

RESOLUTION NO. 2016-29569

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE WRITTEN RECOMMENDATION OF THE CITY MANAGER (AS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION) AND WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING, IN SUBSTANTIAL FORM, THE ATTACHED AGREEMENT BETWEEN THE CITY AND MIAMI THEATER HUB, INC. ("MIAMI NEW DRAMA") FOR THE OPERATION, MANAGEMENT, MAINTENANCE, AND PROMOTION OF THE COLONY THEATRE; SAID AGREEMENT AUTHORIZING ANNUAL FUNDING IN THE AMOUNT OF \$170,000.00, SUBJECT TO ANNUAL BUDGET APPROPRIATION; HAVING AN INITIAL TERM OF TWO (2) YEARS, COMMENCING ON OCTOBER 1, 2016, AND ENDING, ON OCTOBER 31, 2018, WITH AN OPTION TO EXTEND THE AGREEMENT, AT THE CITY' S SOLE DISCRETION, FOR UP TO ONE (1) ADDITIONAL FIVE (5) YEAR TERM, AND ONE (1) ADDITIONAL THREE (3) YEAR TERM.

WHEREAS, at the April 13, 2016 City Commission meeting, Vice-Mayor Micky Steinberg, Commissioner Michael Grieco, and Commissioner Joy Malakoff sponsored a referral to both the Cultural Arts Council (CAC) and the Finance and Citywide Projects Committee (Finance Committee) to consider having Miami New Drama manage the Colony Theater as a pilot program; and

WHEREAS, the City of Miami Beach is committed to promoting the cultural arts, and is home to an internationally recognized ballet company, orchestra, art fair and museums; and

WHEREAS, live theater programming is the missing component of the well-rounded cultural personality that sets the City of Miami Beach apart from the rest of the region; and

WHEREAS, in assessing the need for quality live theater, the CAC has strongly recommended that the management of the Colony be transferred to a professional resident theater company that would present a specific number of its own extended-run productions each year, while still making the theater available and affordable to its current non-profit users; and

WHEREAS, Miami New Drama, a newly founded not-for-profit 501(c)3 corporation, is a theater production company committed to theatrical excellence and theater-making as a means of social engagement, cultural conversation, and human interaction. The company presents world-class relevant work by American, Latin American, and international artists designed for the intersections of Miami Beach's multicultural 21st century audience; and

WHEREAS, Miami New Drama's inaugural production, *The Golem of Havana*, was the highest grossing theater show in recent history in the Greater Miami area, and demonstrates the transformative potential of having a professional resident theater company at the Colony Theater; and

WHEREAS, along with secured international, national, and local partnerships, Miami New Drama has earned the support of the Miami Beach Chamber of Commerce, which passed a resolution urging the City Commission to approve an agreement, even if on a trial basis, to authorize Miami New Drama to operate within the Colony Theater and to develop a full season which will improve the usage of the Colony Theater, for the benefit of residents, tourists, and businesses alike; and

WHEREAS, on May 12, 2016, Miami New Drama's Producing Artistic Director, Mr. Michel Hausmann, presented Miami New Drama's vision to the members of the CAC, who voted unanimously in favor of the company's proposal to oversee the artistic direction and operation of the Colony Theater beginning FY 2016-2017; and

WHEREAS, the Finance Committee met on May 20, 2016 and recommended support of the proposal, directed the Administration to negotiate a management agreement that would include options for City funding; and requested that staff return to the Finance Committee with a draft of the agreement for review and consideration; and

WHEREAS, on June 8, 2016, the City Commission accepted the recommendation of the Finance Committee, and staff negotiated a draft Management Agreement with Miami New Drama; and

WHEREAS, on July 22, 2016, Finance Committee recommended to move forward with the Management Agreement for the Colony Theatre with the following changes:

1. The City annual contribution should be adjusted to \$170,000 annually (with the Cultural Affairs Endowment as an alternate funding source to cover an additional \$70,000, should no other source be identified);
2. The City to cover utility costs at the Colony Theatre; and

WHEREAS, the Administration has modified the Management Agreement to reflect the Finance Committee's recommendation from July 22, 2016, and recommends the City provide Miami New Drama with a contribution toward utilities equal to the amount incurred in the current fiscal year, which are projected to be \$80,000, with all costs in excess of \$80,000 to be the responsibility of Miami New Drama; and

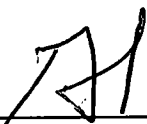
WHEREAS, the Management Agreement is attached as Exhibit A to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the Strategic and Operational Plan presented by Miami New Drama is attached as Exhibit B to the Commission Memorandum accompanying this Resolution and, as noted in the budget proposal; and

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA accept the written recommendation of the City Manager (as set forth in the City Commission memorandum accompanying this Resolution) and waiving, by 5/7th vote, the competitive bidding requirement, finding such waiver to be in the best interest of the city, and approving, in substantial form, the attached agreement between the City and Miami Theater Hub, Inc ("Miami New Drama") for the operation, management, maintenance, and promotion of the Colony Theatre; said agreement authorizing annual funding in the amount of \$170,000.00, subject to annual budget appropriation; having an initial term of two (2) years, commencing on October 1, 2016, and ending on October 31, 2018, with an option to extend the agreement at the City's sole discretion for up to one (1) additional five (5) year term, and one (1) additional three (3) year term.

PASSED and ADOPTED this 14th day of September, 2016.

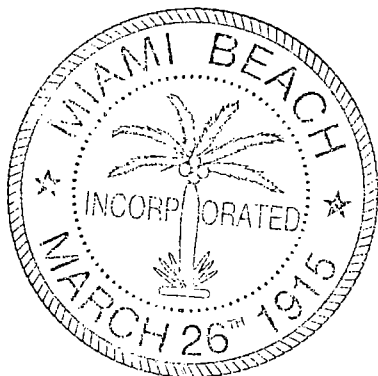
ATTEST:



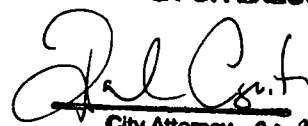
Rafael E. Granado, City Clerk



Philip Levine, Mayor



**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney *RAI*

8/17/16
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: September 14, 2016

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE WRITTEN RECOMMENDATION OF THE CITY MANAGER (AS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION) AND WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING, IN SUBSTANTIAL FORM, THE ATTACHED AGREEMENT BETWEEN THE CITY AND MIAMI THEATER HUB, INC. ("MIAMI NEW DRAMA") FOR THE OPERATION, MANAGEMENT, MAINTENANCE, AND PROMOTION OF THE COLONY THEATRE; SAID AGREEMENT AUTHORIZING ANNUAL FUNDING IN THE AMOUNT OF \$170,000.00, SUBJECT TO ANNUAL BUDGET APPROPRIATION; HAVING AN INITIAL TERM OF TWO (2) YEARS, COMMENCING ON OCTOBER 1, 2016, AND ENDING, ON OCTOBER 31, 2018, WITH AN OPTION TO EXTEND THE AGREEMENT, AT THE CITY'S SOLE DISCRETION, FOR UP TO ONE (1) ADDITIONAL FIVE (5) YEAR TERM, AND ONE (1) ADDITIONAL THREE (3) YEAR TERM.

RECOMMENDATION

City Administration recommends in favor of terms and conditions of the proposed Management Agreement and recommends the Mayor and City Commission adopt the attached resolution.

ANALYSIS

BACKGROUND

The CAC has long lamented the dearth of live drama in Miami Beach. The City is home to the region's major ballet company, orchestra, art fair and museum; live theater is the missing component of the well-rounded cultural personality that sets Miami Beach apart from the rest of the region. In assessing the need for theater, the CAC has strongly recommended that the management of the Colony be transferred to a professional resident theater company that would present a specific number of its own extended-run productions each year, while still making the theater available and affordable to its current stable of non-profit users. Given time to cultivate an audience, the Colony's resident company could become the leading regional theater of the area, filling the gap in our current cultural landscape. South Florida has not had a nationally-respected regional theater since the closing of the Coconut Grove Playhouse many years ago.

Global Spectrum took over management of the City's theaters on October 1, 2008. Since that time, they have made improvements to operations, marketing, customer service, and capital. However, the Colony Theater is operational for only 30% of the year, with regular event attendance operating below 40%. The facility is currently operated as a rental venue with little artistic oversight or curatorial method and has operated at a loss ranging from \$30,000 to \$100,000 for the last several fiscal years.

Miami New Drama's inaugural production, *The Golem of Havana*, presented an alternative to what the Colony Theater could be by producing the following results:

- More than 6500 people attended the show in its extended 5 week run breaking every record for past productions at The Colony Theater
- 40% of the performances were completely sold out
- Average capacity was well over 70%
- The show garnered national attention and received rave reviews from The Miami Herald, The Huffington Post and Florida Theater on Stage, among others.
- Grossed over \$250,000
- The highest grossing theater show in Miami's recent history

Under the direction of multiple-award winning director and playwright Moises Kauffman and Michel Hausmann, Miami New Drama is a newly founded not-for-profit 501(c)3 presenting and producing organization committed to theatrical excellence and theater-making as a means of social engagement, cultural conversation and human interaction. The company presents world-class relevant work by American, Latin American and international artists designed for the intersections of Miami Beach's multicultural 21st century audience. By sharing work where cultures dialogue and communities intersect, Miami New Drama aims to reach audiences as diverse as the city itself.

Miami New Drama's productions include an eclectic mix of original plays, musicals, classics and world premieres, including work commissioned specifically for Miami New Drama. These productions will utilize a mix of the best local, national and international talent to incubate work from scratch. Actors, directors and designers culled from the Miami community and beyond will create work that reflects the best of Miami Beach, while highlighting some of the best theatrical talent in the world.

ANALYSIS

At the December 9, 2015 Commission meeting, Commissioners Steinberg and Malakoff referred a discussion of how to incentivize local theater in Miami Beach to both the Cultural Arts Council (CAC) and the Finance and Citywide Projects Committee (FCPC). This discussion was prompted by the announcement of a major new professional theater company, Miami New Drama, under the direction of multiple-award winning director and playwright Moises Kauffman and Michel Hausmann, and the challenges faced by its month-long run of *The Golem of Havana*, which opened at the Colony Theater on January 16, 2016. The subject was discussed at length by the CAC at its meeting on January 7, 2016. Since this time, Miami New Drama has worked diligently with staff to develop a comprehensive strategic and operational plan that would allow for a presenting and producing organization to manage the Colony Theater.

