

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING FIRST READING, A LEASE AGREEMENT ("LEASE"), AS AUTHORIZED UNDER SECTION 82-37 OF THE CITY CODE AND SECTION 1.03(B)(4) OF THE CITY CHARTER, BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND MIAMI NEW DRAMA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION ("LESSEE"), OF A PORTION OF THE CITY-OWNED COLLINS PARK GARAGE LOCATED AT 340 23RD STREET (THE "PROPERTY"), FOR THE DEVELOPMENT AND OPERATION OF THE COLLINS PARK CULTURAL ARTS FACILITY, WHICH LEASE SHALL INCLUDE THE FOLLOWING USES: (1) A THEATER FOR PRODUCTION OF LIVE THEATRICAL PERFORMANCES AND USES ANCILLARY THERETO; (2) ADMINISTRATIVE AND BUSINESS FUNCTIONS AND REHEARSAL, COSTUME, AND SET DESIGN FACILITIES FOR PERFORMANCES; AND (3) A RESTAURANT CAFÉ PURSUANT TO A SUBLEASE TO A THIRD-PARTY OPERATOR (COLLECTIVELY, THE "PROJECT"); FURTHER, WAIVING, BY 5/7<sup>TH</sup> VOTE THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS OF SECTION 82-39 OF THE CITY CODE, FINDING THE PUBLIC INTEREST TO BE SERVED BY WAIVING SUCH REQUIREMENTS; PROVIDING FOR AN INITIAL TERM OF FIVE (5) YEARS, WITH UP TO THREE (3) RENEWAL TERMS FOR A PERIOD OF FIVE (5) YEARS EACH; FURTHER, PROVIDING THAT THE LEASE IS SUBJECT TO AND CONTINGENT UPON AN APPROPRIATION OF FUNDS BY THE CITY COMMISSION, AT ITS SOLE DISCRETION, IN THE AMOUNT OF \$4,750,000 ON OR BEFORE OCTOBER 1, 2024; FURTHER, AUTHORIZING AN AMENDMENT TO THE MANAGEMENT AGREEMENT BETWEEN THE CITY AND MIAMI NEW DRAMA, INC. FOR THE COLONY THEATRE ("MANAGEMENT AGREEMENT"), TO EXTEND THE TERM OF THE MANAGEMENT AGREEMENT FOR A PERIOD TO RUN CO-TERMINOUS WITH THE TERM OF THE LEASE AND FURTHER, SETTING THE SECOND READING/PUBLIC HEARING OF THE LEASE FOR A TIME CERTAIN.

**WHEREAS**, on November 9, 2016, pursuant to Ordinance No. 2016-4061, the Mayor and City Commission established the Collins Park Arts District Overlay, in response to an expressed desire by the Collins Park Neighborhood Association to incentivize arts and entertainment-related uses and, today, the Collins Park neighborhood is home to cultural institutions including the Bass Museum of Art, the Miami City Ballet, and the Regional Library; and

**WHEREAS**, the Collins Park Garage, located at 340 23<sup>rd</sup> Street and adjacent to the Miami City Ballet, includes a ground floor with approximately 16,000 gross sq. ft. of unfinished interior commercial space; and

**WHEREAS**, on May 22, 2020, the Finance and Economic Resiliency Committee

discussed tenant programming for the unleased commercial space of the Collins Park Garage, emphasizing the importance of community engagement and neighborhood enhancement, with the possibility of using City funds to curate cultural activation; and

**WHEREAS**, on July 29, 2020, Miami New Drama, Inc. ("Miami New Drama") presented the City Commission with an unsolicited proposal to program the tenant space of the Collins Park Garage as a flexible black box studio (the "Project") and the City Commission directed the Finance and Economic Resiliency Committee to examine the Project's feasibility; and

**WHEREAS**, on December 18, 2020, the Finance and Economic Resiliency Committee recommended the Administration prepare a request for proposals (RFP) for cultural arts institutions interested in activating the space and with independent financial support; and

**WHEREAS**, on January 27, 2021, pursuant to Resolution No. 2021-31568, the Mayor and City Commission found that the City's best interests were served by waiving formal competitive bidding in favor of Miami New Drama's unsolicited proposal and authorized negotiation of a term sheet with Miami New Drama; and

**WHEREAS**, on April 30, 2021, the Finance and Economic Resiliency Committee reviewed a term sheet negotiated pursuant to the direction provided by City Commission Resolution No. 2021-31568 ("Term Sheet") and recommended the negotiation of a lease agreement consistent with the Term Sheet for consideration by the City Commission; and

**WHEREAS**, on June 23, 2021, pursuant to Resolution No. 2021-31749, the Mayor and City Commission accepted the recommendation of the Finance and Economic Resiliency Committee at its April 30, 2021 meeting and approved the Term Sheet, and directed the Administration to draft and finalize a lease agreement consistent with the Term Sheet, and further, referred the proposed lease to the Planning Board for review, in accordance with the requirements of the City Charter and City Code; and

