

**LONG-TERM LICENSE AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH AND DESIGN MIAMI II, LLC**

This License Agreement (this "License") is made as of _____, 2017 (Effective Date), by and between the CITY OF MIAMI BEACH, a Florida municipal corporation, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 ("City" or "Licensor"), and DESIGN MIAMI II, LLC, a Florida limited liability company whose address is 3841 NE 2nd Avenue, Suite 400, Miami, Florida 33137 ("Licensee") (each, a "Party" or collectively the "Parties").

WHEREAS, Licensor is in the process of designing and constructing a new public park that will replace the existing surface parking lot located west of Convention Center Drive between 18th Street and 19th Street (the "Park"); and

WHEREAS, Licensee has successfully held its annual Design Miami show at the above-referenced parking lot located west of Convention Center Drive since 2010; and

WHEREAS, Licensee desires to use a portion of the Park, as described more fully in Section 2 and depicted in Exhibit A hereto (the "Premises"), for Licensee to produce and operate the annual furniture design show entitled 'Design Miami,' which presents curated exhibitions of museum-quality furniture, lighting, and objects d'art (the "Annual Show"); and

WHEREAS, the Parties desire to enter into a long-term License based on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein exchanged, the Parties agree as follows:

1. **Re-Design of the Park.** The City shall cause for revisions to be made to the existing design for the Park, with such re-design to include an open area large enough to accommodate events such as the Design Miami show or other functions at the Park (the "Park Re-design"). At the City Commission's sole and absolute discretion, the Park Re-design may, but shall not be required to include, electrical and structural footing enhancements to accommodate set-up for events ("Proposed Enhancements"), as the Proposed Enhancements are subject to and contingent upon a funding appropriation as part of the City's capital budget process. In the event the cost of the Proposed Enhancements exceeds any amounts that may be appropriated for the Proposed Enhancements, if any, then the City shall adjust the scope of the Park Re-design within available funding (including, if necessary, foregoing the Proposed Enhancements altogether), unless other mutually-agreed upon funding arrangements are made with Licensee with respect to the Proposed Enhancements.

2. **License to Use Premises/Term.** In consideration for the annual compensation to Licensor and other terms and conditions herein, Licensor agrees to license to Licensee the portion of the Park consisting of approximately 100,000 square feet and described more fully in Exhibit A attached hereto (collectively, the "Premises"), for the sole purpose of serving as the primary venue for the production and operation of the "Annual Show," for a period of six (6) years, with the license period for each year consistent with the terms herein. The final site plan and Park Re-design is subject to regulatory review and approval by the City's Design Review Board. In the event the final site plan and Park Re-design, as approved by the Design Review

Board and agencies having jurisdiction, requires an adjustment to the description of the Premises as set forth in Exhibit “A,” any such changes to Exhibit “A” shall be memorialized in an amendment to this License Agreement, executed by the City Manager and Licensee.

a. The six (6) year term of this License shall commence with the 2018 Annual Show, and shall expire following the conclusion of the 2023 Annual Show (the “Term”). This License may be renewed in accordance with Section 2(i) below.

b. Except as provided in Section 3 of this Agreement with respect to the 2018 Annual Show, the license period for each Annual Show shall extend for a maximum period of fifty-four (54) consecutive days (including load-in, event days, and load-out), and shall take place each year on or about the same dates (on or about October 28 through December 21 of each year), subject to adjustment of calendar dates on mutual agreement of Licensors and Licensee (“License Period”).

i. Specific dates for Move In, Show, and Move-Out may be changed by mutually agreed to written amendment to this License, provided the annual License Period is generally within the Oct. 28 to Dec. 21 period. Any additional days in excess of the 54 day annual License Period referenced herein, if requested by Licensee, shall be subject to mutual agreement of the parties, at City’s then prevailing daily rates for use of the Premises.

ii. Licensee commits to exercising its best efforts to reduce set-up and load-in period through the potential purchase of modular or other structures. In the event Licensee is able to reduce its set-up or load-in time through any of the foregoing or other efforts, the annual License Fee shall be proportionately reduced on a pro rata basis.

c. Licensee’s proposed use(s) of the Premises for the Annual Show shall solely be limited to the presentation of the Annual Show, with up to 8,600 square feet of the Premises used for back of house operations. Licensee may install temporary tents and tent structures and other equipment necessary for the Annual Show, subject to complying with all City and Miami-Dade County requirements including, without limitation, permitting requirements. All installations and improvements shall comply with all applicable City, County, State and Federal Laws.

d. To the extent Licensee’s mobilization, load-in or load-out at the Premises requires that Licensee be provided with reasonable access through portions of the Park to the Premises, the terms for such access shall be subject to any limitations or restrictions the City may require with respect thereto, with the intent of minimizing impacts to other activities and programming that may be taking place at the Park. With respect to such programming at the Park, Licensee agrees to suspend mobilization or load-in each Veteran’s Day, with no work taking place at the Premises on Veteran’s Day, to permit the City’s Veteran’s Day activities to take place at or in the vicinity of the veteran’s plaza that will be located in the Park.