At the April 13, 2016 City Commission meeting, Commissioners Steinberg, Grieco, and Malakoff sponsored another referral to both the CAC and FCPC to consider having Miami New Drama manage the Colony Theater as a pilot program. On May 12, 2016, Mr. Hausmann presented Miami New Drama's vision to the members of the CAC, who voted unanimously in favor of the organization's proposal to oversee the artistic direction and operation of the Colony Theater beginning FY 16-17. The Finance and Citywide Projects Committee (FCPC) met on May 20, 2016 and recommended in support of the proposal, directed staff to negotiate a Management Agreement that would include options for City funding and to return to the FCPC with a draft of the agreement for review and consideration. On June 8, 2016, the City Commission accepted the recommendation of the FCPC and staff negotiated a draft Management Agreement with Miami New Drama.

The following key terms and conditions were presented to the FCPC on July 22, 2016:

- The City of Miami Beach shall provide funding to Miami New Drama in the amount of \$100,000 in quarterly installments, payable within fifteen (15) days following the end of each Quarter
- The agreement shall be for an initial term of two (2) years, commencing on October 1, 2016 and ending on September 30, 2018. At its sole option and discretion, the City may extend this agreement for up to one (1) additional five (5) year term, and one (1) additional two (2) years and 364 day term.
- Miami New Drama will honor event rentals which have been booked prior to the date of the execution of this Agreement and receive from the City all revenues from the agreements. Miami New Drama shall also honor any rent waivers that have been approved by Resolution of the Mayor and City Commission.
- Miami New Drama shall cause at least 75 events at the facility for each contract year, serving more than 30,000 visitors per year
- Miami New Drama shall provide day-to-day operational and administrative services in support of its management activities to ensure that the facility shall be operated, managed and maintained in a first class manner, including but not limited to, acquisition of services, equipment, supplies and facilities; maintenance and property management; security; personnel management; record-keeping; collections and billing; and promotional activities, including but not limited to public relations, social media and paid marketing outreach.
- Miami New Drama shall provide quarterly reports to the City detailing event records and programmatic plans, marketing and promotional activities, maintenance and capital work, and operational/administrative budgets.
- The City remains responsible for maintenance of the major building systems (i.e. HVAC, roof, plumbing, electrical, and elevator) and for long term building capital improvements.
- Miami New Drama shall be responsible for the purchase of any equipment related to the venue that needs to be replaced due to normal wear and tear.

On July 22, 2016, The FCPC recommended to move forward with the MIND Management Agreement for the Colony Theatre with the following changes:

1. The City annual contribution should be adjusted to \$170,000 annually and recommended using the Cultural Affairs Endowment as an alternate funding source to cover the additional \$70,000, should no other source be identified.
2. The City to cover utility costs at the Colony Theatre.

The Administration has modified the Management Agreement to reflect this directive. However, with regard to the utility costs the Administration recommends the City provide MIND with a contribution toward utilities equal to the amount incurred in the current fiscal year, which are projected to be \$80,000. All costs above \$80,000 would be the responsibility of MIND. This will provide MIND with an incentive to manage utility usage. Staff has discussed the utility contribution with MIND and they have agreed to the Administration's recommendation. Further, the Office of Management and Budget has identified that the \$170,000 as well as the \$80,000 for utilities can be funded from the Colony Fund. Additional terms and conditions can be found in the attached draft Management Agreement (Exhibit A).

Also attached is the Strategic and Operational Plan presented by Miami New Drama (Exhibit B) which provides the following:

- Company Overview
- Budgets
- Staff
- Maintenance
- Affiliations
- Management Support Documents
- Grant Support
- Public Relations/Marketing Plan

CONCLUSION

The CAC recommended that the management of the Colony be transferred to Miami New Drama as a "pilot program." Miami New Drama will act as the resident professional theater company, producing its own shows while continuing to make the theater available to its nonprofit users, benefitting our residents and visitors while also promoting Miami Beach as an international cultural destination. City Administration recommends in favor of terms and conditions of the proposed Management Agreement.

KEY INTENDED OUTCOMES SUPPORTED

Improve Alliance With Key Business Sectors, Namely Hospitality, Arts, & International Business With A Focus On Enhanced Culture, Entertainment, & Tourism

FINANCIAL INFORMATION

The City contribution to MIND will be \$170,000 annually, plus the City is to cover utility costs at the Colony Theatre. The Administration recommends the utility contribution be capped at \$80,000 annually.

Amount 1	170,000	Account 1	011.0383
Amount 2	90,000	Account 2	011.0383.000314 011.0383.000317 011.0383.000318
Total	260,000		

Legislative Tracking

Tourism, Culture, and Economic Development

Sponsor

Commissioners Steinberg, Malakoff, Vice-Mayor Grieco, & co-sponsor Commissioner Arriola

ATTACHMENTS:

Description

- ▢ MIND Colony Reso
- ▢ DRAFT MIND Colony Agreement

**MANAGEMENT AGREEMENT BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND**

**MIAMI THEATER HUB, INC D/B/A MIAMI NEW DRAMA
FOR THE MANAGEMENT OF THE COLONY THEATRE**

THIS AGREEMENT, is made and executed as of this ____ day of _____, 2016 ~~{(Effective Date)}~~, by and between the CITY OF MIAMI BEACH ~~[the "CITY"]~~, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139—, and MIAMI THEATER HUB, INC ~~{D/B/A MIAMI NEW DRAMA}~~ ~~{("MIND")}~~, a Florida not-for-profit corporation, whose principal address is 169 East Flagler Street, PH, Miami, FL 33131-.

BACKGROUND

City is the owner of the ~~Colony~~ OLONY Theatre ~~HEATRE~~ ~~[the "COLONY"]~~, located at 1040 Lincoln Road, Miami Beach, Florida 33139, and which is more particularly described and depicted in Exhibit "A" attached hereto and made a part hereof ~~(the "Facility" or the "Colony Theatre")~~.

MIND is a Florida not-for-profit (501(c)3) arts organization which seeks to showcase South Florida as theater destination while at the same time increase international awareness and cultural exchange through the presentation of theater plays of all genres, including but not limited to musicals, drama, classics and world premieres, as well as work commissioned specifically for MIND.

At the December 9, 2015 Commission meeting, Commissioners Steinberg and Malakoff referred fora discussion of incentives for how to incentivize local theater in Miami Beach to both the Cultural Arts Council (CAC) and the Finance and Citywide Projects Committee (FCPC).

The subject was discussed at length by the CAC at its meeting on January 7, 2016. Since this time, Miami New Drama has worked diligently with staff to develop a comprehensive strategic and operational plan that would allow for a presenting and producing organization to manage the COLONY.

At the April 13, 2016 City Commission meeting, Commissioners Steinberg, Grieco, and Malakoff sponsored another referral to both the CAC and FCPC to consider having Miami New Drama manage the COLONY as a pilot program.

On May 12, 2016, Michel Hausmann on behalf of Miami New Drama presented MINDiami New Drama's vision to the members of the CAC, who voted unanimously in favor of the organization's proposal to oversee the artistic direction and operation of the Colony Theatre beginning Fiscal Year 2016-2017.

The FCPC met on May 20, 2016 to consider the pilot program. The FCPC recommended in support of the proposal, directed staff to negotiate a Management Agreement that would include options for City funding and to return to the FCPC with a draft of the agreement for review and consideration.

On June 8, 2016, the City Commission adopted Resolution No. 2016-29429 accepting the recommendation of the Finance and Citywide Projects Committee, directing the Administration to negotiate a management agreement with MINDiami New Drama Theater Company to become the resident company and venue manager for the Colony Theatre as a pilot program.

After negotiating with the City Administration, the FCPC reconsidered the financial terms on July 22, 2016 and recommended increasing the City's contribution to \$170,000 annually, along with making a contribution towards utilities.

On _____, the City Commission adopted Resolution No. _____ approving an agreement with MIND for management of the Facility.

City desires to engage MIND, and MIND desires to accept the engagement, to provide management services for the Facility on the terms and conditions set forth herein.

NOW THEREFORE, recognizing the aforesated recitals as true and correct and incorporating herein, and in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

SECTION 1. ~~SECTION 1.~~ Definitions.

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

_____"Affiliate" -- an entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 51% of the voting power in the controlled entity.

_____"City" -- as defined in the first paragraph of this Agreement.

_____"City Commission" -- the governing and legislative body of the City.

_____"City Manager" -- the chief executive officer of the City or such person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement. The City Manager's designee for purposes of this Agreement shall be Max Sklar, the Director of the Tourism, Culture and Economic Development Department.

_____"Commencement Date" -- as defined in Section 2.

_____"Contract Year" -- each one year period beginning October 1st, and ending September 30th.

_____"Effective Date" -- provided that this Agreement has been approved by the City Commission and executed by City and MIND, the date as defined in the first paragraph of this Agreement.

_____"Event" or "Show" -- all uses which involve a scheduled beginning and ending time, typically all within the same day. With respect to "Series" (as such term is hereafter defined), each Performance within the Series shall constitute an Event or Show.

_____"Event Expenses" -- any and all expenses incurred or payments made by MIND in connection with the occurrence of an Event at the Facility, including, but not limited to, costs for staffing (including production managers and other Event staff) and costs relating to set-up and clean-up within the facility.

_____"Expiration Date" -- as defined in Section 2

_____"Facility" -- as defined in the Background Section of this Agreement and as depicted in Exhibit A hereto.

_____"Facility Rentals" -- temporary use of the Facility at specific interval of time pre-

determined and agreed upon by MIND.

"Fiscal Year" -- each one year period beginning October 1st and ending September 30th.

"Governmental Requirements" -- all laws, ordinances, rules, regulations, statutes, policies and procedures (including administrative guidelines), and other legal requirements of any governmental body or authority or any agency thereof (including, without limitation, federal, State, County, and municipal).

"Net Operation Loss/Profit" -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

"Operating Expenses" -- any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by MIND in promoting, operating, maintaining, insuring and managing the Facility, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs, supplies, materials, utilities, costs of any interns and independent contractors, advertising, all costs of maintaining the Facility as required by this Agreement, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, amounts expended to procure and maintain permits and licenses, sales taxes imposed upon rentals, professional fees directly relating to the operation of the Facility, printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, telephone switch and telecommunications services, artist and talent fees, costs, and expenses, show settlement charges, security expenses, travel and entertainment expenses in accordance with MIND-City travel ~~normal~~ policies, the cost of employee uniforms, safety and medical expenses, exterminator costs, costs relating to the maintenance of signage inventory and systems, the cost of compliance with Governmental Requirements, all premiums for insurance carried by MIND pursuant to Section 14, and all other costs of operating the Facility. Operating Expenses shall not, however, include any costs of litigation between City and MIND, or any other costs that are specified in this Agreement as costs to be paid by City. All Operating Expenses shall be determined in accordance with generally accepted accounting principles consistently applied and recognized on a full accrual basis.

