**USE AGREEMENT**

**MANUEL ARTIME PERFORMING ARTS CENTER**

This Use Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2022, by and between the City of Miami, a municipal corporation of the State of Florida (“City”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Florida corporation (“User”).

**RECITALS**

 **A.** User has requested that the City make available to it the use of the Manuel Artime Performing Arts Center (“Facility”), for the fee specified herein.

 **B.** The City owns and operates the Facility and is willing to permit User to use the Facility during the use period subject to the terms and conditions set forth herein.

 **C.** The City Commission, by Ordinance 12403, has approved the fees and rates being charged to the User hereunder, and has authorized the execution of this Agreement.

 NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the City hereby grants to User a limited license for the right, privilege and permission to enter into and upon Facility for the Permitted Use and during the Use Period, as the terms are hereinafter defined, subject the terms and conditions set forth in this Agreement.

**1. TERM:** The term of this Agreement shall commence upon full execution hereof and shall terminate upon fulfillment of all the responsibilities and obligations of the parties hereunder (“Term”).

**2.** **PERMITTED USE:** User shall be permitted to enter and occupy certain portions of the Facility for the purposes of presenting a movie presentation (“Event”) as follows:

**(a)** **Other Uses:** Should User wish to use the Facility at any other times or for any other purposes, then the proposed use and the charges to be paid in connection therewith shall be as customarily charged by the City for similar use of the Facility.

**(b) Reservation by other users:** For purposes of this paragraph, the auditorium or any portion of the Facility shall be deemed to have been reserved by another user if, as of the date hereof, such areas are reserved for use by another user or if the City notifies User of a prior reservation at least fifteen (15) days prior to the date of the reserved event or use.

**(c) No Interest Conferred:** This Agreement confers no exclusive possession of the Facility. The User cannot exclude the City from the Facility. This Agreement solely provides a license that authorizes User to the temporary use of the Facility for the limited purposes set forth herein and for no other purpose. The parties hereby agree that the provisions of this Agreement do not constitute a lease. The rights of User hereunder are not those of a tenant but are a mere personal privilege to do certain acts of a temporary character in the Facility and to use the Facility, subject to the terms of this Agreement. The City retains dominion, possession and control of the Facility.

**3. USE PERIOD**: The use period shall consist of the periods for set-up and dismantle and for presentation of the Event (“Use Period”).

* The period for presentation of the Event shall commence at      , on the       day of      , 2018, and shall terminate at      , on the       day of      , 2022.
* The period for the rehearsal shall commence at      , on the       day of      , 2022, and shall terminate at      , on the       day of      , 2022.
* Unless otherwise agreed by the Director of the Facility (the “Director”), the set-up period of the Event shall commence no earlier than      , on the       day of      , 2022, prior to the Event period, and dismantle shall begin immediately upon the conclusion of the Event terminating no later than       on the       day of      , 2022.

In consideration of an additional fee of $\_92.50, the Director may allow User a longer period for setup and dismantle, should User require additional time. Any equipment or stage props left in the Facility after the expiration of the time allowed for dismantle shall be disposed of by the City at User’s sole cost without any right of claim by the User, or at the City’s option, may be stored at User’s cost.

**4.** **USE RATE:**

**(a) Basic Use Rate:** In consideration of the use of the Facility as described above, User agrees to pay to the City the sum of $      per Event, plus $      per rehearsal, plus $\_\_\_\_ per hour (\_\_\_\_\_\_) on additional time for setup and dismantle (“Basic Use Rate”) with a total amount due of $     , to be paid no later than      , 2022. The Basic Use Rate includes normal janitorial service, house lights for ordinary use and air conditioning during the Event hours only, in addition to the items listed in the In House Equipment list, which by this reference is incorporated into and made a part of this Agreement as “Exhibit C”. The Basic Use Rate does not include Additional Charges as defined below.