e. Licensors shall provide Licensee with water service connections and electrical service connections at TBD locations within the Premises, with the final locations for such connections to be identified as part of the design development process for the Park. City’s design for water service and electrical connections shall be based on, and comparable to, Licensee’s approximate water service provided by the City for the 2017 Annual Show, and electrical service capacity not-to-exceed 3400 AMPs @ 480v/3P dedicated service, each

grouping with its own breaker, as depicted in Option C of Exhibit B hereto, provided, however, that the design and proposed locations for electrical connections shall be subject to review and approval by the City's Design Review Board and Agencies Having Jurisdiction. Licensee hereby acknowledges and agrees that the design for water service and electrical service connections based on Licensee's 2017 Annual Show usage shall be sufficient and suitable for the purposes for which the Premises are licensed under this Agreement. Any additional water service or electrical service needs in excess of 2017 Annual Show levels, or otherwise solely required for the benefit of Licensee, shall be the sole responsibility of Licensee, at its sole cost and expense.

f. Any rental of any space other than the Premises shall be the subject of a separate agreement, at the then-prevailing rates, and subject to availability. Except as to the Premises, Licensee shall not use any other portion of the Park without Licensors' prior written approval.

g. Licensee may temporarily fence the Premises for safety purposes during the build-out of the site and installation of the tent structures for each Annual Show, with the fence to be removed prior to each Annual Show upon completion of the installation. Licensee may also fence off any generators Licensee uses to support its electrical power needs for any Annual Show. Except as provided herein, Licensee shall not otherwise fence the Premises or any portion of the Park.

h. At the conclusion of each Annual Show, Licensee shall replace the sod and planting material to the original condition at the Premises and any portion of the Park used by Licensee, such as for mobilization, load-in, or load-out within 15 days of show load-out.

i. Notwithstanding any other provision contained within this License, provided that Licensee has at all times fully complied with its obligations under this License, and subject to the terms of this paragraph, Licensee shall have the Right of First Refusal and Renewal to hold the Annual Show at the Premises for an additional five consecutive Annual Shows. "Right of First Refusal and Renewal" shall mean the right, before any other licensee or potential licensee to use the Premises for any purpose, to use the Premises for the 2024-2028 Annual Show, on the same or similar financial terms as contained within this License (including, without limitation, the License Fee rate structure and the annual adjustments specified in Section 4 of this License). In order to exercise the Right of First Refusal and Renewal, Licensee must give written notice to the Licensors by no later than December 31, 2022, after which the Licensee and Licensors shall negotiate, in good faith, to enter into a license agreement for the 2024-2028 dates in a form acceptable to all Parties prior to June 30, 2023, or another mutually agreed upon date (the "Right of First Refusal Period"). If the parties are in active negotiation of such license agreement on June 30, 2023 or such other mutually agreed upon date, then the Right of First Refusal Period shall be deemed extended until such license agreement is entered into or such negotiations are abandoned by both parties, provided, however, that the Right of First Refusal shall expire if a license agreement is not executed by January 1, 2024. In the event Licensee fails to give written notice exercising the Right of First Refusal and Renewal by December 31, 2022, Licensee's Right of First Refusal and Renewal shall be null and void, and Licensors shall be free to license the Premises to any third party on or after January 1, 2024, in its discretion.

3. Specific License Terms and License Fee with Respect to 2018 Annual Show.

a. The Parties acknowledge and agree that the 2018 Annual Show is a transition year, in light of the Miami Beach Convention Center Renovation Project (“MBCC Renovation”) and the anticipated construction of the Park, and as such, the layout described in Exhibit “A” shall not apply to the 2018 Annual Show. As the City cannot guarantee the completion of construction by a date certain, the details concerning the availability of the Premises, including an exhibit depicting the final site plan or site layout identifying the footprint for the 2018 Annual Show and the location of electrical connections, among other details, shall be subject to the progress of construction, and shall be memorialized in a mutually agreed-upon amendment to this License Agreement, on or before May 1, 2018, executed by the City Manager and Licensee.

b. The License period for the 2018 Annual Show shall extend for sixty (60) consecutive days (including load in, show days, and load out), from October 22, 2018 through December 21, 2018. The License fee for the 2018 Annual Show shall be \$128,500, plus all applicable taxes, including sales tax.

c. For the 2018 Annual Show, Licensor shall provide, and Licensee hereby accepts, the Premises, with water service connections based on, and comparable to, the water service provided by the City for the 2017 Annual Show. Licensee has satisfied itself that there is sufficient pressure to support its water service needs with respect to its use of the Premises. City shall also (i) provide the Premises with all required electrical service connections and/or electric generators, based on, and comparable to, the electrical service connections and/or generators provided for the 2017 Annual Show. If City provides electric generators, then City shall also provide all required electrical service using such generators at no cost to Licensee or otherwise reimburse Licensee for all required electrical service provided by City’s generators), or (ii) alternatively, reimburse Licensee for 100% of Licensee’s costs in obtaining all required electric service connections and/or electric generators (including Licensee’s costs in obtaining electrical service from such generators) for Licensee’s use of the Premises. Except as otherwise agreed to by the Parties, herein Licensee acknowledges and agrees that the City shall not be responsible for providing any services, utilities, equipment or any other items to Licensee for its use of the Premises.