"Operating Revenues" -- any and all revenues of every kind or nature derived from operating, managing or promoting the Facility, including, but not limited to: ticket sales, concession fees,

~~2.2.~~ ~~2.2~~ Renewal Term(s). —At its sole option and discretion, the City may extend this Agreement for up to one (1) additional five (5) year terms, and one (1) additional two (2) years and 364 day term, (a Renewal Term), by providing MIND with not less than 365 days prior written notice prior to the Expiration Date.

~~4.3.~~ —

~~4.4.~~ —

~~4.5.2.3.~~ ~~2.2.1~~ —Notwithstanding anything in this Section 2, in the event before the end of the Initial Term or any of the Renewal Terms-, MIND decides not to renew the Agreement, it shall provide the City Manager with written notice of its intent not to renew at least 365 days prior to the Expiration Date.

~~SECTION 2.~~ ~~SECTION 3.~~ SECTION 3. COLONY THEATRE FACILITY.

The Facility subject to this Agreement shall be those facilities and spaces more specifically described in Exhibit "C."

~~SECTION 3.~~ ~~SECTION 4.~~ SECTION 4. OPERATION AND MANAGEMENT OF THE COLONY.

~~3.1.4.1.~~ General Scope. City hereby engages MIND to operate, manage, maintain, promote and market the Facility during the Term, upon the terms and conditions hereinafter set forth.

~~4.2.~~ Manager of the Facility. MIND accepts the engagement and agrees to operate, manage, promote and market the Facility in a manner consistent with other similar facilities. Subject to the terms of this Agreement, MIND shall be, as agent for the City, the sole and exclusive manager of the City to operate, manage, maintain, promote and market the Facility during the Term. In such capacity, except as otherwise expressly reserved under this Agreement to the City, and/or except for such matters as are subject to the approval of the City or City Manager, MIND shall have exclusive authority over the management and operation of the Facility and all activities therein, subject to subsections 4.3, 4.4 and 4.5 hereof.

~~4.3.~~ Permitted Uses. MIND shall use the Facility solely and exclusively primarily as a ~~venue~~ public auditorium for its not-for-profit cultural presentation company. The Facility shall be used primarily as venue for top-quality cultural entertainment, which may include live performances or pre-recorded presentations. Notwithstanding the foregoing and

pursuant to Section 5.4 of this Agreement., ~~t~~~~The venue~~ Facility may also be used as a live theatrical entertainment venue and public auditorium, or any combination thereof, and for such ancillary uses as are customarily related to such primary use, including, without limitation, broadcasting, recording, filming, private parties or functions, summer and winter children's theater camps , in each case in conjunction with an Event or rental function then being held; and sale of merchandise related ~~t~~to any Event then being held. The Facility does not include dedicated parking for the building. Patrons of Events may park in public parking lots and garages if and to the extent available, upon paying the applicable parking charges. —Such uses shall include only the following: Performance venue, Events facility, Rehearsal space, MIND administrative offices, Sale of merchandise related to an Event then being held, Private parties and/or functions in conjunctions with an Event then being held, As an ancillary use, third party rentals as may occur from time to time; Facility for film / television / photographic/ audio productions. The sale of food and beverage concessions shall not be permitted by MIND, as said services, in connection with the Shows or Events is being provided by Segafredo, as more particularly described in subsection 5.4(n).

4.4. —No other uses shall be permitted without the prior written approval of the City Manager, which approval may be granted or withheld in his/her sole discretion. Any such other use which the City Manager approves must, however, be in accordance with (i) the Articles of Incorporation and other charter documents of MIND; (ii) all laws and regulations applicable to not-for-profit entities; (iii) all applicable Governmental Requirements; and (iv) all ad valorem tax exempt uses of property under Chapter 196, Florida Statutes.

4.5. Prohibited Uses. It is understood and agreed that the Facility shall be used by MIND during the Term only for the stated purposes in subsection 4.3, and for no other purposes or uses whatsoever, without express written permission of the City Manager. Notwithstanding anything contained in subsection 4.3, or any other term or condition of this Agreement: (1) MIND will not make or permit any use of the Facility that, directly or indirectly, is forbidden by any Governmental Requirement, or that may be dangerous to life, limb or property; and (2) MIND may not commit waste on the Facility, use the Facility for any illegal purpose, commit a nuisance on the Facility, or allow any toxic, hazardous or dangerous substance to be brought into the Facility or stored therein (other than small quantities of materials customarily used in the operation of a live theatrical performance and production venue, which shall be used and stored in compliance with applicable law). In the event that MIND

uses the Facility for any purposes not expressly permitted herein, then the City through its City Manager may declare this Agreement in default and, in addition to all other remedies available to City, restrain such improper use by injunction or other legal action, with or without notice to MIND.

4.6. Cessation/Suspension of Approved Use(s) and/or Business Activity(ies).

Notwithstanding anything contained in this Agreement, and except for the Permitted Uses expressly set forth in subsection, 4.3 and in the event that another particular use(s) and/or business activity(ies) has(ve) been approved by the City Manager, and the City Manager thereafter, upon reasonable inquiry, determines that the continuation of such use(s) and/or activity(ies) is(are), or may be, inconsistent, contrary to, and/or detrimental to the Permitted Uses set forth in this Agreement, and/or to the health, safety and/or welfare of the residents of and visitors to the City of Miami Beach, then the City Manager, upon thirty (30) days prior written notice to MIND of same, may revoke, suspend, and/or otherwise disallow the objectionable uses(s) and/or business activity(ies), and MIND shall immediately cease and desist in providing, and/or continuing with, said use(s) and/or business activity(ies) within the time period and in the manner prescribed in the City, subject to such additional guidelines, as may be determined and established by the City Manager, in his/her sole and reasonable discretion and judgment

~~SECTION 4.~~

~~SECTION 5.~~

~~SECTION 4.~~ SECTION 5. ~~SECTION 5.~~ **SCOPE OF SERVICES.**

5.1. General. MIND shall perform and furnish management services, personnel, and systems and materials, as are appropriate or necessary to operate, manage, supervise, maintain, promote and market the Facility in a manner consistent with the operations, management, promotions and marketing of other similar first-class facilities.

5.2. Required Number of Events; Continuous Operation; Conclusion of Events. In order to ensure the continuous operation of the Facility, and commencing on the October 1, 2016 MIND shall cause at least ~~150~~ 75 Events to be held at the Facility for each Contract Year (and proportionately for any partial Contract Year) during the Term. The aforesaid 150 Events shall be calculated by counting each separate Event in a Series.

a. MIND shall cause the Facility to be available to open on a year round basis, subject to closures for reasonable periods for rehearsal, set design, repairs, maintenance and

alterations. 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 taking down and/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 and/or negatively impact the surrounding neighborhood. In the event of such disruption, the City Manager and/or his/her designee shall have the right to either strictly enforce the hours of operation, or impose reasonable guidelines upon MIND as a condition to keeping the Facility open for the aforesated purposes (beyond 2:00 a.m.)

6.1. —

6.2. —

~~6.3.5.3.~~ Booking Policies. The City and MIND agree and acknowledge that the Facility will be used by MIND for cultural and entertainment events, but that MIND may also, from time to time, rent the Facility to third party presenters consistent with the terms herein. Except as otherwise provided herein, MIND shall have the sole authority to approve the scheduling of any Event in the Facility and Events requiring or having co-promotions and may refuse to book any type or category of events for any reason whatsoever consistent with City ordinances and regulations. MIND shall have no obligation to book any type or category of Events (or specific Event) that are inappropriate or unprofitable, as reasonably determined by MIND, or which may in any way interfere with the day to day activities of area residents and businesses. **Notwithstanding the preceding, or any other term or condition of this Agreement, the City Manager shall have the right to prohibit certain Events or uses from occurring at the Facility, upon the City Manager's reasonable determination that such Event or use might present unreasonable safety concerns, or violate (or otherwise not comply with) Governmental Requirements.** Notice of any such determination shall be sent by written notice to MIND within thirty (30) days after the City Manager has received the quarterly booking report from MIND that specifies the potential Event.

a. -Attached hereto as Exhibit "F-" is a list of Events or rentals which have been booked prior to the date of execution of this Agreement. MIND shall honor all such bookings and shall receive from City, or its agents, all revenues from the agreements that have already been paid and shall receive all remaining revenues under the agreements. MIND shall also honor any rent waivers that have been approved by Resolution of the Mayor and City Commission of the City.

6.4.5.4. Specific Services. Without limiting the generality of the foregoing, MIND shall perform all of the following services, all without the necessity of first obtaining City's approval (except where otherwise expressly required in this Agreement), and all of which shall be performed by MIND in a manner consistent with the management and operation of other similar first class facilities: employ, supervise, and direct all employees and personnel consistent with the provisions of this Agreement. All employees and/or subcontractors shall be employees and/or subcontractors of MIND, its Affiliates or third parties, and not of City. MIND shall be solely responsible for assuring that the Facility is adequately staffed with competent, qualified personnel to fulfill its responsibilities under this Agreement;

a. administer relationships with all third parties for the use, day to day maintenance and operation of the Facility, initiate and participate in any and all negotiations, renewals and extensions relating to such third party relationships, and enforce contractual agreements concerning any such third party relationships;

b. negotiate, execute in its name as agent for the City, deliver and administer any and all licenses, occupancy agreements, sponsorship agreements (excluding name-in-title agreements), rental agreements, booking commitments, concession agreements (excluding food and beverage concessions and valet parking agreements), supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, general maintenance stage equipment, staffing and personnel needs, including guards and ushers, telephone, extermination and other services which are necessary or appropriate, and all other contracts and agreements in connection with the management, maintenance, promotion and operation of the Facility; provided that (1) if any such license, agreement, commitment or contract has a term that extends beyond the remaining Term, such license, agreement, commitment or contract shall provide that it is automatically assigned to City as of the expiration or termination date of this Agreement

and that the City Manager may terminate any such agreement without payment thereafter at any time upon not less than ten (10) days written notice; (2) MIND shall have the sole authority to approve the scheduling of any Event to be held at the Facility, subject to the limitations and requirements of this Agreement; and (3) any contract entered into between MIND and a subsidiary and/or Affiliate company shall be at terms and for prices customarily charged by such subsidiary and/or Affiliate company for comparable goods and services elsewhere at rates that are competitive within the industry;

c. maintain the Facility (excluding all structural components thereof and all electrical, HVAC, life safety, mechanical, plumbing, elevator and other systems and equipment), which shall be maintained by the City, in a good and clean condition consistent with other similar first class facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted. Maintenance responsibility shall include, without limitation, preventative and any and all other maintenance and as required in Exhibit "C" to this Agreement (entitled "City of Miami Beach Minimum Specifications for Maintenance of the Colony") and MIND shall keep on-site maintenance manuals and records reflecting all of MIND's maintenance activities, all of which shall be available for inspection by the City Manager upon request. MIND shall submit to City Manager periodic (not less than quarterly) reports specifying all maintenance work performed during such period, which reports shall be used by the City's Tourism, Culture and Economic Development Department (or its consultant) as part of an annual City maintenance inspection and review. Format and content of reports shall be agreed upon by both parties.

