

## **TERM SHEET – MIAMI NEW DRAMA LEASE**

**TENANT:** MIAMI NEW DRAMA INC. (“Tenant” or “MIND”)

**LANDLORD:** CITY OF MIAMI BEACH (“City”)

**LEASE:** Proposed Lease by and between Tenant and City (the “Lease”) with respect to the Premises (defined below) and generally consisting of the ground floor of Collins Park Garage, 340 23<sup>rd</sup> St. Miami Beach

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### **LEASE TERMS**

**1. Facility:** Ground floor of Collins Park Garage, approximately 16,000 sq. ft. interior space and additional exterior terrace areas, including a to be constructed 200 seat black box theater, cultural lobby/lounge/gallery, general use areas, rehearsal space, costume studio, office space for Tenant, café and general purpose studio (such space, together with the Buildout Improvements, as hereafter defined, the “Facility” or “Premises”).

**2. Term:** Initial Term of five (5) years (the “Initial Term”), with three (3) renewal options for a period of five (5) years , as provided below:

(a) Two (2) renewal options for a period of five (5) years each subject to Tenant being in good standing (as a not-for-profit corporation and in compliance with applicable provisions of the City Code) and not otherwise in default of the Lease, including with respect to achieving Benchmark Performance Standards (addressed below); and

(b) Following the initial two (2) renewal options, the City may renew the Term for a final renewal period of five (5) years upon mutual agreement of the parties.

Because of the long programming lead time, for the initial two (2) renewal terms only (depending on 2.b above), the Lease will provide for the exercise of the option to extend for the applicable Renewal Term during the ninety (90) day period commencing one (1) year before the expiration of the Initial Term or renewal Term (as applicable and then in effect). Each renewal term shall be on same terms and conditions of Initial Term. In the event Tenant fails to meet the Benchmark Performance Standards for the Lease Year immediately preceding a Renewal Term (subject to the occurrence of any Force Majeure Events), City may elect to not to accept the

renewal option with respect to such Renewal Term at its sole and absolute discretion, provided that City must communicate its election not to accept such renewal to Tenant within sixty (60) days after Tenant exercises its renewal option with respect to the applicable Renewal Term.

**3. Benchmark Performance Standards:** During the first twelve (12) months following the Commencement Date (as set forth below)(such period being “Lease Year 1”, with each successive twelve (12) month period thereafter being a “Lease Year”), Tenant shall cause the Facility to host at least (1) 125 cultural or community activations per year; (2) 25,000 patrons per year (inclusive of virtual patrons for hybrid events TBD); (3) 150 students per year; (4) 75 seniors per year; (5) 50 Pro bono nonprofit/community rental hours per year; and (6) 500 discounted tickets provided per year. These benchmarks shall increase during the Initial Term as follows: (i) Lease Year 2: 150 events, 30,000 patrons, 175 students, 80 seniors, 50 pro bono nonprofit/community rental hours; (ii) Lease Year 3: 175 events 35,000 people, 200 students, 85 seniors, 55 pro bono nonprofit/community rental hours; (iii) Lease Year 4: 200 events 40,000 people, 225 students, 90 seniors, 55 pro bono nonprofit/community rental hours; and (iv) Lease Year 5 (and thereafter including the Renewal Terms): 220 events 45,000 people, 250 students, 95 seniors, 60 pro bono nonprofit/community benefit rental hours. Prior to any renewal term, as provided in Section 2 above, the Benchmark Performance standards may adjusted based on the mutual agreement of the parties. In addition to Landlord’s rights with respect to the renewal terms, Tenant’s failure to achieve the Benchmark Performance Standards for two consecutive years shall be an event of default.

**4. Commencement Date:** The Lease will commence upon the earlier of Tenant’s beneficial occupancy of the Premises or the Certificate of Occupancy for the Buildout Improvements.