d. For the 2018 Annual Show, if applicable based on the progress of construction at the time of Licensee’s load-in period, the cost of relocating up to 450 parking spaces to the 17th Street Parking Garage is \$107 per space for the period from October 22, 2018 – December 21, 2018 for employees/laborers of Clark Construction and its subcontractors. Licensee and Licensor agree that (i) each Party shall pay 50% of the cost of such relocation, for up to five (5) weeks of relocation, and (ii) Licensee shall be responsible for 100% of the cost of such relocation for any period after five (5) weeks.

e. In the event the City determines that, due to the progress of construction activity at the Miami Beach Convention Center, or construction of the Park during either 2018 or 2019, the City needs to either (a) utilize the Premises for such construction during 2018 or 2019 or (b) make the Premises available to accommodate Art Basel in the event that portions of the Miami Beach Convention Center are not available for use by Art Basel for its 2018 event due to construction delays, then the City shall provide Licensee with notice of the unavailability of the Premises not later than May 1, 2018 for the 2018 Annual Show, and not later than June 1, 2019 for the 2019 Annual Show, and the provisions of this License with respect to the 2018 Annual Show or 2019 Annual Show, as applicable, shall be null and void. In the event the City notifies the Licensee of the unavailability of the Premises for the 2018 or 2019 Annual Show pursuant to

this subsection, the City shall have no obligation to identify any alternative accommodations for Licensee, or any monetary obligation or liability to Licensee whatsoever, and Licensee hereby accepts all risks with respect thereto. Licensee acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatever kind or nature, against the City, its officials, employees, agents, and/or contractors, including, without limitation, claims for interference in business or damages for business interruption, due to such cancellation pursuant to this subsection. In the event the City notifies the Licensee of the unavailability of the Premises for either the 2018 or 2019 Annual Shows pursuant to this Section (such that the Annual Show does not take place at the Premises), Licensee shall have the right to terminate the Agreement for all Annual Shows subsequent to the Annual Show for which the Premises are unavailable, by giving notice to the City not later than December 1, 2018 (if the Premises are unavailable for the 2018 Annual Show) and December 1, 2019 (if the Premises are unavailable for the 2019 Annual Show).

f. Except as specified in this Section 3 with respect to the 2018 Annual Show, all of the terms and conditions set forth in this License shall otherwise apply to each Annual Show, including the 2018 Annual Show. In the event of any conflict between the terms of this License and the terms set forth in this Section 3 with respect to the 2018 Annual Show, the terms of this Section 3 shall govern and control.

g. Notwithstanding any provision to the contrary in this License, upon notice by the City to Licensee on or before June 1, 2019, in the event the construction of the Park is on-going during 2019, and the City determines, at its discretion, that the Premises as described in Section 2 hereof may not be available for the 2019 Annual Show, the terms described in this Section 3 for the 2018 Annual Show (including, without limitation, the License fee for the 2018 Annual Show), shall be extended and shall apply to the 2019 Annual Show, in the same manner as provided herein for the 2018 Annual Show.

4. **License Fee for 2019 – 2023 Annual Show.** The base rental fee (“License Fee”) for the use of the Premises for the 2019 Annual Show shall be \$150,000, plus all applicable taxes, including sales tax. For each year thereafter, commencing with the 2020 Annual Show, the License Fee shall be calculated by reference to the License Fee for the immediately preceding Annual Show, subject to annual adjustment by the greater of (x) two percent (2%), or (y) inflation measured by utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; Miami-Fort-Lauderdale (on an October 1 to September 30 fiscal year basis). For illustrative purposes only, the License Fee for the 2022 Annual Show shall be calculated by reference to the final 2021 License Fee, subject to adjustment by the greater of (x) two percent (2%), or (y) inflation measured by utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; Miami-Fort-Lauderdale; the License Fee for the 2023 Annual Show shall be calculated by reference to the final 2022 License Fee, subject to adjustment by the greater of (x) two percent (2%), or (y) inflation measured by utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; Miami-Fort-Lauderdale; and so on.

i. If the square footage utilized by Licensee for each Annual Show changes, the License Fee for such Annual Show shall be adjusted on a pro rata basis.

ii. The License Fee does not include any of the following, which shall be the sole responsibility of Licensee:

1. Utilities/electrical costs;
2. Equipment required for use of Premises;
3. Installation and removal of signage;
4. Taxes, including ad valorem, if applicable;
5. Permit fees as specified in Paragraph 24;
6. Trash removal;
7. Sod and planting material replacement;
8. Repair and replacement of damaged hardscape or landscape; and
9. Any other direct expenses arising from the Annual Show which are incurred by Licensor for which Licensee is expressly responsible under this Agreement.

iii. In the event Licensee fails to remit payment of any amounts due under this License, interest shall accrue on such overdue amounts at the rate of 0.5% per month (6% per annum, non-compounded), or the maximum rate permitted by law, whichever is less.