d. rent, lease, or purchase all equipment and maintenance supplies necessary or appropriate for the day-to-day operation and maintenance of the Facility;

~~a-c.~~ establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts, and any other commitments relating to the Facility to be negotiated by

MIND in the course of its management, operation, booking and promotion of the Facility; provided, however, that MIND shall, on or before the Commencement Date, submit its proposed initial rates and rate schedule to the City Manager for his/her review and written approval (which review/approval shall not be unreasonably withheld, conditioned or delayed). ~~and, thereafter~~ MIND shall consult with the City Manager about any adjustments to the rates and rate schedules at the Facility to be made by MIND, and similarly secure the City Manager's written approval (which review/approval shall not be unreasonably withheld, conditioned or delayed) prior to MIND's implementation, of same;

f. pay when due, all Operating Expenses from MIND's own funds;

g. after consultation with the City Manager and the City Attorney, and subject to approval by the City Attorney or his designee, institute as agent for the City, the costs of which shall be included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility (using legal counsel approved by the City Attorney), including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility; institute on MIND's own behalf (and not as agent for City) without consultation or approval of the City, the costs of which shall be included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City or MIND or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

~~h.~~ h. maintain a master set of all Event records, booking records and schedules for the Facility (which shall be available for inspection by the City Manager upon request);

i. provide day-to-day administrative services in support of its management activities to

ensure that the Facility shall be operated, managed, and maintained and performed in a first class manner consistent with similar first class facilities including, but not limited to, acquisition of services, equipment, supplies and facilities; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

e.j. engage in advertising, solicitation, and promotional activities necessary to effectively market the Facility and Events, and manage related social media platforms for the Facility. Any marketing materials created for the Facility shall be approved, in writing, by the City Manager, in advance of being implemented, and will remain the exclusive property of MIND. In connection with its activities under the terms of this Agreement, MIND is required to use the logo and brand identity of the City of Miami Beach, and of the Facility, as approved by the City Manager;

k. act as a collection agent for the City on sales taxes as required from for -profit facility rentals of the Facility and remit to the State of Florida such sales taxes;

l. comply with all City Agreements;

m. Except as otherwise approved by the City Manager, MIND shall not license or allow the use of any portion of the Facility to other than short-term users (i.e., less than sixty (60) consecutive days). MIND shall require that all users of the Facility provide certificates of insurance evidencing appropriate insurance and any other insurance required by the applicable license, use or occupancy agreement. Copies of these certificates shall be furnished to the City Manager prior to any Event or use. Such insurance shall be kept in force at all times by all licensees, users, lessees and concessionaires. All liability policies shall name the City and MIND as additional insureds. MIND shall also require all users of the Facility to execute (among the terms of the license or occupancy agreement) an agreement to indemnify, defend and hold harmless the City. MIND standard license or occupancy agreement shall, at a minimum, include the insurance and indemnity requirements contained herein; shall further be subject to the prior review and approval of

the City Manager and City Attorney's Office; and – if and when approved – shall be attached as Exhibit "D" hereto.

n. MIND acknowledges the City has entered into a Lease with Colony Theater Café, Inc. (d/b/a Segafredo) ("Segafredo") for the 769 sqsq. ft. restaurant/café space, 296 sqsq. ft. in the Colony Theatre lobby for use of the food and beverage concession and storage area, and 306 sqsq. ft. adjacent to the Colony Theatre building for a dumpster/storage area (the "Segafredo Lease").—MIND also acknowledges that Segafredo owns and maintains a liquor license in connection with for the aforementioned Segafredo Lease. In exchange for operating the Concession stand in the Colony Theatre lobby, Segafredo is responsible to pay 50% of the water consumption of the Colony Theatre building on a monthly basis, as invoiced by the City, and may use the restrooms in the Theatre lobby at all times except for when a Show is in progress. This Agreement is subject to the Segafredo Lease or any other subsequent leases which the City may enter into in connection with the food and beverage concessions at the Colony Theater.

~~SECTION 7.~~SECTION 6. ~~SECTION 6.~~ **COMPENSATION TO THE CITY FOR USE OF THE FACILITY (USE FEE).**

~~7.1-6.1.~~ Base Use Fee. For the Term of the Agreement, MIND shall pay City an annual Use Fee for the right to use the Facility as follows:

a. in the amount of \$1.00 annually in consideration for MIND's investments of programming, staffing, marketing and improvements.

a.b.

All payments are payable annually, commencing on the Commencement Date and thereafter on the first day of each Contract Year. If the Commencement Date occurs on a day other than the first day of a calendar month, the first Contract Year shall include the partial month on which the Commencement Date occurs and the following twelve (12) calendar months. The Base Use Fee (and all other amounts due hereunder) shall be paid to City in legal tender of the United States of America at the following address: Tourism, Culture, and Economic Development Department, 1700 Convention Center Drive, Miami Beach, Florida 33139; or at such other place that City may from time to time designate by notice in writing.

~~7.2.6.2.~~ Additional Fees and Charge. In addition to the Base Use Fee as set forth in subsection 6.1, MIND shall also be responsible for payment of the following Additional Fees and Charges:

~~7.3.6.3.~~ Operating Expenses. MIND shall pay all costs and expenses related to Operating Expenses. MIND hereby irrevocably and unconditionally guarantees to the City that Operating Revenues shall at all times be sufficient to pay as and when due all Operating Expenses and any and all other amounts that MIND is obligated to pay pursuant to this Agreement, and further covenants and agrees that if at any time there are insufficient Operating Revenues to pay all of the foregoing amounts, as and when required, MIND shall immediately pay the difference from MIND's own funds. This obligation is absolute and unconditional and shall even apply if Operating Revenues are reduced or limited by facts or circumstances not contemplated by the parties or for reasons beyond the parties' control. The provisions of this section 6 shall survive any termination or expiration of this Agreement.

~~6.4.~~ Notwithstanding subsection 6 MIND shall not be responsible for paying for capital improvements or infrastructure within the Facility.

~~7.4.6.5.~~ Sales Tax. MIND shall pay and include any and all additional sums for applicable sales and use tax, now or hereafter prescribed by State, federal or local law, concurrent with and to the extent any sales tax is imposed in connection with any payment due hereunder by MIND.

~~SECTION 8.~~ SECTION 7. ~~SECTION 7~~ **INTENTIONALLY OMITTED**

~~SECTION 9.~~ SECTION 8. ~~SECTION 8~~ **RIGHTS RESERVED TO CITY**

~~8.1.~~ Rights of Entry. Representatives, contractors and employees of the City shall have the right to enter all portions of the Facility to inspect same, to observe the performance of MIND of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the Facility, or to do any act or thing which the City may be obligated or have the right to do under this Agreement. Nothing contained in this subparagraph is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not unreasonably interfere with the activities of MIND hereunder, and the City's actions shall be conducted such that disruption of MIND work shall be kept to a minimum and there shall be no disruption of any Event by City (the City's actions in its proprietary capacity of the foregoing, shall not diminish any

rights of City in its governmental capacity).

9.1.8.2. Signage. The following provisions shall govern the name-in-title rights, interior naming rights, and the related signage rights with respect to the Facility:
—Exterior Marquee messaging will be controlled by MIND and will list events taking place within the Facility. MIND shall include City requested public information messages, at no cost to the City, where such public information messages do not unduly limit or interfere with the Facility's event messaging.

MIND shall provide, at its sole expense and responsibility, any required signs within the Facility. All signage shall be approved by the City Manager, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage shall be subject to the prior approval of the City Manager as to size, shape and placement of same. ~~MIND may provide the City with a standard sign template(s) and the City may approve the template for ongoing use without the requirement of approving each use.~~

Notwithstanding the preceding paragraph, the City Commission's consent and approval, in the City's sole and absolute discretion, shall be required if MIND seeks to change the name of the Facility to anything other than "Colony Theatre", and any such name change must be approved by a 5/7 vote of the City Commission.

8.3. Interior Naming Rights; Interior Signage. MIND shall be entitled to all permanent (meaning for a specific area such as a VIP lounge together with a duration in excess of twelve (12) months) interior signage (and all proceeds derived therefrom shall be Operating Revenues); provided, however, that the names affixed thereon (including, without limitation, any sponsorship names) are subject to the City Manager's prior written approval, which shall not be unreasonably be withheld, conditioned or delayed. In no event may any such signage include the names of any company selling the following types of products ("Prohibited Names"): guns, tobacco or sexual products.

Nothing contained herein shall preclude MIND from allowing sponsors from using temporary banners and temporary signage within the Facility with respect to any Event, so long as the banners and signage do not include any Prohibited Names.

9.2.8.4. General Requirements. All signage (whether interior, exterior, permanent and/or temporary)

shall comply with all applicable Governmental Requirements, and shall be maintained by MIND in good condition.

~~SECTION 10.~~SECTION 9. ~~SECTION 9.~~ LIMITED FUNDING BY CITY.

9.1. ~~During the first Contract Year of the initial term of this Agreement (From October 1, 2016 through September 30, 2017), the City shall provide funding to MIND, in the amount of \$100170,000.00 ("City's Contribution(s)"), payable in quarterly installments within fifteen (15) days following the end of each Quarter, with the first payment, in the amount of \$4225,500.00, due due October 15, 2016; \$4225,500.00 due on January 15, 2017, \$4225,500.00 due on April 15, 2017, and \$4225,500.00 due on July 15, 2017. MIND shall submit an invoice for each payment of such City's Contribution and also submit the corresponding reports due for that particular Quarter. The City, in its sole discretion, may condition payment of the City upon MIND providing the requisite reports under this Agreement, including, without limitation, those reports set forth in Sections 5 and 12 of this Agreement. Thereafter, subject to funding availability and at the City's sole option, the City shall provide a City Contribution, in an amount of \$17000,000.00 annually, payable quarterly in the amount of \$42,500.00 within fifteen (15) days following the end of each Quarter, during the balance of the Initial Term and any Renewal Terms (should said Renewal Terms be granted, at the sole option of the City), toward the operation of the Facility.~~

9.2. ~~Beginning January 15, 2017 and during the balance of the Initial Term and any Renewal Terms (should said Renewal Terms be granted, at the sole option of the City), subject to funding availability and at the City's sole option, the City will also contribute a reimbursement not to exceed \$80,000.00 dollars annually ("City's Additional Utility Contribution(s)"), payable quarterly along with the City's Contribution, for only to the following utility costs: electrical, water, sewer, and storm water. MIND must provide the City copies of utility bills for the Facility along with proof of payments in order to receive a reimbursement. At the City's option and for its convenience, the City may make equal quarterly reimbursements in the amount of \$20,000.00 of the City's Additional Utility Contribution with an annual true-up, if necessary, made on the October 1st of each year.~~

9.3. ~~Any references to City's annual eContributions, City's Additional Utility Contribution(s), payments, or reimbursements are based on full Ceontract Yyear and subject to budgetary funding approvals for said the Fiscal Year covering said Contract Year. As such, -and as such in any event which creates a shortened contract year, such as a default or termination~~

for convenience, shall be prorated accordingly.