**5. Rent:** Rent shall be \$1 per year. For avoidance of any doubt, except as expressly provided in Section 6 below, Tenant shall not pay any additional rent under the Lease, with Tenant’s obligations with respect to operating expenses being limited to those operating expenses being solely applicable to the Facility itself and Tenant shall expressly not pay any additional common area maintenance expenses with respect any other portion of the building (Collins Park Garage) within which the Facility is located.

**6. Operating Expenses/Grants:**

Except as provided below, Tenant shall be solely responsible for the operation and programming expenses of the Facility, including, without limitation, utilities, maintenance expenses, and applicable taxes (sales taxes, use/excise taxes, personal and ad valorem applicable to the Premises and Tenant's business therein) with no City funding obligation whatsoever with respect to such costs.

As a condition of the Lease, MIND agrees to make reasonable efforts to apply for the Florida Division of Cultural Affairs Cultural Facilities Grant. Except as set forth herein, the City will have no other funding or other payment obligations with respect to the Facility or its Operating Expenses; provided, however, that City acknowledges and agrees that given the application cycle for such grants, MIND may not be able to apply for such grant prior to the execution of the Lease and in such event MIND 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 for programming, provided, however, that in recognition of City's significant contributions to Tenant by making the Premises available to Tenant rent-free and providing significant funding for the Buildout Improvements, Tenant shall not apply for any City grants related to the Buildout Improvements and Tenant shall not apply for City grants to improve, maintain or operate the Facility.

**7. Maintenance:**

Tenant shall be responsible for day to day cleaning, maintenance and repairs of the Premises. City shall be responsible for the major building systems (HVAC, electric, fire, water, water intrusion etc.) and the building structure, including walls, windows and exterior. Tenant shall be responsible to maintain, in a clean and orderly manner, the exterior frontage of the Premises, i.e. the sidewalk and stairs walk-up, in a manner consistent with similarly situated commercially establishments. For avoidance of any doubt, City shall, at its sole cost and expense (and without any pass through or charge to Tenant), be responsible for any and all (including day to day) maintenance, cleaning and repairs with respect to any and all portions of the Collins Park Garage other than the Facility.

**8. Cultural Center Buildout:**

The City shall be responsible for the funding for the construction services, permitting, selection of the contractor, and the construction for the buildout of the Premises and procurement and/or installation of all applicable theatrical equipment to be

utilized by Tenant in connection with Tenant's use of the Facility (collectively, the "Buildout Improvements" or "Project"). The City's total available funding and budget for construction of the Project shall not exceed Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000.00) ("Landlord Contribution"). The City shall utilize a CM at Risk with Guaranteed Maximum Price ("GMP") delivery method for the construction of the Project.

The Tenant shall be responsible for the selection and funding of the Project's design and design professionals (i.e. Architect), and will cause the Architect to deliver to the City the design layout of the Premises for the City's reasonable approval and comment (in City's proprietary capacity). IN NO EVENT SHALL THE CITY BE RESPONSIBLE TO FUND ANY PORTION OF THE DESIGN SERVICES AS SET FORTH HEREIN. Upon such approval, Tenant will cause the Architect to engage with all required consultants and prepare the Project plans and specifications. The design for the Project shall contain the minimum design elements set forth in Exhibit "A" (to be provided at a later date) hereto ("Mandatory Design Elements"), as provided by the City. The City and/or the City's Contractor will have the right to review and reasonably approve and provide comment as the plans and specifications are prepared at the 30%, 60%, 90% and final completion stages, again in its proprietary capacity. Tenant's contract with the Architect shall be subject to the City's reasonable approval and shall contain required contract language, attached as Exhibit "B" (to be provided at a later date). The parties agree that Buildout Improvements will be developed with a design-to-budget approach based upon a budget equal to the sum of the Landlord Contribution and Tenant's Contribution.

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 Building Improvements and such consultant will be invited to attend construction meetings between the City and the Project professionals, contractor, engineer and architect. The City shall maintain ownership of all plans, specifications, permits, or other approvals, and any other work product developed to date in connection with the Project (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. The City will not charge the Project funding 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.