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 **(b)****Theater Staff Charges:**     Theater personnel are not included under Section 4(a) “Basic Use Rate” of this Use Agreement.   Should the User contract the theater personnel services, fees for such services shall be charged per  theater staff member at a rate of:  three hundred dollars ($300.00) for a total of eight (8) hours, including any combination of rehearsal, set-up/tear down, and event; four hundred fifty dollars ($450.00) for a total of eight (8) hours for a Daily Event, including any combination of rehearsal, set-up/tear down, and event; one hundred dollars ($100.00) for a total of four (4) hours for each additional rehearsal; any additional time required beyond eight (8) hours and/or four (4) hours for additional rehearsals, the User shall be charged a rate of forty dollars ($40.00) an hour per theater staff personnel.  A sub total amount due of       dollars ($     ) plus forty dollars ($40.00) per hour/per theater staff member (      hours) for a total amount due of $    , to be paid no later than      , 20\_\_.

Should the User not use the City’s theater staff, one (1) theater staff member will be scheduled to oversee operations at no charge to the User for a maximum of eight (8) hours. Any additional time beyond the initial eight (8) hours, the User shall be charged a rate of forty dollars ($40.00) an hour for the theater staff member.  For any Filming event, one (1) theater staff member will be scheduled to oversee operations at a rate of two hundred dollars ($200.00) per event for a total of eight (8) hours; any additional staff time required beyond eight (8) hours, the User shall be charged a rate of forty dollars ($40.00) an hour per theater staff member.  If the Auditorium Manager determines that it is in the best interest of the City to require a second theater staff member be present for the event, the User shall be charged a fee of three hundred dollars ($300.00) for the initial eight (8) hours; any additional time required beyond eight (8) hours, the User shall be charged a rate of forty dollars ($40.00) an hour per staff member. A sub total amount due of $      plus forty ($40.00) per hour/per technician (      hours) for a total amount due of $     , to be paid no later than      , 20\_\_. In addition to the above Theater Staff charges, the User shall be responsible for a “during-event cleaning fee” in the amount of one hundred twenty dollars ($120.00), which shall encompass the Theater providing sufficient staff in order to ensure that the Facility remains clean, including but not limited to any unforeseen situations that may require emergency cleaning of ancillary Facility areas during the Event, and ending upon the conclusion thereof.

**(c) Additional Charges:** User shall be responsible for the staffing of all Events and shall pay for all supplies or other services, needed or provided in connection with the use of the Facility and/or the presentation of an Event, including but not limited to those listed in the In House Equipment List included as “Exhibit C” (all such costs and expenses being referred to herein as “Additional Charges”). Payment of Additional Charges not previously agreed to prior to the Event, shall be made within five (5) business days following the occurrence of the Event giving rise to such payment.

User shall be responsible for a non-refundable Cleaning Fee of three hundred one and No/100 Dollars ($301.00) and shall consist of staff members providing complete cleaning services after the Event has concluded.  Should further cleaning services be needed or should the Event last longer than the aforementioned four (4) hours, an additional cleaning fee will be imposed at the rate of twenty-five and No/100 dollars ($25.00) per hour thereafter.

In the event that the User elects to conduct a rehearsal as described herein, User shall be responsible for a cleaning fee in the amount of fifty and no/100 dollars ($50.00), per each rehearsal conducted.

**(d) Payment of Use Fee:** All payments from User to the City shall be by Cashier’s or certified check drawn from a local bank, or credit card acceptable to City staff.  No payments shall be accepted in the form of cash.  Failure to pay any portion of the Use Fee prior to thirty (30) days from the date of the Event shall result in the immediate termination of this Agreement and shall result in the forfeiture of all deposit funds.

**5.** **DEPOSIT:** Upon execution of this Agreement, and as a condition to its effectiveness, User shall deliver to the City a deposit, in the amount of two hundred and five dollars ($205.00) (“ Event Deposit”), to be held by the City throughout the Term. The Event Deposit shall secure User’s performance under this Agreement and full payment of all amounts due hereunder, including the cost of any damage repairs, replacement or restoration, payment of any Additional Charges, or to defray any other unusual but reasonable expense borne by the City as a consequence of User’s use of the Facilities hereunder and/or presentation of an Event. The City shall return the Event Deposit, or the unexpended portion thereof, to the User upon full satisfaction of all of User’s obligations hereunder. The Event Deposit fee includes a fee of$105.00 to be held by the City as per the terms of this agreement; in additional to, a Cleaning Deposit Fee of one hundred dollars ($100.00) which User shall be responsible for. The Cleaning Deposit Fee, is to be returned to the User should no additional cleaning services be necessary.  Should said services be necessary, at the sole discretion of Manuel Artime, such will be provided at a rate of fifty dollars ($50.00) per hour.  This section does not include any further fees required as per the Additional fees section or any other section of this Agreement.