9.4. —Except as set forth in this Section 9, and other costs which the City has expressly agreed to pay under the terms of this Agreement, the City will have no other funding or other payment obligations with respect to the Facility or its Operating Expenses or its operations. Additionally, MIND and City have entered into this Agreement with the expectation and belief that, as of the Effective Date, no governmental body will impose any ad valorem taxes upon the Facility nor any sales, income, excise or other taxes. Notwithstanding the preceding sentence, the City makes no representation to MIND, ~~—either expressed or implied;~~implied that any or all of such taxes may or may not be imposed at any time during the Term of the Agreement.

~~40.4.~~9.5. Community Benefit Fund. The Community Benefit Fund at the Jackie Gleason Theater was established by Resolution No. 83-17447 to provide discounted show tickets to senior citizen and student residents. It is funded by a \$1.50 surcharge on each ticket sold. The fund's purpose was further defined by Resolution No. 92-20454 to "present and promote performances, programs, shows and entertainment at reduced prices or free admission for the residents of Miami Beach." On February 10, 2016, the City Commission adopted Resolution No. 2016-29287, which created a rent waiver grant program for the Colony Theatre through the use of the Community Benefit Fund. The rental fee waiver grant program for the Colony Theatre was created to incentivize live theater in Miami Beach. Grants will cover not-for-profit theater rental fees for up to four days per week, and are available only for live dramatic productions. Dance, music, stand-up comedy, cabaret, burlesque and film screenings are not eligible for this grant. Grants will be administered by the Tourism Culture and Economic Development Department following review and recommendation by the Miami Beach Cultural Arts Council.

- a. MIND agrees to continue to honor the Community Benefit Fund rent waiver grant program ~~allow City to rent the Facility~~ for twelve (12) Events per ~~Contract~~calendar ~~Year~~. MIND agrees that the rental charge for each of the 12 rentals paid by the City under this program shall be fixed at _____ for the entire Term. The City reserves the right to discontinue such rent waiver grant program in the event that revenues become inadequate to subsidize the program, or for any reason in the City's sole and absolute discretion.

~~SECTION 10.~~ SECTION 10. ~~SECTION 10-RECEIPTS AND DISBURSEMENTS~~

~~10.1.~~ 10.1. MIND shall establish and maintain in one or more depositories, one or more operating, payroll and other bank accounts for the operation and management of the Facility, as MIND shall determine. All Operating Revenues collected by MIND from the operation of the Facility shall be deposited into the accounts and all Operating Expenses shall be paid by MIND as agent for the City from the accounts. Any amounts remaining in the operating accounts upon expiration or termination of this Agreement for any reason, after payment of all other amounts that MIND is required to pay under this ~~Agreement~~ Agreement including any portion of the City's Contribution or City's Additional Utility Contribution paid to MIND in excess of the prorated amount through the date of expiration or termination, shall be promptly paid to MIND. Notwithstanding the foregoing, if the Agreement is terminated by the City for cause, any excess of the prorated amounts, which were paid to MIND in connection with the City's Contribution or City's Additional Utility Contribution, shall be paid to the City.

~~SECTION 11.~~ SECTION 11. ~~SECTION 11-ALTERATIONS, MAINTENANCE, AND REPAIRS.~~

~~11.1.~~ 11.1. MIND shall not make any additions, improvements, or alternations (collectively "Alterations") to the Facility without the City Manager's prior written consent. Any The cost including those for maintaining and future capital repairs of all Alterations made by MIND shall be borne solely by MIND from its own funds and shall not constitute Operating Expenses, unless otherwise agreed to by the City under the category —of Capital Improvements or Maintenance. The City Manager shall not unreasonably withhold, condition or delay his/her consent to any Alterations except that the City Manager may withhold consent, in his/her sole and absolute discretion, with respect to any Alterations that change the structural elements or life-saving systems or that affect the exterior of the Facility; Notwithstanding anything to the contrary, however, MIND shall not under any circumstances be permitted to make any Alterations that: (i) affect the structural portions of the Facility, or (ii) fail to comply with any applicable Governmental Requirements; or (iii) interfere in any material manner with the proper functioning of any mechanical, electrical, plumbing, HVAC, life safety or other systems, facilities or equipment of the Facility.

11.2. Except as required pursuant to Notwithstanding the maintenance responsibilities as set forth in Section 5.4 and Section 11, it is understood by the parties hereto that MIND shall not be

responsible, nor required to pay for, ~~any other costs~~ related to Capital Improvements, or infrastructure, and its related scheduled maintenance defined as (i.e. including, but not limited to, plumbing and sewer lines, major electrical, structural, storm, HVAC, roof, slab, any and all fire safety equipment and fixtures, and exterior restoration (collectively "Capital Improvements") etc.) with regard to the Facility. City is specifically not responsible for any glazing including exterior windows, interior paint, drywall, doors, locks, fixtures such as lighting and plumbing fixtures, any non-durables/non-durables, utility meters, tile, decorative elements, and Alterations as defined in Section 11.1 either desirable to or approved for MIND.

- a. MIND warrants and represents to City that, prior to the Effective Date, MIND has inspected the Facility, and MIND hereby accepts the Facility "as-is, where-is and with all faults" and except where required by laws, rules, and regulations of the City; Miami-Dade County; the State of Florida; and the U.S. Government now in force or hereafter to be adopted, is under no obligation to improve upon or make any Capital Improvements. Before the commencement date of this agreement, The City shall ensure all equipment, bathroom, plumbing, HVAC, fire extinguishers, fire safety equipment and fixtures, are in working order and that the building is up to applicable codes.

11.3. MIND shall obtain all required permits for Alterations performed by, through or under MIND and shall perform or cause to be performed such Alterations in compliance with all Governmental Requirements. Under no circumstances shall MIND make any Alterations which incorporate any Hazardous Substances including, without limitation, asbestos-containing construction materials, into the Facility. Any request for City Manager's consent to any proposed Alterations by, through or under MIND shall be made in writing and shall contain plans or other written materials describing the work in detail reasonably satisfactory to City Manager, provided that architectural plans shall not be required unless required for the issuance of a building permit. City Manager shall provide or deny consent within twenty (20) business days following receipt of MIND written request, the failure to provide or deny consent within such twenty (20) business day period shall be deemed a consent. Should the work proposed by MIND and consented to by City Manager modify the basic floor plan of the Facility and the building permit ~~therefor~~therefore require architectural plans, then MIND shall, at its expense, furnish City with as-built drawings and CAD disks for such work. Unless City Manager otherwise agrees in writing, all Alterations made or affixed to the Facility (excluding moveable trade fixtures, equipment, personal property and furniture)

(including without limitation, all upgrades constructed pursuant to subparagraph (b)), shall become the property of City and shall be surrendered with the Facility at the expiration or termination of this Agreement. With respect to Alterations costing in excess of \$200,000 City Manager may require MIND to obtain a payment bond for the work

11.4. Maintenance.—Except as provided for in Section 11.2, MIND shall, at its sole cost and expense, have sole responsibility for basic maintenance to be performed on a regular basis on all facilities, improvements, and facilities and utilities infrastructure equipment at the Facility. Any and all repairs or replacement of the same is the responsibility of the City. MIND shall, at its sole cost and expense, and to the satisfaction of the City, keep and maintain the Facility, and all improvements thereon, in good, clean, and sanitary order. ~~The City shall, at its sole cost and expense, have the sole responsibility for maintaining the grounds of the Colony.~~ To that end, the parties herein acknowledge, and MIND herein agrees to be bound by, the minimum maintenance standards set forth in Exhibit “C” to this Agreement, entitled “City of Miami Beach Minimum Specifications for Maintenance of the Colony.” It is further understood that MIND shall provide the City with a quarterly maintenance report, in a format to be approved by the City Manager.

~~12.2.~~11.5. Personal Property. A list of City-owned personal property included in the Agreement for use by MIND during the Term hereof is attached and incorporated herein as Exhibition “E”. MIND hereby accepts such equipment in its “as-is” condition, and without any warranty(ies) and, at its sole cost and expense, acquire and maintain all replacement and such other equipment as may be necessary to maintain the Facility in a condition which satisfies those maintenance standards set forth in Exhibit “C”, but shall not have an obligation to improve the condition of the personal property beyond the “as-is” condition in which it was accepted, all of which shall be noted on the inventory. MIND shall have the right, at the initial inventory and at any point thereafter, to decline the use and responsibility for any personal property not useful for its operation of the Facility, and may turn such personal property over to the City in the condition in which it was accepted. The City shall have the right to periodically take an inventory of any or all City-owned equipment at the Facility.

~~SECTION 13.~~SECTION 12. ~~SECTION 12.~~ **RECORDS, AUDITS AND REPORTS.**

12.1. Records and Audits. MIND shall keep full and accurate accounting books and records relating to all Operating Revenues and Operating Expenses, all in accordance with generally accepted accounting principles. MIND shall give the City such books and records during reasonable business hours and upon reasonable advance notice. All books and records shall be made available on-site at the Facility or electronically. MIND shall keep and preserve for at least three (3) years following each Fiscal Year, or for as long as such records are required to be retained pursuant to Florida Public Records Law (whichever is longer), all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before 120 days following each Fiscal Year, MIND shall furnish to the City a line item (i.e., by categories) statement of Operating Costs and Operating Revenues (and profit or loss) for the Facility for the preceding Fiscal Year, and including the number of tickets sold and Events held, prepared in accordance with generally accepted accounting principles certified as accurate by MIND's Chief Accounting Officer or Chief Financial Officer.

12.2. The City Manager shall have the right at any time, and from time to time, to cause independent auditors or the City's own accountants or auditors to audit all of the books of MIND relating to Operating Revenues, Operating Expenses, tickets and Events including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense.

12.3. Annual Plan. Commencing upon October 1, 2016, MIND shall provide to the City on or before June 1st of each year, an annual management plan, which shall include the annual operating budget for the then current Fiscal Year but may not have a complete booking plan or event schedule. The annual plan shall include information regarding MIND'S anticipated operations for such Fiscal Year, including planned operating and maintenance activities, anticipated capital improvements and capital equipment purchases and an anticipated budget therefore, anticipated Events at the Facility (to the extent known at such time), and planned equipment and furnishings purchases. MIND shall have the right from time to time to make any changes it deems necessary or appropriate to any such annual plan so long as the annual plan is consistent with MIND'S fulfillment of its obligations hereunder.