The Guaranteed Maximum Price Agreement 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 project costs**, and (ii) not exceed the amount of the Landlord Contribution. In no event shall the use of the contingency cause for the GMP to be exceeded, and the City's Contractor shall be solely responsible for all costs that exceed the GMP, without any reimbursement from the City.

Prior to the commencement of the Buildout Improvements City shall cause the City's 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 (which shall not exceed the amount of the Landlord Contribution).

In the event Tenant requests any change to the Buildout Improvements, Tenant shall submit such request to the City for the City'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, the City agrees not to unreasonably withhold, delay or condition 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%), which decrease shall be reflected in the same requested change order, or (b) funded in cash the amount by which the unallocated contingency line item falls below twenty percent (20%).

The above provisions are being inserted in order to ensure that City's contribution to the Project does not exceed the amount of the Landlord Contribution (i.e., \$4,750,000.00).

**9. Tenant Contribution to Project:**

As set forth in Section 8, Tenant shall be solely responsible for retaining and funding all design professionals, including the Architect, as may be required for the Project, which Tenant expects to cost Two Hundred Fifty Thousand Dollars (\$250,000), which Tenant shall raise through grants and/or donations (such amount being the “Tenant’s Contribution”). The Tenant’s Contribution shall be used to fund the payment of all design services and soft costs (architectural and/or engineering fees) which may be incurred in connection with the Project and funds permitting to the acquisition of equipment for the theatrical performance space. The City may terminate the Agreement for convenience in the event Tenant fails to demonstrate it has secured funding for the design services/architect and fails to enter into a contract with an Architect within 365 days following City’s Commission’s approval of the Lease.

**10. Use:**

Tenant shall use the Facility solely and exclusively as a theater for its not-for-profit cultural presentations, production of live theatrical performances and uses ancillary thereto, including its administrative and business functions and rehearsal, costume and set design facilities for performances, and as further provided herein. 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 reasonable approval of the City, and subject to the Prohibited Uses in Section 13 and Section 11 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

**11. Café Sublease/Concession:**

With respect to any sublease or concession agreement (or other similar agreement) for the operation of the restaurant or café at the Facility (the “Café”), Tenant shall charge the Café operator market rental rates and other terms and conditions comparable to the rental rates and terms and conditions 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). The Café operator and the economic terms of the agreement with the Café operator shall be subject to approval by the City Manager (or designee), shall have a term that does not exceed Initial Term (provided, however, that such agreement may provide for renewal or extension terms which shall become effective upon any

Renewal Term under the Lease), and shall be automatically assignable to the City in the event of termination of Lease.

Subject to City Manager's reasonable approval, Tenant may offer one concession or other for profit activation by a third party at below market rates to an approved vendor to be identified in the Lease (i.e. Books and Books) and shall not exceed 250 sqft of the Premises. All other concessions or similar for-profit activations by third parties at the Facility offered at below market rates, shall be limited to a term of under 30 days (and may be extended upon written approval from the City Manager to 90 days), shall be ancillary and complementary to the cultural activations and/or programming within the Facility, and shall be subject to the City Manager's (or designees) reasonable approval.

In the event that ad valorem taxes are assessed by the Miami-Dade County Tax Appraiser on the Facility, by reason of this Agreement or by reason of any uses and/or activities of MIND or its sub-lessees, upon or in connection with the Facility, MIND agrees to pay, before delinquency, all such ad valorem taxes and assessments (provided, however, that the foregoing shall not preclude MIND from passing such costs along to the applicable sub-tenants operating within the Facility); however, MIND remains responsible notwithstanding.

**12. Programming:**

N/A.

**13. Prohibited Uses:**

No stand-alone bars (provide 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); Pawnshops and Secondhand dealers of precious metals/precious metals dealers; Accessory outdoor bar counters except in compliance with local law; Tobacco/vape dealers; Check cashing stores; Medical cannabis dispensaries (medical marijuana dispensaries); Convenience store; Grocery stores; Occult science establishments; Pharmacy stores; Souvenir and t-shirt shop; and Tattoo studios.