5. **Costs.** For each Annual Show, Licensee shall reimburse the Licensor for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises, including, without limitation, equipment, services and labor costs, police/fire personnel, and other labor costs, if any. Licensor shall charge, and Licensee shall pay, for all costs and expenses at the then-prevailing rates.

6. **Security Deposit.** Licensee shall pay to the Licensor, no later than sixty (60) days prior to the first Move-In date of each Annual Show, the sum of \$20,000.00, as security for the faithful performance by Licensee of the terms, conditions and covenants of this License. In the event of Licensee's default of a term, condition and/or covenant of this License, the Licensor shall be entitled to retain such Security Deposit. In the event that Licensee shall fully comply with all of the terms, conditions, and covenants of this Lease, the Security Deposit shall be credited toward the License Fee or any other amounts due to the Licensor under this License.

7. **Food and Beverage/Concessions.** Licensee shall have the exclusive right to provide food, beverage and catering services at the Premises, unless otherwise agreed to by the parties for any given year. With respect to the sale or service of food and beverage at the Premises, Licensee shall comply with any exclusive product or sponsor relationship applicable to the Premises, including City's agreement with Coca-Cola North America with respect to product exclusivity at the Premises (or any other exclusive beverage product sponsorship or similar relationship that City may enter into prior to the expiration of the 2023 Annual Show). Except as to Coca-Cola, Licensee shall not be bound to honor any such exclusive product or sponsor relationship of the City which conflicts with Licensee's existing business relationships or Licensee's business relationships arising hereafter but prior to City's notice to Licensee that City is bound by such exclusive product or sponsor relationship.

8. **Protection Clause/Competing Events.**

a. The Licensor agrees that it will not license the Premises to third parties for the purpose of holding a furniture design show, for thirty (30) days immediately prior to, and the thirty (30) days immediately after, the Annual Show (including move-in and move-out dates).

b. Throughout the Term, Licensee shall maintain its primary programming at the Premises as a furniture design show. Except for the use of the Premises as a furniture design show featuring museum-quality furniture, lighting, and objects d'art, any other uses, including without limitation, the presentation of an annual show with primary programming as any other type of art fair, shall be subject to the prior written approval of the City Manager, at his or her sole discretion.

9. **Due Care in Use of Premises.** Licensee agrees to exercise due care in its use of the Premises, and shall use the Premises in a safe and careful manner. Except as expressly set forth herein, Licensee shall not alter any part of the Premises without the City Manager's prior written approval. Licensee shall not damage, mar, deface or injure any part of the Premises, and shall be solely responsible for any damage caused to the Premises (or any other portion of the Park used by Licensee) during the License Period.

i. Upon expiration of the License Period for each Annual Show, Licensee shall deliver the Premises in as good condition and repair as existed at the beginning of the License Period, shall remove from the Premises, any and all property, goods or other effects belonging to, or brought onto the Premises, by Licensee (or its agents, contractors, representatives or invitees). If Licensee fails to do so, Licensor may store or cause to be stored any such property at Licensee's expense. Alternatively, Licensor may deem such property to be abandoned and sell such property in such a manner and to such an extent as is permitted by applicable law, and apply the proceeds of such sale(s) in a manner determined by Licensor in its sole discretion.

ii. Further, as provided in Section 2(h), upon expiration of the License Period for each Annual Show, Licensee shall replace the sod and planting material at the Premises (and any other portion of the Park used by Licensee). If Licensee fails to replace the sod and planting material, Licensor may replace the sod and planting material, at Licensee's sole cost and expense.

iii. In its use of the Premises, in no event shall Licensee cover or remove any element of the Veteran's Plaza or any of the City's Art in Public Places works installed or displayed at or in the vicinity of the Premises or the Park, and shall take steps to protect and not cause any damage to the Veteran's plaza or Art in Public Places works of art.

10. **Delay of Possession:**

i. In the event Licensor is not able to tender possession of the Premises or any part thereof to Licensee because of any delay, then as long as such inability continues, the License Fee shall be reduced pro-ratably. Licensor shall also be liable to pay any and all costs incurred by Licensee including, but not limited to, personnel overtime costs, as a result of Licensor's failure to tender possession of the Premises, unless such delay is caused by an event of Force Majeure (as provided in Section 26 below), in which case the provisions of Section 26 shall take precedence and control.

ii. Should Licensee fail to vacate and surrender the Premises at the end of the License Period or restore the Premises to its original condition, Licensee shall pay to the Licensors Licensee shall pay to the Licensors \$0.05 per square foot per day for use and occupancy for that portion of the Premises that has not been vacated, surrendered, or restored to its original condition. Further, the Licensors may, as a bailee, using reasonable care, remove and store all goods and chattels at the sole expense of the Licensee and may dispose of any such property if, after the expiration of fifteen (15) calendar days after the expiration of the License Period, the Licensee has failed to remove the property from the possession of the Licensors, upon prior written notice. The Licensors shall not be liable to the Licensee on account of so removing, storing, or disposing of any property as provided by this subsection and Licensee shall save and hold Licensors harmless from any liability from another licensee who is prevented from occupying their licensed portion of the Premises due to the holding over of the Licensee.