12.4. Programmatic Plan. Accompanying MIND's proposed annual budget shall be the Facility Programmatic Plan for the next fiscal year, detailing the then-known activities planned, and the number of residents and visitors anticipated to be impacted.

12.5. Major Capital Repairs. Accompanying MIND's proposed annual budget shall be a detailed list of then-known major capital repairs anticipated for the Facility, which remain the sole responsibility of the City.

12.6. MIND shall submit to the City, every Quarter, within fifteen (15) days from the end of each Quarter, commencing with the January, 2017 Quarter, a detailed report ("Programmatic Quarterly Report") setting forth the following information:

- a. Event Records and Programmatic Plan
 - i. A listing of Events hosted during the previous Quarter, including number of attendees and the charge to the public for the event, if any.
 - ii. The Events scheduled or anticipated for the upcoming Quarter
 - iii. ~~iii.~~ The number of Facility Rentals, and the charge for said Facility Rentals, including previous Quarter and Upcoming Quarter.
- b. ~~b.~~ Marketing and Promotional Activity
 - i. ~~i.~~ A detailed plan and budget illustrating marketing and promotional efforts
 - ii. ~~ii.~~ Examples of consistent marketing materials, including social media campaigns, paid marketing, outreach and public relations that ensure both the Miami Beach community and South Florida residents in general are aware of programs taking place at the Facility. All materials should have proper use of City of Miami Beach logo and shall be subject to the prior written approval of the City Manager.
- c. ~~c.~~ Maintenance and Capital
 - i. ~~i.~~ All maintenance work performed during the previous Quarter, including cost
 - ii. ~~ii.~~ All maintenance work anticipated for the upcoming Quarter, including cost
- d. ~~d.~~ Staffing and Administration
 - i. ~~i.~~ A detailed plan and budget illustrating staffing

~~SECTION 15.-~~

~~SECTION 16.~~ SECTION 13. ~~SECTION 13.~~ INDEMNIFICATION.

~~16.1.13.1.~~ MIND shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City, its officers, agents, servants and employees from and against any and all claims, liabilities, demands, causes of action, costs and expenses (including reasonable attorneys' fees at trial and all levels of appeal) of whatsoever kind or nature ("Claims") arising out of (i) errors, omission or negligent act or willful misconduct of MIND, its agents, servants, contractors, or employees; (ii) any default by MIND under this Agreement; MIND shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City, its officers, agents, servants under this Agreement; or (iii) any other claim arising, directly or indirectly, from the operation or management of the Facility or any Event held therein or rental or use of the Facility; provided that there is expressly excluded from the foregoing obligations any Claims to the extent resulting from the gross negligence or willful misconduct of the City, its officers, agents (excluding MIND), contractors (excluding MIND) and employees or the use of the Facility by the City, its officers, agents (excluding MIND), and employees, pursuant to Section 16 hereof.

~~16.2.13.2.~~ In addition, MIND shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of MIND not included in the paragraph in the subsection above and for which the City, its officers agents, servants or employees, are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the gross negligence or willful misconduct of the City, its officers, agents, servants or employees.

~~16.3.13.3.~~ The provisions of this Section 13 shall survive expiration or termination of this Agreement.

~~SECTION 17.~~ SECTION 14. ~~SECTION 14.~~ **INSURANCE REQUIREMENTS.**

~~17.1.14.1.~~ Before beginning any work and throughout the term of the Agreement (including renewal periods), MIND shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that MIND shall not occupy the Demised Premises until proof of the following insurance coverage have been reviewed and approved by the City's Risk Manager. All insurance policies required below shall be issued by companies authorized to do business under the laws of the State of Florida. Provider shall indicate that insurance coverage has been obtained which meets the requirements as outlined below by

submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively:

- a. Worker's Compensation for all employees of the provider as required by Florida Statute 440 and Employer's Liability coverage in accordance with the Florida Statutory requirements.
- b. Commercial General Liability on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage and \$2,000,000 aggregate. City of Miami Beach must be shown as an additional insured with respect to this coverage.
 - i. Additionally Mind will be insured for the following coverage:

Products (completed operation aggregate)	\$ 2,000,000
Personal and advertising (injury)	\$ 1,000,000
(Per occurrence)	\$ 1,000,000
Fire damage	\$ 100,000
Medical Expense	\$ 5,000
- c. Intentionally Omitted
- d. 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 Demised Premises by or on behalf of MIND and including without limitation all of MIND's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by MIND under the provisions of this Agreement).
- e. Intentionally Omitted
- f. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the provider.
- g. Any insurance coverage required above must include a waiver of subrogation in favor of the City.

- h. The company must be rated no less than "B+" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
3rd FLOOR – OFFICE OF REAL ESTATE
MIAMI BEACH, FL 33139

~~17.2.14.2.~~ 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.

~~17.3.14.3.~~ City reserves the right to impose additional reasonable insurance requirements as the City may deem necessary or in accordance with common practice.

~~14.4.~~ The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to City and then subject to the prior written approval of the City's Risk Manager. Should MIND fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by MIND to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If MIND does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

~~17.4.14.5.~~ ~~14.3~~—Fire and Property Insurance for the Facility shall be the responsibility of the City.

~~SECTION 18.~~ SECTION 15. **SECTION 15. OWNERSHIP OF ASSETS.**

~~18.1.15.1.~~ Ownership. The ownership of the Facility and all buildings and real estate, all existing (and replacements thereof) technical and office equipment and facilities, furniture, displays,

fixtures, vehicles and similar tangible property located at the Facility at the time of the commencement of this agreement shall remain with the City. Any and all technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property purchased by MIND for use at the facility shall remain property of MIND. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by MIND, with MIND's separate funds, shall remain with MIND. MIND shall be granted permission to use and have access to prior customer lists or similar materials developed by the City for the use of the Facility during the Term of this Agreement; however, MIND shall not take, for its own purposes, Customer lists or similar materials developed by the City for the use of the Facility, unless prior written consent is granted by the City Manager. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property purchased by MIND with Operating Revenues for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition, ~~except for those items which by the terms of this Agreement shall remain the property of MIND.~~ The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned. Notwithstanding anything to the contrary contained in this Agreement, any personality, furnishings, and movable equipment that are not a fixture and are not integral to the operation of the Facility purchased by MIND and used at the Facility shall be the sole property of MIND. Ownership of and title to all intellectual property rights of whatsoever value related marketing and promotional materials, designs, slogans, social media profiles, and web pages will remain the exclusive property of MIND.

~~SECTION 14.~~ SECTION 16. **SECTION 16. USE BY THE CITY**

~~19.1.16.1.~~ The City shall have the right to use the Facility, or any part thereof, subject to availability, for the benefit of the community for such purposes including, but not limited to, meetings, City-sponsored special events, receptions, and other purposes, as deemed necessary by the City Manager, in his/her sole and absolute discretion, without the payment of any rental or use fee, except that the direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City.

~~SECTION 20.~~ SECTION 17. **SECTION 17. ASSIGNMENT/SUBLET.**

~~20.1.17.1.~~ Except as otherwise specifically provided in this Section 17, MIND may not voluntarily or by operation of law, assign, encumber, pledge or otherwise transfer all or any part of MIND's interest in this Agreement or subcontract its management duties hereunder without the City's prior written consent, which may be granted or withheld in City's sole and absolute discretion. Any attempt by MIND to assign all or any part of its interest and any attempt to subcontract its management duties hereunder without first having obtained City's prior written approval shall be void and of no force or effect. In the event of any assignment, transfer, encumbrance or subcontract, MIND shall nevertheless remain liable for all obligations hereunder and the transferee shall be jointly and severally liable for all obligations thereafter arising under this Agreement. MIND specifically recognizes that City selected MIND to be the manager of the Facility as a result of the City's evaluation of MIND's specific qualifications and experience in operating similar first class facilities.

~~20.2.17.2.~~ The provisions of subsection 17.1 above shall not prevent MIND in the performance of its management duties hereunder to grant licenses and concessions and rental agreements for Events and entering into a concessions agreement for the concession operations at the Facility. Notwithstanding the foregoing, MIND shall not be permitted to grant licenses, concessions or rental agreements in connection with food and/or beverage services.

~~SECTION 21.~~~~SECTION 18.~~ **SECTION 18. SECURITY.**

~~21.1.18.1.~~ MIND shall provide reasonable security to protect the Facility and its equipment, materials and facilities, including any City equipment, furnishings, and fixtures used by MIND, and shall be solely responsible to the City for any loss or damage to any City equipment, furnishings, and fixtures so used by MIND.

~~SECTION 22.~~~~SECTION 19.~~ **SECTION 19. PERMITS; LICENSES; TAXES; APPLICABLE LAWS.**

~~22.1.19.1.~~ MIND agrees to obtain and pay for all permits and licenses necessary for the conduct of its business, including a liquor or beer and wine license for the Facility, and agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by MIND. MIND shall also be solely responsible for payment of any and all taxes levied on the Facility and its operations. In addition, MIND shall comply with all rules, regulations and laws of the City; Miami-Dade County; the State of Florida; and the U.S. Government now in force or hereafter to be adopted.

~~SECTION 23.~~SECTION 20. **SECTION 20. UTILITIES; RESPONSIBILITY FOR TAXES AND ASSESSMENTS.**

20.1. Utilities. MIND shall be solely responsible for and shall pay (whether to the City or directly to the utility) before delinquency, of all charges for all water and sewer, and electricity utilities used at the Facility.

~~23.1.~~20.2. Procedure If Taxes Assessed. MIND agrees to, and shall pay before delinquency, all taxes and assessments of any kind assessed or levied, whether upon MIND or the Facility, by reason of this Agreement or by reason of any use(s) and/or activity(ies) of MIND upon or in connection with the Facility. The parties acknowledge that MIND's operation and use of the Facility is for public purposes, and therefore anticipate that, as of the Effective Date, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, ad valorem taxes are assessed by the Property Tax Appraiser, MIND has the right to terminate this ~~a~~Agreement without penalty by providing 90 days notice to the City at which point the City shall be solely responsible for such payment(s). As such, unless the parties agree otherwise, if MIND fails to terminate the Agreement or pay for any such ad valorem tax assessment, the City shall have the option to terminate this Agreement, without any penalty, upon providing MIND with thirty (30) days prior written notice.

~~SECTION 24.~~SECTION 21. **SECTION 21 FORCE MAJEURE.**

~~24.1.~~21.1. No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, epidemics, landslides, ~~lightening~~lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

21.2. Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Governmental Requirements.