**WHEREAS**, pursuant to Section 1.03(b)(4) of the City Charter governing leases of ten years or longer for City-owned property, the Lease requires approval by a majority 4/7<sup>th</sup> vote of all members of the Planning Board and 6/7<sup>th</sup> vote of the City Commission; and

**WHEREAS**, on July 27, 2021, the Planning Board approved the lease terms, in accordance with the requirements of Section 1.03(b)(4) of the City Charter; and

**WHEREAS**, consistent with the direction provided in Resolution No. 2021-31749, the proposed Lease is attached as an Exhibit to the Commission Memorandum accompanying this Resolution, and includes the following terms:

- Miami New Drama will enter into the Lease for the ground floor space for an initial term of five (5) years, with options for three (3) additional five (5) year terms, in

order to activate the facility as a theater for its not-for-profit cultural presentations, production of live theatrical performances and uses ancillary thereto, including administrative and business functions and rehearsal, costume, and set design facilities for performances, as well as a restaurant café to be operated by a third-party pursuant to a sublease to be approved by the City Manager; and

- As conditions to the exercise of each Renewal Option, Tenant must be in good standing as a not-for-profit corporation, in compliance with applicable provisions of the City Code, and not otherwise in default of the Lease, including with respect to achieving the applicable Benchmark Performance Standards; and
- Landlord's City Manager or his/her designee shall serve as a voting member of Tenant's board of directors, with Landlord's City Manager having the option to designate one (1) additional representative to serve as a non-voting member; and
- The term of Miami New Drama's Management Agreement for the Colony Theatre shall be extended coterminous with the Collins Park Lease Term (including renewal periods), including cross-default provision for both the Management Agreement and Lease; and
- Miami New Drama is solely responsible for funding all design, architectural, and engineering professionals and architectural and engineering fees associated with the buildout improvements for the project (the "Project"), in an anticipated amount of approximately \$250,000 (the "Tenant Contribution"), and Miami New Drama must demonstrate it has secured funding in an amount equal to the Tenant Contribution within 365 days following City Commission approval of the Lease or 30 days after City Commission approval of the budget for buildout improvements; and
- The City is responsible for construction of the Project and the funding for construction hard costs related to the buildout improvements, in a total amount not to exceed \$4,750,000 (the "Landlord Contribution"); and
- The Lease is subject to and contingent upon, and will accordingly not become effective until, an appropriation of funds by the City Commission, at its sole discretion, for the Landlord Contribution in an amount of \$4,750,000, on or before October 1, 2024; and
- Subject to the budget appropriation by the City Commission, the Project will be developed with a design-to-budget approach based upon a budget equal to the sum of the Landlord Contribution and Tenant Contribution; and
- The City shall utilize a project delivery method of Construction Manager at Risk with Guaranteed Maximum Price, and the City and its construction manager shall have the right to review, reasonably approve, and provide comment on the

Project's plans and specifications at the 30%, 60%, 90%, and final stages of preparation; and

**WHEREAS**, pursuant to Section 82-37 of the City Code, the Lease requires two readings before the City Commission, with the second reading being a public hearing; and

**WHEREAS**, the Planning Department analysis, required pursuant to Section 82-38 of the City Code, is attached as an Exhibit to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, for the reasons outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends the City Commission approve the Lease on first reading and set the second and final reading / public hearing, with the final Lease subject to and contingent upon the City Commission's appropriation of the Landlord Contribution, at its sole discretion; and

**WHEREAS**, in the interest of activating the site with a nonprofit cultural amenity serving the public with community benefits, the Mayor and City Commission waive the competitive bidding and appraisal requirements, by a 5/7<sup>th</sup> vote, as permitted under Section 82-39 (a) and (b) of the City Code, as being in the best interest of the City.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve, following first reading, a lease agreement ("Lease"), as authorized under Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter, between the City of Miami Beach ("City") and Miami New Drama, Inc., a Florida not-for-profit corporation ("Lessee"), of a portion of the City-owned Collins Park garage located at 340 23<sup>rd</sup> Street (the "Property"), for the development and operation of the Collins Park Cultural Arts Facility, which Lease shall include the following uses: (1) a theater for production of live theatrical performances and uses ancillary thereto; (2) administrative and business functions and rehearsal, costume, and set design facilities for performances; and (3) a restaurant café pursuant to a sublease to a third-party operator (collectively, the "Project"); further, waiving, by 5/7<sup>th</sup> vote the competitive bidding and appraisal requirements of Section 82-39 of the City Code, finding the public interest to be served by waiving such requirements; providing for an initial term of five (5) years, with up to three (3) renewal terms for a period of five (5) years each; further, providing that the Lease is subject to and contingent upon an appropriation of funds by the City Commission, at its sole discretion, in the amount of \$4,750,000 on or before October 1, 2024; further, authorizing an amendment to the Management Agreement between the City and Miami New Drama, Inc. for the Colony Theatre ("Management Agreement"), to extend the term of the Management Agreement for a period to run co-terminous with the term of the Lease and further, setting the second reading/public hearing of the Lease for a time certain.


PASSED and ADOPTED THIS \_\_\_\_ day of October 2021.

ATTEST:

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

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

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney PAZ

\_\_\_\_\_  
Date 10-5-21