11. **Condition of Premises**. Licensors makes no warranty or representation to Licensee of any kind (express or implied) regarding the suitability of the Premises, or any portion thereof, for any aspect of the use Licensee expects or intends to make of the Premises. Licensee further agrees that the Premises shall be delivered to Licensee for each Annual Show “AS IS”, “WHERE IS,” and “WITH ANY AND ALL FAULTS,” and without warranty, express or implied, as to the merchantability or fitness for the use thereof for any particular purpose.

12. **Event Activation/Operations**. Licensee shall be solely responsible to provide for, and make all arrangements with respect to, the activation, operation and safe presentation of each Annual Show, including, without limitation, set-up and breakdown, box office and ticketing, credit card terminals, crowd control, badge checkers, supervisors, janitorial staff, telecommunications staff, internet technology staff, ticket takers, concession and catering staff, communications services (such as telephone, internet, and other services), support services, and first aid EMTs and fire personnel (at then-prevailing rates).

13. **Advertising and Promotion**. Licensee warrants that all advertising for each Annual Show will be accurate and truthful, and will include accurate information of event times and ticket prices (if applicable). All advertising of the Annual Show shall be subject to the prior written approval of Licensors (which shall not be unreasonably withheld).

14. **Security**. Licensee shall be solely responsible for the security of all goods, property, equipment, materials and any other items that it or its contractors, agents, or other representatives bring onto the Premises. Licensee shall also be solely responsible for the security of its employees, contractors, agents, representatives, invitees and other guests on the Premises. The Licensors shall have no obligation or responsibility whatsoever in connection therewith unless due to the gross negligence or willful misconduct of the Licensors.

15. **Access and Control**. Licensee shall, and shall cause its employees, agents and exhibitors and contractors to, follow any and all rules, regulations and policies of the Licensors, including any instructions of Licensors’s representatives regarding Licensee’s use and occupancy of the Premises. In licensing the use of the Premises to Licensee, it is understood that Licensors does not relinquish the right to control the management thereof and to enforce all necessary rules and regulations. Licensors shall at all times have the right to limit the number of people attending the Annual Show, for the purpose of ensuring the safety of people and property at the Premises.

16. **Disorderly Conduct.** Licenser reserves the right at all times to refuse admission to or to cause to be removed from the Premises any disorderly person, including Licensee's employees, agents, contractors, exhibitors, guests and invitees, as determined by Licenser in its sole discretion, and in the event of the exercise of such authority, Licensee hereby waives any and all claims for damages against Licenser and the Owner on account thereof.

17. **[Omitted]**

18. **Clean Up.** Licensee shall be solely responsible for the necessary housekeeping services to properly maintain the Premises in a neat and orderly manner. Licensee shall maintain the order and cleanliness of the Premises on a daily basis, and shall be responsible for the removal of trash, rubbish, and garbage. If required by the Licenser, Licensee shall provide, at its own expense, trash receptacles throughout the Premises in an amount sufficient to maintain the cleanliness of the area. Licensee shall also instruct and monitor its employees and contractors to assure that trash, rubbish, and garbage are immediately picked up on the Premises.

19. **Indemnification.** Licensee shall indemnify, defend and hold the Licenser, its officers, employees, contractors, and agents, harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any persons, firm or corporation, for personal injury, property damage, or other occurring upon the Premises occasioned in whole or in part by any of the following:

a. an act of omission on the part of Licensee or any officer, employee, contractor, agent, invitee, guest, or assignee of Licensee;

b. any misuse, neglect, or unlawful use of the Premises by Licensee or any officer, employee, contractor, agent, guest, invitee, or assignee of Licensee; and/or

c. any breach, violation, or nonperformance of any undertaking by Licensee under this License.

Licensee agrees to pay, and shall pay, for all damage to the Premises caused by Licensee or any employee, contractor, agent, guest, invitee, or assignee of Licensee.

20. **Insurance.** This License shall not be effective, nor shall Licensee take possession of the Premises, until all insurance required under this section has been obtained and such insurance has been approved by the City's Risk Manager. Licensee shall maintain and carry insurance sufficient to cover the operations and activities to be carried out on the Premises, including the following minimum insurance:

- 1) General Liability, in the amount of \$1,000,000.00. A certified copy of Licensee's Insurance Policy must be filed and approved by the Risk Manager prior to commencement. The CITY OF MIAMI BEACH, FLORIDA must be named as an Additional Insured.