**14. Key Person Clause:**

In recognition of the success of Tenant's programming, and Mr. Michel Hausmann and Mr. Nicholas Richberg's (each, a "Key

Individual”) instrumental efforts with regard thereto, the City’s selection of the Tenant, and the Key Individual’s participation as part of the Tenant’s organization, is an integral and primary consideration for City’s decision to approve this Lease. Accordingly, each Key Individual shall each be actively involved in the operation, management, and artistic direction of the Tenant and shall devote a substantial majority of their business time in such efforts.

In the event that (i) one of the Key Individuals are no longer a director of, or employed by, the Tenant; or (ii) one or more of the Key Individuals are no longer devoting the necessary time, attention, and resources described above, Tenant shall notify City of such event (a “Key Individual Event”), and if no replacement Key Individual has been identified by the Tenant and reasonably approved by the City Manager within one hundred and eighty (180) days of such Key Individual Event, City shall have the right to terminate the agreement for convenience.

**15. Miami Beach Headquarters:**

Throughout the term of the Lease, MIND must keep 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.

**16. Force Majeure:**

Mutual Force Majeure provision to toll obligations of the parties in the event of an act of god, i.e. hurricane, pandemic etc. (“Force Majeure Event”). In addition, if City performs the Buildout Improvements, any City obligation to complete work shall be subject to extension for unavoidable delays and Force Majeure Events. The period for tolling of obligations under the Lease shall include the time associated with the Force Majeure Event itself, and the period of 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 as a consequence of the Force Majeure Event.

**17. Community Benefit proffers:**

In addition, and notwithstanding any participation in the City’s Community Benefit Fund program, City shall have the right to utilize the Facility, excluding the restaurant/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 MIND in order to open and make the Premises available in connection with a City use thereof) shall be paid by the City. Additional community benefits to be developed with the Administration.

**18. Days and Hours of Operation:**

Subject to the occurrence of Force Majeure Events and closures for reasonable periods for repairs, maintenance, and alterations, during the initial two (2) years of the Term, Tenant shall open and operate the Facility at a minimum four (4) days a week and Tenant shall cause the Café to 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, Tenant shall open and operate the Facility (excluding the Café) at a minimum of six (6) days a week and Tenant shall cause the Café to 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 for the Café and the remainder of the Facility areas open to the public shall not fall on the same day, and accordingly, either the publicly accessible Facility areas or Café shall be open 7 days a week.

**19. Maximum Permitted Closing Time:**

All events and all uses shall conclude prior to 2:00 a.m. unless otherwise approved by the City Manager, in writing; provided, however, that MIND's employees and/or contractors may be permitted to remain at the Facility beyond 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, etc., so long as MIND's activities at the Facility during this time do not disrupt or negatively impact the surrounding neighborhood. In the event of such disruption, the City Manager or his/her designee shall have the right to strictly enforce the hours of operation.

**20. Sponsorship/Naming Rights:**

During the Term, Tenant shall have the right to erect interior signage in recognition of individual(s) or corporate sponsors or donors, including, without limitation banners. Any naming for exterior signage (including, without limitation, any sponsorship/donor names) shall be subject to approval as required by the City's Naming Ordinance, as codified in Chapter 82, Article VI, Sections 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 term of this Lease (including Renewals Terms). All signage and advertising, whether or not related to approved naming, shall comply with signage standards established by the City Code and comply with all applicable building codes, and any other municipal, County, State, and Federal laws, including the design review 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 ("Prohibited Names"): [guns, tobacco, etc.]. Any naming recognition shall be subject to reconsideration in the event of any criminal conviction 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 City in its reasonable discretion), the City may, in its proprietary capacity, require removal of the advertisement or sign.

**21. Audit and Financial Records:**

In addition to the Inspector General Audit rights, the Tenant shall be required to maintain financial records and records of services and programs it provides at the Facility; said records shall be subject to audit by the City.