~~24.2.~~21.3. In the event of substantial damage to or destruction of the Facility by reason of fire, storm or other casualty or any eminent domain action or other regulatory action that, in either case, shall render a substantial part of the Facility inoperable for a period of at least ninety (90) days or in MIND's reasonable opinion the Facility can no longer be operated in a reasonably profitable manner as a result of the damages or action for a period of at least ninety (90) days from the happening of the fire, other casualty or regulatory action, either party may terminate this Agreement upon written notice to the other. Upon any such termination, the provisions of Section 31 shall apply; and provided City shall receive the entire amount of all insurance proceeds or eminent domain award as applicable.

~~SECTION 25.~~SECTION 22. ~~SECTION 22.~~ **INSPECTION.**

~~25.1.~~22.1. MIND agrees that the Facility may be inspected at any time upon reasonable notice by authorized representatives of the City, or by any other State, County, Federal or municipal officer or agency having responsibilities for inspections of such operations and/or Facility.

~~SECTION 26.~~SECTION 23. ~~SECTION 23.~~ **WAIVER OF INTERFERENCE.**

~~26.1.~~23.1. MIND hereby waives all claims for compensation for loss or damage sustained by reasons of any interference with its operation and management of the Facility by any public agency or official as a result of their enforcement of any laws or ordinances or of any of the rights reserved to the City herein. Any such interference shall not relieve MIND from any obligation hereunder.

~~SECTION 27.~~SECTION 24. ~~SECTION 24.~~ **NO LIENS.**

~~27.1.~~24.1. MIND agrees that it will not suffer, or through its actions or anyone under its control or supervision, cause to be filed upon the Facility any lien or encumbrance of any kind. In the event any lien is filed, the MIND agrees to cause such lien to be discharged within ten (10) days therefrom, and in accordance with the applicable law and policy. If this is not accomplished, the City may automatically terminate this Agreement, without further notice to MIND.

~~SECTION 28.~~SECTION 25. ~~SECTION 25.~~ **MIND EMPLOYEES, MANAGERS AND BOARD OF DIRECTORS.**

25.1. The City and MIND recognize that in the performance of this Agreement, it shall be necessary for MIND to retain qualified individuals to effectuate and optimize MIND's management and operation of the Facility. MIND shall select, train and employ at the Facility such number of employees as is necessary to appropriate for MIND to satisfy its responsibilities hereunder. MIND shall recruit employees consistent with standards employed at comparable first class facilities, and MIND shall have authority to hire, terminate and discipline any and all personnel employed by MIND working at the Facility. Any such personnel, whether employees, agents, independent contractors, volunteers, and/or other, employed, retained, or otherwise engaged by MIND for such purpose(s), shall not be deemed to be agents, employees, partners, joint ventures, or associates of the City, and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City; further they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, MIND, and/or its employees shall never have been convicted of any offense involving moral turpitude or felony. Failure to comply with this subsection shall constitute cause for termination of this Agreement.

~~28.1.~~25.2. MIND shall assign to the Facility a competent staff member experienced in the operations of similar facilities, who will be located on-site with regular and posted hours during the Term. The staff member will be supervised by a general manager who is experienced in operating and managing similar facilities. The staff member shall be accessible to the City Manager at all reasonable times to discuss the management, operation, and maintenance of the Facility.

~~SECTION 29.~~SECTION 26. ~~SECTION 26.~~ **NO IMPROPER USE.**

29.1.26.1. MIND will not use, nor suffer or permit any person to use in any manner whatsoever, the Facility for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. MIND shall not use the Facility for any unlawful purpose and shall comply with all laws, permitting, and licensing requirements now in force or hereafter adopted, applicable to the Facility or the activities, uses, and/or business(es) conducted on

the Facility. MIND agrees not to knowingly use the Facility for, or to permit operation of any offensive or dangerous activity, nuisance or anything against public policy. Any criminal activity in the Facility knowingly caused by or knowingly permitted by MIND shall result in automatic termination of this Agreement. Except as may result from acts of force majeure, MIND agrees that it will not allow the Facility to become unoccupied or vacant. MIND shall take appropriate precautions to prevent fire on the Facility, maintaining existing fire detection devices and extinguishing equipment at all times. Fire detection devices and extinguishing equipment to be provided and maintained by the City.

~~SECTION 30.~~ SECTION 27. ~~SECTION 27.~~ **NO DANGEROUS MATERIALS.**

27.1. MIND agrees not to use or permit in the Facility the storage of illuminating oils, oil lamps, turpentine, gasoline (except for small containers [5 gallons or less] for machinery), benzene, naphtha, or other similar substances, or explosives or any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida.

~~SECTION 31.~~ SECTION 28. ~~SECTION 28.~~ **NO CLAIM AGAINST CITY OFFICERS, EMPLOYEES, INDIVIDUALS.**

~~31.1.~~ 28.1. It is expressly understood and agreed by and between the parties hereto that all individuals, employees, officers, and agents of the City are acting in a representative capacity and not for their own benefit; and that neither MIND nor any occupant shall have any claim against them or any of them as individuals in any event whatsoever in conjunction with any acts or duties which are reasonably related to the performance of their duties.

~~SECTION 32.~~ SECTION 29. ~~SECTION 29.~~ **DEFAULT AND TERMINATION.**

29.1. MIND's Defaults. The occurrence of any one or more of the events listed in sub-paragraphs 29.1.1 through 29.1.4 shall constitute an Event of Default by MIND.

29.1.1 The failure by MIND to make any payment required to be made by MIND as and when due, which continues for more than ten (10) days after written notice from City;

~~SECTION 33.~~

29.1.2 The failure or inability by MIND to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by MIND, other than as specified in other subparagraphs of this subsection 29.1, which continues for more than thirty (30) days after written notice from City Manager; provided, however, if

the nature of the failure is such that more than such period is reasonably required for its cure, then MIND shall not be deemed to have committed an Event of Default if MIND commences the cure within such period and thereafter diligently pursues the cure to completion and actually completes the cure within a period not to exceed an additional sixty (60) day period;

29.1.3 Except as permitted pursuant to Section 17 of this Agreement, the assignment, encumbrance, pledge, or transfer of this Agreement, whether voluntarily or by operation of law, or any subcontract of MIND's duties hereunder, which continues for more than fifteen (15) business days after written notice thereof from City Manager;

29.1.4 (i) The making by MIND of any general assignment for the benefit of creditors; (ii) the filing by or against MIND of a petition to have MIND adjudged a Chapter by operation of law, or any Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against MIND, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of MIND assets located at the Facility or of MIND's interest in this Agreement, if possession is not restored to MIND within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of MIND's assets located at the Facility or of MIND's interest in this Agreement, where the seizure is not discharged within sixty (60) days. MIND's failure to qualify as a not-for profit organization pursuant to Section 501(c)3 of the Internal Revenue Code of 1986.

29—

29.2 City Remedies. If an Event of Default by MIND occurs, then in addition to any other remedies available to City, City may exercise the following remedies:

29.3 City may terminate this Agreement by written notice to MIND, in which case this Agreement shall terminate and MIND shall immediately surrender possession of the Facility to City. Upon termination, City shall be entitled to recover from MIND: (1) Operating Expenses that remain unpaid through the date of termination; (2) all other amounts that MIND is required to pay under this Agreement through the date of termination.

30—

33

29.4 City may seek specific performance of any of MIND's obligations hereunder or seek injunctive relief;

29.5 City may exercise any other remedies available at law or in equity.

29.6 The various rights and remedies reserved to City in this Agreement or otherwise shall be cumulative and, except as otherwise provided by Florida law, City may pursue any or all of its rights and remedies at the same time.

29.7 MIND's Remedies. If an Event of Default by City occurs, then MIND may exercise either of the following remedies:

29.7.1 MIND may terminate this Agreement by written notice to City, in which case this Agreement shall terminate and MIND shall immediately surrender possession of the Facility to City. Upon termination, MIND shall be entitled to recover from City all amounts owed by City to MIND as of the termination date and the provisions of Section 31 shall apply; or

29.7.2 Late Payments. Any payment owed to City or MIND under this Agreement including, without limitation, any other payment owed to City or MIND under this Agreement that is not received by City or MIND within ten (10) days following notice of such amount being due shall bear interest at the rate of eighteen percent ~~45(18%)~~ per annum or the highest rate allowed by Florida law, whichever is less ("Default Rate") from the date due until fully paid.

~~30.4~~29.8 IN THE EVENT THAT MIND CEASES TO BE A NOT-FOR-PROFIT CORPORATION, THIS AGREEMENT SHALL BE AUTOMATICALLY TERMINATED.

~~31.30~~ SECTION 30. [INTENTIONALLY DELETED]

~~32~~—

~~33.31~~ SECTION 31. TERMINATION.

~~33.4~~31.1 Termination for Convenience by City. The City reserves and retains the right, at its sole option and discretion, to terminate this Agreement, without cause and without penalty, with regard to MIND's rights and responsibilities with respect to the operation, management,

maintenance, promotion and marketing of the Facility, upon ~~eighteen~~ twelve months (12~~8~~) prior written notice to MIND.

31.2 Effect of Termination. In the event this Agreement expires or is terminated for any reason:

(1) All Operating Expenses and all other obligations for the period up to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in subsection 10.1 and to the extent such funds are not sufficient, MIND shall pay all such amounts from its own funds; (2) After all amounts referenced in subparagraph (1) have been paid, MIND may retain all remaining Operating Revenues (if any). Upon the expiration of this Agreement or a termination for any reason, all further obligations of the parties hereunder shall terminate except for the obligations which for all periods up to the date of expiration or termination and such other obligations as are stated to survive or be performed after such expiration or termination. All of the foregoing reimbursement and the payment obligations are to be made within thirty (30) days after the termination date. The provisions of this Section regarding the above reimbursement and payment obligations of the City shall survive the termination of this Agreement.

~~33.2~~ 31.3 Surrender of Facility. Upon termination or expiration of this Agreement MIND shall surrender and vacate the Facility upon the effective date of such termination (or expiration). The Facility and all equipment and furnishings shall be returned to the City in a good and clean condition consistent with other similar first class facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted.

~~34.2~~ SECTION 32. —NOTICES.

All notices from the City to MIND shall be deemed duly served if mailed by registered or certified mail to MIND at the following address:

Miami New Drama

169 East Flagler Street, PH

Miami, FL 33131

All notices from MIND to the City shall be deemed duly served if mailed to:

City of Miami Beach

City Manager

1700 Convention Center Drive

Miami Beach, Florida 33139

With copies to:

City of Miami Beach

~~1700~~ 1700 Convention Center Drive

Miami Beach, Florida 33139

Attention: Max Sklar, Tourism, Culture, and Economic Development Director

MIND and the City may change the above mailing addresses at any time upon giving the other party written notification. All notice under this Agreement must be in writing.

~~35~~

~~36~~ **SECTION 33. NO DISCRIMINATION.**

33

33.1 ~~The~~ MIND agrees that there shall be no discrimination as to race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age or disability in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation of the Facility. All facilities located on the Facility shall be made available to the public, subject to the right of MIND to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation and security of the facilities.