- 2) Workers' Compensation & Employers Liability, as required pursuant to Florida Statutes. A certified copy of Licensee's Insurance Policy must be filed and approved by the Risk Manager prior to commencement.
- 3) Automobile Insurance, in the amount of \$1,000,000.00. A certified copy of Licensee's Insurance Policy must be filed and approved by the Risk Manager prior to commencement. THE CITY OF MIAMI BEACH, FLORIDA must be named as an Additional Insured.
- 4) All-Risks Property and Casualty Insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering the non-permanent structures and floor coverings owned by Licensee.
- 5) Liquor Legal Liability Insurance, with policy limits of \$2,000,000.00 per occurrence, naming the CITY OF MIAMI BEACH, FLORIDA, as an additional insured, either as an endorsement to Licensee's General Liability policy or as a separate policy. Licensee shall provide the Licensors with evidence of this insurance prior to selling or serving alcoholic beverages at or from the Premises. If Licensee fails to obtain or to continue this coverage, Licensee shall immediately discontinue selling and serving alcoholic beverages from the Premises. Licensee may also satisfy this requirement by ensuring that a third party selling and serving such beverages maintains such insurance.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

21. **Default and Termination.** The following actions (a) through (e) shall constitute an event of default by Licensee:

- a. If Licensee abandons or vacates the Premises during any of the dates provided for its use of the Premises hereunder, other than as consistent with moving in or out;
- b. If Licensee fails to timely pay any amount due, as required by this Agreement;
- c. If Licensee fails to discharge any lien filed on the Premises caused by any act or omission of Licensee or its agents, contractors or employees, within five (5) days of written notice from Licensors; or
- d. If Licensee fails to perform in accordance with any of the other terms and conditions herein contained and such default is not cured within ten (10) days after written notice from Licensors; or
- e. If Licensee fails to comply with the insurance requirements in Section 12 hereof and such default is not cured within twenty-four (24) hours of verbal or written notice from the Licensors.

In the event of a default by Licensee, and where such default is not cured within the applicable period, the Licensors may terminate this Agreement without further notice to Licensee. Licensee shall immediately surrender possession of the Premises, as well as removing any personal property and equipment therefrom. Any personal property and equipment not so removed shall be removed and stored at Licensee's expense.

Additionally, in the event of a termination hereunder, the Licensors may also pursue any and all remedies, whether at law or equity, available to seek redress for such default.

22. **Bankruptcy and Insolvency.** If Licensee is adjudicated bankrupt or makes an assignment for the benefits of creditors, the Licensors shall have the right to immediately terminate this Agreement and re-enter the Premises without notice or demand.

23. **Termination for Convenience.**

a. Either party may terminate the Agreement without cause prior to the conclusion of the 2023 Annual Show by giving notice to the other not later than December 31 of the calendar year prior to the calendar year of the first Annual Show scheduled to occur following such termination..

b. In the event Licensors terminates the Agreement prior to the conclusion of the 2023 Annual Show without cause pursuant to this Section 23, the Licensors shall reimburse Licensee for (i) any deposit previously made for such next scheduled Annual Show; and (ii) all non-refundable costs and expenses incurred by Licensee with respect to that year's Annual Show.

c. In the event Licensee terminates the Agreement prior to the conclusion of the 2023 Annual Show, without cause pursuant to this Section 23, Licensee shall (i) forfeit any deposit previously made for the next scheduled Annual Show; (ii) reimburse the Licensors for all non-refundable costs and expenses incurred by the Licensors with respect to such next scheduled Annual Show; and (iii) reimburse the Licensors, as liquidated damages, for the costs of the unamortized portion of design and construction of the Proposed Enhancements (if funding is appropriated by the City for the Proposed Enhancements).

24. **Permits and Licenses.** For each Annual Show, Licensee shall be solely responsible for obtaining, at its sole cost and expense, any and all permits and licenses necessary for its use of, and operations on, the Premises, including, without limitation, a City Special Event Permit, which includes building, structural, and electrical permits, with associated special event permit fees. Issuance of such Special Event Permit shall be subject to and contingent upon Licensee meeting all the requirements and conditions of the City's administrative rules and guidelines for special events, as same may be amended from time to time, and any approvals that may be required by any Authorities Having Jurisdiction or other regulatory authority (such as the City's Building Department and Fire Department). Licensee shall be responsible for its own Maintenance of Traffic (MOT) plan and life safety plans. Further, Licensee shall secure, and shall be solely responsible for, any licenses required by any performing arts societies such as ASCAP or BMI for music or other copyrighted works to be utilized or displayed at the Annual Show. Licensee shall defend, indemnify and hold harmless Licensors and the Owner from any

and all claims, fees, expenses, costs or damages, including reasonable attorneys' fees and court costs, suffered or incurred by such parties in connection with any breach of this Section.

25. **Licensor's Right of Entry.** The Licensor, or its authorized agent or agents, shall have the right, but not the obligation, to enter upon all or any part of the Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the Licensor may consider necessary, and for the purpose of preventing fire, and/or addressing other life safety issues. However, the Licensor agrees that, whenever reasonably possible, the Licensor shall provide notice to Licensee, unless the need to enter the Premises is an emergency, as deemed by the Licensor, in its sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the Licensor to do any work that under any provisions of this Agreement Licensee may be required to perform, and the performance thereof by the Licensor shall not constitute a waiver of the Licensee's default.

