousand and 00/100 (\$10,000.00) Dollars for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed



upon the City's liability as set forth in Florida Statutes, Section 768.28.

30. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

31. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

32. Venue:

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**CITY 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.**

33. Radon is a naturally occurring radioactive gas that, when it is 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.

34. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

35. Tenant's Compliance with Florida's Public Records Law.

Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

35.1 The term "public records" shall have the meaning set forth in Section 119.011(12), 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.

35.2 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:

35.2.1 Keep and maintain public records required by the City to perform the service;

35.2.2 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;

35.2.3 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 contract term and following completion of the Agreement if the Tenant does not transfer the records to the City;

35.2.4 Upon completion of the Agreement, 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 completion of the Agreement, 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 completion of the Agreement, 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.

35.3 Request for Records; Noncompliance.

35.3.1 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.

35.3.2 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.

35.3.3 A Tenant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

#### 35.4 Civil Action.

35.4.1 If a civil action is filed against a Tenant to compel production of public records relating to the City's contract for services, the court shall assess and award against the Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:

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

35.4.2 A notice complies with subparagraph 35.4.1(ii) 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.

35.4.3 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.

**35.5 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:**

**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**

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF,** the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

**Attest:**

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

\_\_\_\_\_  
DAN GELBER, MAYOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(Date)

**Attest:**

**NEW WORLD SYMPHONY, INC.**

\_\_\_\_\_  
WITNESS  
\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
WITNESS  
\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(Date)

EXHIBIT "A"

SKETCH AND LEGAL DESCRIPTION FOR DEMISED PREMISES

EXHIBIT "B"

CITY'S IMPROVEMENTS