~~36.1~~

~~36.2~~ 33.2 No Discrimination in Employment; Affirmative Action. In connection with the performance of work under this Agreement, MIND shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age or disability.

~~37~~ **SECTION 34. INTENTIONALLY DELETED.**

~~38~~ **SECTION 35. EQUAL BENEFITS FOR DOMESTIC PARTNERS**

This Agreement is subject to, and MIND shall be required to comply throughout the Term hereof with, the requirements of Section 2-373 of the City Code entitled, "Requirement for city contractors to provide equal benefits for domestic partners" (as same may be amended from time to time).

The Agreement is deemed to be a "covered contract," as defined in Section 2-373(a)(6) of the City Code, and shall require MIND to provide its employees working pursuant to this Agreement (whether working within the City of Miami Beach city limits, or within the United States, but outside the City limits, if such employees are directly performing work pursuant to this Agreement) "Equal Benefits" (as defined in Section 2-373(a)(8) of the City Code) to its employees with spouses and its employees with "domestic partners" (as defined in Section 2-373(a)(7) of the City Code). Failure by MIND to comply with the requirements of Section 2-373 of the City Code (as same may be amended from time to time) shall be deemed to be a material breach of this Agreement which may result in termination of the Agreement, with all monies due or to become due under the Agreement to be returned by the City. The City may also pursue any and all remedies at law or in equity for such breach. Failure to comply with Section 2-373 may also subject MIND to debarment, in accordance with the procedures provided in Sections 2-397 through 2-406 of the City Code.

36 SECTION 36.—LIMITATION OF LIABILITY.

38.1—

—The City desires to enter into this Agreement only if in so doing the City can place a limit on its 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 \$4025,000. MIND hereby expresses his willingness to enter into this Agreement with MIND's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$4025,000, less the amount of all funds actually paid by the City to MIND pursuant to this Agreement, but only to the extent the amount is paid in connection with the breach, not all payments.

—Accordingly, and notwithstanding any other term or condition of this Agreement, MIND hereby agrees that the City shall not be liable to the MIND for damages in an amount in excess of \$25,000, ~~which amount shall be reduced by the amount actually paid by the City to MIND pursuant to this Agreement,~~ 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 paragraph 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 Section 768.28, Florida Statutes.

3937 SECTION 37. NOT A LEASE.

It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to MIND; that this Agreement is a management agreement and not a lease; and that MIND's right to operate and manage the Facility shall continue only so long as the MIND complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.

4038 SECTION 38.—MISCELLANEOUS

38.1 Venue/Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principals of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND MIND EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

38.2 No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and MIND. None of the officers, agents or employees of MIND shall be or be deemed to be employees of the City for any purpose whatsoever.

38.3 Entire Agreement. This Agreement and all Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals or other expressions of intent with respect thereto. The Exhibits attached hereto are incorporated into and made a part of this Agreement. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

40.1—Written Amendments. This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.

38.4

40.2—Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

41—This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective permitted successors and permitted assigns.

This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

41.438.6 Section Headings and Defined Terms. The headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

41.238.7 Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

41.338.8 Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

41.438.9 Certain Representations and Warranties.

41.438.9.1 The City represents, warrants, and covenants to MIND the following: (i) City has full legal right, power and authority to enter into and perform its obligations hereunder; and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance

with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

~~41.4.2~~38.9.2 MIND represents and warrants to the City the following: (i) MIND has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by MIND and constitutes a valid and binding obligation of MIND, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

38.10 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to otherwise applicable principles of conflicts of law.

42.39 MIND'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

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

~~42.1.1~~

~~42.1.2~~39.1.1 Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;

~~42.1.3~~39.1.2 Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

~~42.1.4~~39.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

~~42.1.5~~39.1.4 Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of MIND upon termination of this Agreement. Upon termination of this Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records

stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

~~42-239.2~~ For purposes of this ~~Section Article~~, the term "public records" shall mean 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.

~~42-339.3~~ MIND failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

~~42-439.4~~ In the event MIND does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

~~43~~—

4440 PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

~~45~~—

40.1 MIND agrees, to the extent permitted under this Agreement, not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Facility or in connection with this Agreement. MIND shall ensure that all vendors operating in the Facility abide by the restrictions contained in this Section ~~4025~~. A violation of this section shall be deemed a default under the terms of this Agreement. This subsection shall not apply to expanded polystyrene ~~-food service articles, defined as follows,~~-used for prepackaged food that have been filled and sealed prior to receipt by the MIND or its vendors.

~~45.1.140.1.1~~ 45.1.140.1.1 *Expanded polystyrene* is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

~~45.1.240.1.2~~ 45.1.240.1.2 *Expanded polystyrene food service articles* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

4641 COCA-COLA:

The City has entered into an agreement with Coca-Cola Bottling, effective September 1, 2011 – September 1, 2021, to be the exclusive provider of non-alcoholic beverages and coffee products. MIND shall only sell Coca-Cola beverages as listed in the attached Exhibit “G” and as may be updated from time to time.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

Attest:

CITY OF MIAMI BEACH

Rafael Granado, City Clerk

Philip Levine, Mayor

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Mayor Philip Levine and Rafael Granado, City Clerk, or their designees respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 20164.

Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

Attest: Miami New Drama

Secretary

Executive Director

Print Name

Print Name

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, on behalf of The Rhythm Foundation, Inc. known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2014.

Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF THE FACILITY

TO BE UPDATED UPON COMPLETION OF A SURVEY.

LEGAL DESCRIPTION
EXHIBIT B
ANNUAL BENCHMARKS

- MIND will operate a minimum of 75 new events per year at the Facility
- These 150+ events will serve an anticipated 30,000+ visitors per year
- In addition to their own produced events, MIND will collaborate with other cultural and quality presenting organizations to develop consistent events at the Facility
- MIND will create and implement consistent marketing materials, including but not limited to public relations, social media campaigns, and paid marketing outreach to ensure that both the Miami Beach community and South Florida residents in general are aware of programs taking place at the Facility. A detailed plan and budget illustrating marketing efforts will be submitted quarterly

DRAFT

EXHIBIT C
CITY OF MIAMI BEACH
MINIMUM MAINTENANCE SPECIFICATIONS
FOR MAINTENANCE OF THE COLONY THEATRE

These minimum operating and maintenance standards are intended to be considered as a whole and intended to provide an overall standard for the Facility. Individual discrepancies, as well as deviations, from any individual standard shall not be considered a default of the Agreement; it is the intention of the parties that this Exhibit is merely a guide and that MIND is only expected to use good faith efforts to endeavor to meet the standards set forth herein. In the event of a conflict between the terms or conditions of the Agreement and the terms or conditions of this Exhibit, the terms and conditions of the Agreement shall control.

PERSONNEL

MIND shall have the sole responsibility to recruit and employ a full-time general manager and any necessary administrative and accounting personnel that are responsible for the overall management and operation of the Facility.

MIND shall have the sole responsibility to recruit and employ sufficient personnel to maintain the following functions: general and event security; janitorial, housekeeping and cleaning for both event and non-event cleanup; painting and general overall maintenance of the Facility to ensure that the Facility is being maintained consistent with other similar first class facilities operated by MIND.

The City shall have the sole responsibility for maintenance of capital systems, electrical systems, plumbing, and air conditioner operation;

MIND shall have the sole responsibility to recruit and employ personnel as it deems necessary for the staging and coordinating of Events and productions.

MIND shall maintain personnel policies that assure employment practices do not discriminate on the basis of race, color, religion, military status, marital status, physical or mental disability, national origin, age, gender, or sexual preference.

GENERAL SECURITY

MIND shall provide for the overall security of the Facility, including during non-event hours.

EMERGENCY PROCEDURES

MIND shall assign an employee and a backup employee to act as an Emergency Liaison to the City. This individual will be required to use good faith efforts to attend any and all meetings, held by the City, that deal with emergency situations, such as extreme weather events, terrorist acts, etc. The Liaison will serve as the point of contact during any emergency crisis.

MIND shall develop and implement a Hurricane Preparedness Procedure, a copy of which shall be provided to the City.

JANITORIAL, CLEANING AND HOUSEKEEPING

The Facility shall be reasonably clean and stocked with supplies (i.e. toilet paper, soap, etc.) at all times. This includes general cleaning during non-event times, as well as during Events.

Restrooms are to be cleaned during Events and on a periodic basis during non-event times to assure that they are in a functional and reasonably sanitary condition.

MIND shall have the responsibility for Sanitation and Waste as it relates to emptying of the dumpster and servicing trash receptacles within the park area. The dumpster will be serviced at current service levels.

At MIND's responsibility, treatment for pests and rodents (except termites) shall occur on a quarterly basis as needed to prevent infestation or as required by applicable code.

Flooring shall be cleaned and polished on an as needed basis.

Windows shall be maintained in a reasonably clean condition and cleaned on an as needed basis.

Entrance doors and mirrors shall be maintained in a reasonably clean condition and cleaned on an as needed basis.

LANDSCAPING

The City shall maintain all exterior landscaping

EXTERIOR LIGHTING

The Facility shall remain illuminated regularly after dark. MIND shall maintain all exterior lighting, except for neon lighting.

EQUIPMENT MAINTENANCE AND GENERAL MAINTENANCE

Equipment shall be maintained in a good and workmanlike manner in order to maintain in full force and affect all dealer's and manufacturer's warranties. MIND shall develop an annual schedule for equipment inspection and preventative maintenance.

Upon termination, cancellation, and/or expiration of the Agreement, MIND shall provide all records maintained in accordance with Section 5.3.4. All existing warranties that are transferable will be transferred to the City.

MIND shall post and maintain, as required by any applicable governmental code and/or regulation, any and all required professional licenses, certifications, and/or permits.

The City shall maintain and inspect all building safety systems including but not limited to: smoke, fire, and CO detector systems, backup generator operation, emergency battery backup functions, emergency lighting, emergency egress, special needs and blackout preparedness equipment. All building safety systems shall be tested on at least an annual basis or as required by federal, state or local codes and regulations, and maintained in operating condition at all times.

The City shall develop and implement a plan for inspection and maintenance for the Facility's HVAC systems. This shall include inspection of all HVAC controls on a quarterly basis to verify proper setting and operation as well as any adjustments and/or maintenance that may be appropriate, including, but not limited to filter replacement, blower and/or heat exchanger, proper operation of air intakes/vents, fan units, ducts, etc.

MIND has the sole responsibility of maintaining the paint on the interior of the Facility.

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EXHIBIT D
MIND STANDARD AGREEMENT

DRAFT

EXHIBIT E
CITY OF MIAMI BEACH OWNED PROPERTY INCLUDED IN THE AGREEMENT

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EXHIBIT F

LIST OF CONTRACTED EVENTS

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