26. **Sponsorship/Complimentary Tickets.** The City of Miami Beach shall be recognized as a [REDACTED] level sponsor of each Annual Show, and shall receive sponsorship recognition that, at a minimum, includes logo recognition in the annual catalog, and logo recognition on the Licensee website (with a link to City's website). In addition, City will receive recognition in the Design Miami catalogue. Licensee shall provide the City with a minimum of ten (10) complimentary VIP passes for each Annual Show, and at least 25 additional complimentary day passes for each Annual Show. Further, for each Annual Show, Licensee shall provide Miami Beach residents with the opportunity, at least [REDACTED] days in advance of each Annual Show, to purchase individual passes or tickets to the Annual Show at a discount of at least fifteen percent (15%) off regularly advertised ticket prices. The Licensor shall provide Licensee with various media channels/formats to promote the offer (i.e. City newsletter, website).

27. **Force Majeure.** Licensor does not guarantee the uninterrupted use of the Premises, as the use of the Premises may be suspended or delayed by reason of "Force Majeure" as defined herein. Neither Party shall be considered to be in breach of this License, or liable or responsible to the other Party, for any delay, damage, loss, failure, or inability to perform its obligations hereunder, if such delay, damage, loss, failure or inability to perform, directly or indirectly, is caused by or in any manner arises from, an event of "Force Majeure." The term "Force Majeure", as used in this subsection, means the following: an act of God, strike, war, public rioting, terrorism, unusual tidal activity affecting the use of the Premises, fire, hurricane or other storm event, explosions, epidemics, earthquakes, floods, civil disturbances, chemical or environmental contamination, accident, confiscation or seizure by any governmental authority, and any other similar cause which is not reasonably within the control of the Party whose performance is to be excused, and by which the exercise of due diligence could not be reasonably prevented or overcome. If an occurrence of an event of Force Majeure takes place, the Party affected by the Force Majeure event shall provide notice to the other Party within twenty-one (21) days of the date on which such Party gains actual knowledge that such Party is unable to perform due to Force Majeure. The period of Force Majeure, and the suspension of obligations hereunder, shall extend to and include any period of time required to implement emergency preparations in advance of the event of Force Majeure, the event of Force Majeure itself, and the period of time following the event of Force Majeure that may be required to restore the Premises and/or remediate any delay, damage, loss, failure or inability to perform as a consequence of the event of Force Majeure. If either Licensor or Licensee cancel any Annual Show due to an event of Force Majeure, the Parties shall not have any liability under the License and Licensee, as its sole remedy and relief, shall receive a refund

of any uncommitted or cancelable advance payments, including any deposits made pursuant to this License, less any expenses directly incurred by Licensor in preparing for the Annual Show.

The Parties further acknowledge that by virtue of climate conditions and the City's status as a major tourism destination that attracts many foreign visitors, the Licensor cannot make any guarantees with respect to mosquito borne virus transmissions, including but not limited to the Zika virus. In the event of the occurrence of any such transmissions, Licensee shall have access to the same general information that the City provides to the general public with regard to transmission risks and prevention efforts. The Licensor encourages Licensee to post relevant public health-related information on its website and if possible, other marketing channels, for the benefit of its guests and patrons, as necessary. The Parties expressly acknowledge and agree that the occurrence of mosquito borne virus transmissions, including but not limited to Zika virus transmissions within the City of Miami Beach, Florida or elsewhere shall not constitute an event of Force Majeure under this License, unless a governmental entity or other public authority having jurisdiction issues a mandatory evacuation order or a travel ban that precludes attendees from traveling to the City of Miami Beach for the Annual Show.

28. **Compliance With Laws and Rules of the Premises; Taxes.** Licensee shall fully abide by, conform to and comply with, and shall cause every person under its direction or control who is connected with the performance of any aspect of this License to fully abide by, conform to and comply with all applicable laws, rules, regulations and ordinances of the United States of America, the State of Florida, the County of Miami-Dade, the City of Miami Beach and their respective agencies, as well as any rules, regulations and policies of Licensor for the use, occupancy and operation of the Premises. Licensee agrees to pay promptly all taxes assessed on its activities at the Premises hereunder, including, without limitation, any sales tax on the payment of the License Fee and any other costs payment under this License (which shall be in addition to, and separate from, the amounts due hereunder), and any ad valorem taxes, if any. Licensee shall be responsible for filing of any required federal, state or local tax or information returns and the payment of all sales, admission, excise and other taxes due, if any, in connection its obligation due with respect to with the Annual Show or admissions thereto.