**6.** **ATTENDANCE:** User understands that the maximum attendance at any one event is nine hundred (900) persons and that User shall not print more than eight hundred and forty one (841) tickets per Event.

**7. EVENT PERSONNEL, UTILITIES AND SUPPLIES:** Except as specifically provided herein, User shall be responsible for all staffing in connection with the use of the Facility and/or the presentation of an Event which includes ticket sellers, ticket takers, ushering staff, stagehands, spotlight operators, etc. Additionally, User understands and agrees that it shall only utilize the services of sound and/or lighting technicians who have been approved by the City to operate the Facility’s sound and/or lighting equipment. If the Auditorium Manager determines that it is in the best interest of the City to require additional staffing to be present for an Event, the User shall be charged the fees as defined in Section 4 of this Agreement for the additional personnel.

**8. CONDITION OF FACILITY/REMOVAL OF USER’S EFFECTS:**

**(a)** User has inspected the Facility and accepts it in “as-is” condition. User agrees to tear down and remove all of User’s effects immediately after the presentation of an Event and/or expiration of the Term. User shall not permit the Facility to suffer any damage or disrepair.

**(b)** User shall not construct or erect any fixtures within the Facility without the Auditorium Manager’s prior written approval, which may be withheld in the Auditorium Manager’s sole discretion and subject to any restrictions and conditions as may be prescribed by the City, including but not limited to requirements imposed by the City’s Risk Department and Building Department, as applicable. Upon issuance of a notice to proceed the User shall contact the Auditorium Manager and the Risk Management Department at (305) 416-1700 to schedule any necessary inspection(s).

(c) At the conclusion of each Event, and upon expiration of the Term, User agrees to surrender the Facility to the City properly cleaned and in the same condition existing upon User’s acceptance. If the Facility is not properly cleaned to the City’s satisfaction, then the City shall have the right to invoice the User for such additional cleaning. The cost of additional cleaning, as well as the cost of damage repairs, or any repairs necessitated as a result of the use of the Facility by User, shall be deducted from the Deposit. User shall pay any deficiency upon demand.

**(d)** User shall not be permitted to remove the piano from the stage under any circumstances. Additionally, the removal of lights from their original setting is prohibited. Changing of the original positioning or focusing of the lighting equipment or reprogramming of the lighting computer can only be done with the City’s prior written approval and supervision. If any such changes are made with City’s permission, User shall pay for any technical labor involved in returning the equipment to its original standard design. Any violation of this section may result in the immediate termination of this Agreement and will subject User to liability for all damages arising from, or in connection with, said violation.

**(e)** The City shall have the right to enter upon the Facility at any time during the Use Period or the Term, as it deems necessary.

**9.** **AUDIT AND INSPECTION RIGHTS:** The City may, at reasonable times, and for a period of up to three (3) years following the expiration of the Term, audit, or cause to be audited, those books and records of User which are related to this Agreement. User agrees to maintain all such books and records at its principal place of business for a period of three (3) years after expiration of the Term.

**10. PUBLIC RECORDS:** User understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. User’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

**11. COMPLIANCE WITH APPLICABLE LAWS AND RULES AND REGULATIONS:** User agrees to obtain all required licenses and permits and to abide by and comply with all applicable federal, state, and local laws, rules, regulations, codes and ordinances in the use of the Facility and/or presentation of an Event. By execution of this Agreement, User acknowledges that it has received and fully understands the “Rules and Regulations for Use of City of Miami Municipal Facilities” which has been furnished to User prior to the execution hereof. User hereby represents and warrants to the City that User shall abide by each, and shall not permit the violation of any, rule and regulation set out therein.