**22. Reporting to City:**

Notwithstanding the Commencement Date, no less than annual, within 15 days after filing with the Internal Revenue Service, Tenant shall provide City with its 990 tax form. Tenant shall also provide City with quarterly program reports, detailing Benchmark Performance Standards (including total number of participants, total number of Events, and total public benefits provided, such as free or discounted tickets, and the like.)

**23. License/Compliance with Laws:**

Tenant shall be solely responsible for obtaining, or shall cause its food service vendors (including, without limitation, the Café operator) 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. Tenant or the Café operator shall obtain all applicable occupational licenses, and all permits required for sale and service of food. Tenant shall comply with all applicable laws related to sale and service of food and alcohol.

**24. Insurance:**

Tenant shall, at its sole expense, maintain any insurance which may be reasonably required by the City including, without limitation, General Liability, Property All Risk Coverage, Workers 'Compensation required by Florida law; Automobile Liability Insurance; Liquor Liability Coverage.

**25. City Approval of Assignments, Subleases and Other Contracts:**

No assignment, transfer, sublease, concession, or license agreement for the entire Premises (or for the operation of the Café, as set forth herein) shall be valid without the City's written consent (at City's sole and absolute discretion), which consent, if given, may require the contracting party to pay fair market rent/value for the use of the Premises. Notwithstanding the foregoing, Tenant will be permitted to enter into (i) agreements consistent with the permitted uses and (ii) subleases of less than the entire Premises, subject to approval by the City Manager, which approval shall not be unreasonably withheld or delayed.

**26. Termination for Cause:**

City may terminate the agreement for cause upon an uncured Event of Default by Tenant. Events of Default shall include: failure to observe or perform any of the covenants or provisions of the Agreement, which continues for thirty (30) days following written notice (with the standard extension for additional time as may be required if diligently pursuing cure etc.); Insolvency of Tenant; any wrongful assignment, sublease or transfer by Tenant not authorized by the Agreement; failing to achieve benchmark standards for two consecutive years; and failure of Tenant to maintain its exempt organization status as a not-for-profit corporation that exists for charitable or educational purposes.

**27. Termination for Convenience:**

City may terminate the Agreement for convenience: (1) in the event the City Commission, at its sole and absolute discretion, does not budget and appropriate sufficient funds for the Buildout Improvements; (2) the City does not obtain all regulatory approvals required for the Buildout Improvements; (3) Tenant does not secure funding and/or enter into contract with Architect within 365 days after Lease approval by City Commission; and (4) Tenant fails to replace Key Individual.

**28. City Representation on MIND Board:**

City Manager or designee shall serve as a voting member of the Miami New Drama, Inc.'s board of directors, with City Manager having the option to designate one (1) additional representative to serve as a non-voting member of Tenant's board of directors. The City board appointees shall have the the same rights afforded to all Tenant Board members.

**29. Promotion of City of Miami Beach's Lead Sponsorship Support of MIND:**

In recognition of the City of Miami Beach's foundational support of MIND, the Tenant shall promote the City of Miami Beach's cultural partnership with Tenant on Tenant's website,

digital and social media, at performances, and in all collateral material where corporate sponsors or donors are referenced. In addition, Tenant shall, in all appropriate materials, platforms, and correspondence with the media, market itself as being “headquartered” or “based” in the City of Miami Beach.

### **30. Extension of Colony Theater**

As part of Tenant’s commitment to be “headquartered” in the City of Miami Beach for the entire term of this Lease (including renewal periods thereof), and in furtherance of the Parties’ mutual desire to ensure the Tenant’s continued activation and operation of the Colony Theater, Tenant agrees to an extension of the term of its Management Agreement for the Colony Theater to align with the term (including renewal periods) of this Lease. This Lease and the Management Agreement will have a cross-default provision so that an uncured material event of default, as defined in the Management and Lease Agreement, of the Management Agreement shall constitute an event of default under this Lease (and vice versa).