29. **Non-Discrimination / Americans With Disability Act.** Licensee agrees not to discriminate against any employee or applicant for employment to be employed in the performance of or in relation to this License, with respect to the hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to such employment, whether on account of race, marital status, color, religion, national origin, ancestry, age, sex, sexual orientation or handicap. With respect to the Annual Show, Licensee recognizes that it is subject to the provisions of Title III of the Americans with Disabilities Act, as amended ("ADA"). Licensee shall be responsible for ensuring that its set-up for the Premises for each Annual Show complies in all respects with the ADA, including without limitation with regard to accessibility, usability, and configuration. Licensee shall be solely responsible for providing auxiliary aids or any modification of the Premises or other portion thereof that may be required in order to accommodate the Annual Show, and for ensuring that the policies, practices, and procedures it applies in connection with the Annual Show are in full compliance with the ADA.

30. **Waiver.** No waiver by Licensor any time of any of the terms or conditions of this License shall be deemed at any time thereafter a waiver of the same or any other term or conditions hereof.

31. **Remedies.** The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by any party hereto shall not preclude or constitute a waiver of its right to use any or all other remedies. Such rights and remedies are given in addition to any other rights and remedies a party may have by law, statute, or otherwise.

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

33. **Governing Law; Venue.** This License shall be governed by and construed in accordance with the law of the State of Florida. This License shall be enforceable in Miami- Dade County, Florida, and if legal action is necessary by either Party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **BY ENTERING INTO THIS LICENSE, LICENSEE AND LICENSOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS LICENSE.**

34. **Limitation of Liability.** Licensor desires to enter into this License only if in doing so the Licensor can place a limit on the Licensor's liability for cause of action for money damages due to an alleged breach by the Licensor of this License, including but not limited to a delay or failure to provide the Premises to Licensee, so that the liability of the Licensor for any such breaches never exceeds the aggregate total sum of \$10,000, plus any amounts which Licensee has paid to the City and for which City is obligated to reimburse Licensee ("the Liability Cap"). Licensee hereby expresses its willingness to enter into this License with Licensee's recovery from the Licensor for any damage action for all matters arising under this License to be limited to a maximum aggregate total amount equal to the Liability Cap. Accordingly, and notwithstanding any other term or condition of this License, Licensee hereby agrees that the Licensor shall not be liable to Licensee for damages in an aggregate total amount in excess of the Liability Cap for any action or claim for breach of contract or otherwise arising out of the performance or nonperformance of any obligations imposed upon the Licensor by this License. Nothing contained in this paragraph or elsewhere in this License is in any way intended to be a waiver of the limitation placed upon the Licensor's liability as set forth in Florida Statutes, Section 768.28. Neither party shall be liable under any circumstances to the others or to any third party for any indirect, special, punitive or consequential damages, or loss of revenue or profits, arising in connection with this License, even if such party has been advised of the possibility of such damages. Furthermore, Licensor shall not be responsible or liable for any injury or death to person or loss or damage to property sustained by Licensee, its employees, agents, exhibitors, contractors, or any other person claiming through Licensee resulting from any condition, accident or occurrence in or upon the Premises, unless such injury, loss or damage is due to the gross negligence or intentional misconduct of Licensor or its employees or

agents. Nothing herein shall limit or impair any right of Licensee under any insurance policy(ies) maintained by the City.

35. **Notices.** All notices shall be sent to the Parties at the following addresses:

Licensors:	City of Miami Beach City Manager's Office 1700 Convention Center Drive, 4 th Floor Miami Beach, FL 33139 Attn: City Manager
and	Tourism and Cultural Development Department 1755 Meridian Avenue, Suite 500 Miami Beach, FL 33139 Attn: Director
Licensee:	Design Miami II, LLC 3841 N.E. 2 nd Avenue, Suite 400 Miami, FL 33137 Attention: Craig Robins
With copies to:	Design Miami II, LLC 3841 N.E. 2 nd Avenue, Suite 400 Miami, FL 33137 Attention: Jen Roberts and Nicole Darnell

Licensee and Licensors may change such address at any time upon giving the other Party written notification. All notices under this License must be in writing and shall be deemed to be served when delivered to the address of the addressee. All notices served by mail shall be registered mail, return receipt requested. Licensee may designate additional persons for notification of default.

36. **Not a Lease.** It is expressly understood and agreed that no part of the Premises or the Park, or any part, parcel, building, structure, equipment or space is leased to the Licensee; that this License is solely in the nature of a non-exclusive license agreement, and is not a lease, and in no event shall this License be construed to confer any legal or equitable interest of any kind whatsoever in the Premises, the Park, or any City-owned property.

37. **Entire Agreement.** The Parties hereby agree that this License represents the entire agreement between the Parties relating to the subject matter hereof. This License alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This License may not be amended or modified, except by a written agreement signed by all parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this License to be executed by their appropriate officials, as of the date first entered above.

ATTEST:

LICENSOR/CITY OF MIAMI BEACH

Rafael E. Granado, City Clerk

Philip Levine, Mayor

LICENSEE/DESIGN MIAMI

DESIGN MIAMI II, LLC,
by Design Miami Inc., its managing partner

WITNESS:

By: _____

Print Name

Jennifer Roberts
CEO

WITNESS:

By: _____

Print Name