**12. INDEMNIFICATION:** User shall indemnify, covenant not to sue, defend and hold harmless the City and its officials, employees and agents (collectively referred to as “Indemnitees”), from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney’s fees) or any other liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the Event; (ii) the use of the Facility, whether caused directly or indirectly, in whole or in part (whether joint, concurrent or contributing), by any act, omission, default, negligence (whether active or passive), recklessness or intentional wrongful misconduct of any Indemnitees, User or any of User’s guests, invitees, employees, agents or subcontractors; or (iii) by the failure of User to comply with any of the provisions herein, including but not limited to User’s obligation to comply with all applicable statutes, ordinances or other regulations or requirements in connection with the use of the Facility. This indemnification shall survive the termination or expiration of this Agreement.

**13. RISK OF LOSS:** User understands and agrees that the City shall not be liable for any loss, injury or damage to any personal property or equipment brought into the Facility by User or by anyone whomsoever, during the time that the Facility is under the control of, or occupied by the User. All personal property placed or moved in the Facility shall be at the risk of User or the owner thereof. User further agrees that it shall be responsible to provide security whenever personal property either owned or used by the User, its employees, agents or subcontractors is placed in the Facility, including any property or equipment necessary for set-up and dismantle, whether or not the Facility is open to the general public.

**14. INSURANCE:** Insurance is required for all Events based on the terms of “Exhibit A” and “Exhibit B” attached hereto and made part of this Agreement. In the event that attendance exceeds the number on which the fee paid by the User has been computed, the User shall be obligated to pay the difference within 48 hours of the conclusion of the event. User understands that not all events are eligible under the “TULIP Class One Events” of “Exhibit A”, and such coverage is subject to terms, conditions and exclusions. The User agrees to provide the City with a certificate of insurance in accordance with “Exhibit B”. The City reserves the right to solicit from the user copies of any and all insurance policies and corresponding endorsements in connection with this Agreement. User shall be responsible for submitting all necessary insurance documentation, as required by Manuel Artime and/or the City of Miami Department of Risk Management, no less than thirty (30) days prior to the Event/Use Date.  Failure to do so will result in an automatic termination of this agreement and forfeiture of all deposit funds.

**15. DEFAULT:** User is responsible for providing a fully signed and notarized agreement to Manuel Artime no less than thirty (30) days prior to the Event/Use Date, and if User fails to comply, the event will automatically be cancelled and all deposit funds shall be retained by Manuel Artime. If User fails to comply with any term(s) or condition(s) of this Agreement, or fails to perform any of its obligations hereunder, then User shall be in default. Upon the occurrence of a default hereunder, the City, in addition to all remedies available to it by law, may by notice to User, terminate this Agreement whereupon all deposits, payments, advances, or other compensation paid by the User to the City shall be retained by the City. **Notwithstanding any other provision herein, or any rule or regulation providing otherwise if the User cancels the event Thirty (30) days or less than thirty (30) days from the commencement of the Use Period this shall be a default by the User who shall automatically forfeit and owe the entire Basic Use Rate as defined by §4 (a) herein. The Basic Use Rate shall be immediately due and owing to the City, not as a penalty but as liquidated damages; insofar as the parties cannot ascertain the losses the City will suffer from the inability to allow another User to use the facility during this Use Period. The User shall have no recourse against the City due to the User’s cancellation of the event thirty (30) or less days preceding the Use Period. The User shall be liable to pay interest at the rate of twelve (12%) per annum, or the maximum rate permissible by law if less. for the principal involved in the Basic Use Rate until it is paid in full. The forfeiture of the Basic Use Rate shall not apply if the cancellation occurs due to an Act of God (e.g. hurricane, tornado).**

**16. CITY’S TERMINATION RIGHTS:**

**(a) Termination for Convenience:** The City shall have the right to terminate this Agreement for convenience, in its sole discretion, upon a thirty (30) day prior written notice to User. Additionally, the City shall have the right to cancel the presentation of an Event, at any time if, in the exercise of its reasonable discretion, the City determines that the presentation of such Event, at the scheduled time, is not in the best interest of the City due to circumstances beyond the City’s reasonable control.

**(b) Termination for Cause:** The City shall have the right to terminate this Agreement, without notice or liability to User, upon the occurrence of an event of default.

**(c) Other Termination Rights:** The City shall have the right to terminate this Agreement in the event that the Facility is sold, is condemned, or in the event of its damage due to fire, windstorm, catastrophe or other act of God, and the City decides, in its sole discretion, not to repair or rebuild.

**(d) Force Majeure:** The City shall not be liable for any failure to perform its obligations where such failure is caused by conditions beyond its control, including, but not limited to, Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, events in foreign countries that affect the City and its citizens, hostilities (whether war is declared or not), civil war, rebellion, pandemics, revolution, insurrection, riots, street celebrations or protests, military or usurped power or confiscation, terrorists activities, nationalization, government sanctions or restrictions, blockage, embargo, labor dispute, strike, lockout or interruption, or the failure of services such as electricity or telephone.

**(e) Cancellations and Return of Deposit:** Except where this Agreement is terminated for cause or cancelled by the User outside of the allowable timeframe(s) as provided by this Agreement, User shall be entitled to a refund of the Deposit and Cleaning Fee, or so much thereof as has not been applied, upon termination of the Agreement, after satisfaction of all amounts due by User hereunder, if any. Should User cancel the event within thirty (30) days of the Event, all deposit funds will be lost. In the event of a refund as per the terms of this Agreement, all refunds shall be returned to the User within thirty (30) days of the cancellation/end of the Event Date, or such reasonable time thereafter as administratively possible by Manuel Artime

**17. NONDISCRIMINATION:** User represents and warrants to the City that User does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with User’s use of the Facility or presentation of the Event on account of race, color, sex, religion, age, handicap, marital status or national origin. User further covenants that no individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination in connection with the use of the Facility under this Agreement.

**18. ASSIGNMENT:** This Agreement may not be assigned by User, in whole or in part, without the prior written consent of the City’s, which may be withheld, or conditioned, in the City’s sole discretion.

**19. NOTICES:** All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by giving notice in the manner herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

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| --- | --- | --- | --- |
| **TO USER:** |  |  | **TO THE CITY:** |
|  |  |  |  |  |  |  |
|  |  |  |  | **Art Noriega** |
|  |  |  |  | **City Manager** |
|  |  |  |  | **444 SW 2nd Avenue, 10th Floor** |
|  |  |  |  | **Miami, FL 33130** |

**WITH COPY TO:**

**Victoria Méndez**

**City Attorney**

**444 SW 2nd Avenue, Ste. 945**

**Miami, FL 33130**

**20. MISCELLANEOUS PROVISIONS:**

**(a)** User shall provide to the Director twenty (20) promotional tickets for each paid event, for the purpose of promoting the Facility.

**(b)** This Agreement shall be construed and enforced according to the laws of the State of Florida and each party shall be responsible for its own attorney’s fees. Venue for the resolution of any disputes, including litigation, shall be in Miami-Dade County, Florida.

**(c)** Title and paragraph headings are for convenient reference and are not a part of this Agreement.

**(d)** No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

 **(e)** Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

**(f)** This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by property authorized representatives of the parties hereto.

**(g)** User is aware of the conflict of interest laws of the City of Miami (Code of the City of Miami, Florida, as amended, Chapter 2, Article V) and agrees that it will fully comply in all respects with the terms of said laws.

**21. ENTIRE AGREEMENT:** This instrument, together with its attachments and all other instruments incorporated herein by reference constitute the sole and only agreement of the parties hereto relating to the use of the Facilities. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

**22. COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement. This Agreement may be signed by digital or electronic means and be considered an original as described herein.

**23.** **INSPECTIONS:** The User will allow City inspectors, agents or representatives the ability to monitor its compliance with safety precautions as required by federal, state or local laws, rules, regulations and ordinances. By performing these inspections, the City, its agents, or representatives are not assuming any liability by virtue of these laws, rules, regulations, and ordinances. The User shall have no recourse against the City, its agents, or representatives from the occurrence, non-occurrence, or result of such inspection(s).

**24.** **AMERICANS WITH DISABILITIES ACT:** User shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor or services funded by the City including Titles I and II of the ADA ( regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines and standards. Additionally, User shall take affirmative steps to ensure nondiscrimination in employment of disabled persons.

**25. COMPLIANCE WITH LAWS:** User accepts this Agreement and hereby acknowledges that User's strict compliance with all applicable federal, state and local laws, ordinances and regulations is a condition of this Agreement, and User, and any of its employees, agents or performers, shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

Further, the User, and any of its employees, agents or performers, hereby agrees to comply with all regulations regarding travel to and from the United States as promulgated by the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) and the U.S. Department of State.

Violation of any federal, state and local law shall subject the User to immediate cancellation of this Agreement.

**26.** **RELEASE OF THEATER USE OF MATERIALS:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, User hereby grants to theater and the City of Miami, and its licensees, designees and assigns, a non-exclusive license to use, for any reason and via any medium, any and all materials described herein, as collected by Theater or the City of Miami before, during, or after the Event (collectively, the "Materials") in accordance with the terms of this Agreement. The license granted hereunder includes the perpetual, worldwide right to photograph, edit, telecast, rerun, reproduce, use, syndicate, license, print, distribute, and otherwise exploit the Materials, or any portion thereof, as incorporated in any version of Event or rehearsal thereof, in whole or in part, in any manner and in any media, whether now known or hereafter devised, and for the promotion of the Event.

**27. CHALLENGE OF EVENT (DATE (S):**

Another potential user may challenge an existing reservation for an Event (“Challenger”), in writing to the Theater, when the first User with such existing reservation has paid the associated deposit but the contract for such event has not yet been fully executed (“Challenge”). In this event, the Challenger shall furnish a challenge payment of seven hundred forty nine dollars ($749.00) per day the first User has an existing reservation, in addition to the total amount due to Theater for the Challenger’s proposed event, inclusive of all associated rehearsals, Additional Fees, etc. (“Challenge Payment”), to be retained by Theater. Simultaneously, User with an existing reservation has no later than two (2) weeks from the date of the Challenge to return an executed contract with prepayment in full for the Event. If these two (2) weeks pass without the first User executing the contract and tendering payment in full for the Event, the Challenger shall be entitled to such reservation and the Theater shall keep such prepayment in full. In the event that the first User submits the executed contract and payment in full for the Event, the Challenge Payment shall be returned in full to the Challenger.

**28. COVID-19 PROTOCOLS:**

User hereby acknowledges and confirms its commitment to holding the Event in a safe and hygienic manner and User shall take reasonable measures to protect its staff, agents, invitees and others from the spread of COVID-19 and other infections and diseases. User shall implement its own safety protocols and utilize measures during the entire Term for the safe and hygienic preparation, operation, and dismantling of the Event. Additionally, User has executed the attached Release included as Exhibit “D” in furtherance of User’s commitment to combat the spread of COVID-19. Notwithstanding any language contained in this Agreement to the contrary, the City expressly retains all rights and benefits of sovereign immunity in accordance with Section 768.28, Florida Statutes (2022). Nothing in this Agreement shall be deemed as a waiver of sovereign immunity or as increasing the City's liability beyond any statutory limitation of liability.

**29. AUTHORITY TO EXECUTE:**

The below signatory represents and warrants that it has full authority to enter into, deliver, and perform under this Agreement, and that all acts and actions have been taken to grant such authority, and that no third-party consent, which has not already been obtained, is required. User further represents and warrants that the below signatory is authorized to execute this Agreement on its behalf.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

**“USER”**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ,

a Florida Corporation

By:

Print Name:

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:CITY OF MIAMI, a municipal corporation

 Of the State of Florida

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:

 TODD b. HANNON ART NORIEGA City Clerk City Manager

APPROVED AS TO FORM AND APPROVED AS TO INSURANCE

CORRECTNESS: REQUIREMENTS:

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

VICTORIA MÉNDEZ ANN-MARIE SHARPE, Director

City Attorney Division of Risk Management

“**EXHIBIT A”**

Insurance Fee Schedule

# TULIP Class One Events

Antique Shows Fashion Shows

Art Festivals and Shows Flowers Shows

Auctions Funeral Service

Award Presentations Graduations

Ballets or other Classical Dance Shows/Recitals Holiday Events & Parties

Beauty Pageants Home Shows

Body Building Contests Jam and Jazz Concerts – Indoors

Business Meetings or Shows Job Fairs - Indoors

Chamber of Commerce Events Ladies Club Events

Charity Benefits, Dances, Auctions or Sales Lecturers

Choirs – Indoors Meeting (indoors)

Church Services or Meetings Pageants

Civic Club Meetings Professional and Amateur Association Meetings

Classical Dance Shows Reunions – Indoors

Classical Music Concerts - Indoors Séances

Concerts – Celtic Music Seminars

Concerts – Chamber Music Social Receptions

Concerts – Holiday Music Speaking Engagements

Concerts – Instrumental Story Teller

Consumer Shows Symphony Concerts

Dance Competitions Teleconferences

Dance Recital Telethons

Voter Registration

**TULIP Rating Schedule**

A. Total Event Rates (1-4 Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $75.00 $100.00 $150.00

B. 101 - 500 100.00 135.00 200.00

C. 501 - 1,500 150.00 185.00 310.00

B. Total Event Rates (5 or More Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $95.00 $170.00 $300.00

B. 101 - 500 140.00 215.00 360.00

C. 501 - 1,500 235.00 355.00 455.00

\* Add 10% to the premium for each Additional Insured (other than the programs sponsor and venue), up to a maximum of $1,000.00.

Handling Fee: $35.00

# TULIP Class Two Events

Bingo Games

Carnivals – School Events with no mechanical

Christmas Tree Lighting

Clowns – No Motorized Vehicles

Comedians

Concerts – 50’s, 60’s 70’s or 80’s Music

Concerts – Blues Music

Concerts – Country Music

Concerts – Folk Music

Concerts – Funk Music

Concerts – Motown

Concerts – Soul Music

Dog, Cat, Bird & Other Domestic Animal Shows/Events

Festivals and Cultural Events – Indoors

Impersonator – Celebrity or Holiday Character

Impressionist

Jugglers (No Pyro)

Magician

Mariachi Band

School Band Competitions or Events

Union Meeting

**TULIP Rating Schedule**

A. Total Event Rates (1-4 Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $75.00 $100.00 $150.00

B. 101 - 500 100.00 135.00 200.00

C. 501 - 1,500 150.00 185.00 310.00

B. Total Event Rates (5 or More Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $95.00 $170.00 $300.00

B. 101 - 500 140.00 215.00 360.00

C. 501 - 1,500 235.00 355.00 455.00

\* Add 10% to the premium for each Additional Insured (other than the programs sponsor and venue), up to a maximum of $1,000.00.

Handling Fee: $35.00

# TULIP Class Three Events

Aerobics and Jazzercise Classes or Events

Casino and Lounge Shows

Cheerleading Events/Competitions (no Pyramids)

Comedy shows

Concert – Pop Cover Bands

Film Screenings

Film Showings

Gymnastic Competitions – Spectators Only

Halloween – Costume Contests

Magic Show

Old Timer Event

Play Readings

Plays

Proms

Talent Show (No Rap, Hip Hop, Heavy Metal shows)

Tap Dancing

Theatrical Stage Performances

Wine Tasting

**TULIP Rating Schedule**

A. Total Event Rates (1-4 Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $75.00 $100.00 $150.00

B. 101 - 500 100.00 135.00 200.00

C. 501 - 1,500 150.00 185.00 310.00

B. Total Event Rates (5 or More Days)

**Daily Attendees Class I Class II Class III**

(Spectators/Participants)

A. 1 - 100 $95.00 $170.00 $300.00

B. 101 - 500 140.00 215.00 360.00

C. 501 - 1,500 235.00 355.00 455.00

\* Add 10% to the premium for each Additional Insured (other than the programs sponsor and venue), up to a maximum of $1,000.00.

Handling Fee: $35.00

“**EXHIBIT B”**

INSURANCE REQUIREMENTS- SPECIAL EVENTS INSURANCE

1. **Commercial General Liability**
	1. Limits of Liability

 Bodily Injury and Property Damage Liability

 Each Occurrence $1,000,000

 General Aggregate Limit $ 2,000,000

 Personal and Adv. Injury $ 1,000,000

 Products/Completed Operations $ 1,000,000

* 1. Endorsements Required

 City of Miami included as an additional insured (Endorsement is required)

 Primary Insurance Clause

 Contingent and Contractual liability

 Premises and Operations Liability

1. **Business Automobile Liability (If Applicable)**
	1. Limits of Liability

 Bodily Injury and Property Damage Liability

 Combined Single Limit

 Any Auto

 Including Hired, Borrowed or Non-Owned Autos

 Any One Accident $ 300,000

* 1. Endorsements Required

 City of Miami included as an Additional Insured

 III. **Worker’s Compensation (IF APPLICABLE)**

Limits of Liability

Statutory-State of Florida

Employer’s Liability

* 1. Limits of Liability

$100,000 for bodily injury caused by an accident, each accident

$100,000 for bodily injury caused by disease, each employee

 $500,000 for bodily injury caused by disease, policy limit

 IV. **Host liquor/Liquor Liability (IF APPLICABLE)**

* 1. Limits of Liability

Each occurrence $1,000,000

Aggregate $1,000,000

**The Department of Risk Management reserves the right to solicit additional coverage or higher limits of liability as may be applicable.**

**The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer in accordance with policy provisions.**

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than “A-” as to management, and no less than “Class V” 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. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

“**EXHIBIT C”**

In House Equipment\*

Sound System

Control: 1 Allen & Heath – ML3000-32 System

 1 Cassette Player

 1 Numark Dual CD Player

Speakers: 2 Sound Physics Labs-TD1sub Dual 12” subwoofer

 3 Sound Physics Labs-TD1 3-way full range loudspeakers

 7 Tannoy V-8 8” dual concentric loudspeakers

(balcony & under balcony)

 4 Tannoy V-12 12” dual concentric Loudspeakers

(stage monitors)

Accessories:

 6 AKG D770 handheld microphones

Light System

5 CYC

2 Comet Follow Spots

17 PAR 64

13 Altam 360Q (6” x 9”)

20 Altam 360Q (6” x 12”)

22 Altman 360 Q (6” x 16”)

\* Not all equipment may be available on the date of the event.

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**Exhibit “D”**

**RELEASE OF LIABILITY RELATING TO CORONAVIRUS**

I am aware of the novel coronavirus, (“COVID-19”), which has been declared a worldwide pandemic by the World Health Organization. **COVID-19 is extremely contagious** and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend physical distancing and have, in many locations, prohibited the congregation of groups and people.

The City of Miami encourages preventative measures to reduce the spread of COVID-19. The City **cannot guarantee** that you, your business, your employees, client, contractors, guests, invitees, or any other person that may utilize the Facility, will not become infected with COVID-19. Further, attending or hosting any event in the Facility could **increase** my risk and/or any attendees of my Event and/or employed by myself or the company, of contracting COVID-19.

I acknowledge that the circumstances regarding COVID-19 are changing from day to day and much information regarding COVID-19 is still unknown. I fully understand and appreciate both the known and unknown potential dangers of utilizing the City’s Facility. I acknowledge that my use of any City facilities and services despite the City’s reasonable efforts to mitigate such dangers, may result in exposure to COVID-19, which could result in quarantine requirements, serious illness, disability, and/or death. By signing this release, I acknowledge the contagious nature of COVID-19 and voluntarily release the City from any liability if I or any invitee, employee, attendee of the Event if exposed to, or infected by, COVID-19 by utilizing any City facilities or services.

I hereby **RELEASE, WAIVE, DISCHARGE, INDEMNIFY, HOLD HARMLESS AND PROMISE NOT TO SUE** the City, any of its employees, agents, representatives, volunteers, or contractors from and against any and all liability to myself, my employees, my clients, my invitees, and any personal representatives, assigns, heirs, and next of kin and any claim or demands on account of any property damage or injury, illness, death of, myself, my child, any personal representatives, assigns, heirs, and next of kin as a result of exposure to or infection with COVID-19, whether caused by negligence of the City or otherwise.

**I VOLUNTARILY ACCEPT SOLE RESPONSIBILITY FOR ANY INJURY TO MYSELF, EMPLOYEES, OR ATTENDEES**, including, but not limited to, personal injury, disability, death, illness, damage, loss, claim, liability, or expense of any kind, that may be experienced or incurred in connection with my Event. On my behalf, or Vilaplana Films Productions, LLC and on behalf of my employees, I understand and agree that this release includes any claims based on the actions, omissions, or negligence of the City, its employees, agents and representatives, whether a COVID-19 infection occurs before, during, or after participation in any City program or facility.

Print Name & Title:

Date: