

**AGREEMENT BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
ALTOS DEL MAR SCULPTURE PARK, INC.  
FOR THE MANAGEMENT AND OPERATION  
OF A SCULPTURE PARK IN ALTOS DEL MAR PARK  
PURSUANT TO REQUEST FOR PROPOSALS NO. 02-07108**

THIS AGREEMENT, is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF MIAMI BEACH, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), and ALTOS DEL MAR SCULPTURE PARK, INC., a Florida not-for-profit corporation, whose principal office is located at 7701 Collins Avenue, Miami Beach, Florida 33141 (the "ADMSP").

**W I T N E S S E T H**

**RECITALS:**

**WHEREAS**, the City is the owner of Altos del Mar Park and the street ends (as more fully described and delineated in the Boundary and Topography Surveys 1 and 2 and the Altos del Mar Park Location Map sketch attached hereto and incorporated herein as Exhibit "A" hereto) (the "Park"); and

**WHEREAS**, On October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals No. 02-07108 for Establishing a Cultural Arts Themed and/or Other Passive Recreational Activities Program in Altos Del Mar Park located on Collins Avenue, between 76<sup>th</sup> and 77<sup>th</sup> Streets in the area of Miami Beach known as North Beach (the RFP); and

**WHEREAS**, on July 16<sup>th</sup>, 2008, the Mayor and the Commission accepted the recommendation of the City Manager and authorized the City Administration to enter into negotiations with the successful proposer, ADMSP; and

**WHEREAS**, ADMSP wishes to establish a cultural arts themed program, as proposed by ADMSP and to be known as "Altos del Mar Sculpture Park" (the "Sculpture Park"); said Sculpture

Park to be established in that area of the Park generally delineated in the sketch and incorporated as Exhibit “B” hereto (hereinafter, the Sculpture Park may also be referred to as the “Premises”); and

**WHEREAS**, the City recognizes that ADMSP is a Florida not for profit corporation with a team having a unique mix of expertise in sculpture park project design, art curating, park project development, investment project development, executive project management, legal affairs, financial management, marketing and sales, media, sponsorship, fundraising and grant management; and

**WHEREAS**, ADMSP has obtained the services of ArquitectonicaGeo (the “ARQCEO”) to create the Sculpture Park site plan and design; and

**WHEREAS**, both ADMSP and ARQCEO seek to create a unique amenity that meets the needs of the present without compromising the needs of the future, by utilizing subtle interventions and ecologically harmonious materials, trees and plants, thereby conserving the land while using it as a park with sculptures; and

**WHEREAS**, the City is desirous of continuing to improve the Park and increase community ratings of City cultural activities ; and

**WHEREAS**, the design and construction, and thereafter, operation and maintenance of the Sculpture Park would be funded and undertaken by ADMSP at its sole cost and responsibility; and

**WHEREAS**, the City is supportive of ADMSP’s offer to use its own funding (which will consist of monies raised from private donations, grant resources, and other funding sources that ADMSP is uniquely qualified and/or positioned to apply for and receive) toward the design, development, construction, maintenance, and operation of the Sculpture Park; and

**WHEREAS**, it is vital that the City demonstrate a long-term commitment toward ADMSP’s intended use and programming of the Sculpture Park; to that end, ADMSP has requested, and the City has deemed it in the best interest of the public, that the foregoing Management and Operation Agreement (the Agreement) have as long a term as possible; and

**WHEREAS**, the City would recommend that, in order to effectuate this long term commitment, the City and ADMSP approve and execute the following Agreement (whereby ADMSP would design, develop and construct the Sculpture Park; the City would continue to own the Park; and the Sculpture Park would be managed, operated, and maintained by ADMSP, at its sole cost and expense, as a public sculpture park for public recreational purposes; and

**WHEREAS**, the Agreement set forth herein is consistent with other similar commitments

that the City has undertaken with not for profit entities for long-term management and operation of City facilities (by said agencies) for public recreational purposes.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

**SECTION 1.**

The City hereby grants to ADMSP, and ADMSP hereby accepts from the City, this Agreement for the exclusive use (except for use by the City as set forth herein) management, coordination, operation and maintenance of the Premises (as more fully described and delineated in Exhibit “B” hereto), in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

**SECTION 2. TERM. [NOTE: NEED TO ADDRESS ADMSP’S REQUEST FOR LONGER TERM]**

This Agreement shall be for an initial term of [TBD] years, commencing on the \_\_\_ day of \_\_\_\_\_, 2009, and ending on the \_\_\_ day \_\_\_\_\_, 20\_\_.

At the expiration of the initial term herein, and provided that (i) ADMSP is in good standing and free from default hereunder, and (ii) ADMSP continues to operate, manage and maintain the Premises in accordance with the terms of this Agreement including, without limitation, in accordance with the approved uses (as hereinafter defined) and for the stated purposes herein, the City, at its sole judgment and discretion, may renew this Agreement for a maximum of [TBD] terms.

In the event that ADMSP determines not to renew the Agreement, it shall notify the City of same, in writing, no less than one (1) year prior to the end of the initial term, or a renewal term, as the case may be.

**SECTION 3. PREMISES.**

In addition to the description of the land and area set forth in Exhibit “B” hereto, the Premises subject to this Agreement shall also include all facilities, structures, additional landscaping, fixtures

and other improvements within the proposed Sculpture Park, whether existing as of the commencement date of this Agreement or as shall be constructed throughout the Term hereof. The parties acknowledge and agree that, following completion, the Proposed Improvements (as defined in Section 9.7 hereof), , shall be the sole and exclusive property of the City and shall be deemed to be part of, and incorporated to, any reference herein to the Premises. **[NOTE: ALTHOUGH CITY IS INTENDED TO BE OWNER OF SCULPTURE PARK IMPROVEMENTS AT END OF TERM, WHAT ABOUT ART WORK? ARE THERE ANY SCULPTURES CITY WILL OWN AT END OF TERM?]**

Subject to the terms of this Agreement, ADMSP shall have the primary use and occupation of the Premises and shall be responsible for its management, operation, programming, and maintenance. **ADMSP WARRANTS AND REPRESENTS THAT IT HEREBY AGREES TO ACCEPT THE PARK, AND THE LAND THEREIN MAKING UP THE PREMISES, IN ITS/THEIR “AS IS” CONDITION, WITHOUT ANY REPRESENTATION(S) OR WARRANTY(IES) OF ANY KIND OR NATURE WHATSOEVER BY CITY, WHETHER AS TO ITS/THEIR CONDITION OR AS TO THE USE OR OCCUPANCY WHICH MAY BE MADE THEREOF.**

**SECTION 4. OBJECTIVES/APPROVED USES. [NOTE: SECTION 4 PREPARED BY ADMSP. CMB ALSO NEEDS TO ALSO REVIEW]**

**4.1 Objectives.**

**4.1.1** The City’s objectives while establishing a cultural arts themed and/or other passive recreational activities program in Altos Del Mar Park are the following:

- a. To comply with the restrictive covenant on the land which states: “The property shall only be used for conservation or public recreation purposes”.

ADMSP hereby agrees to remain in compliance with the above restrictive covenant and will use the property only for public recreation purposes during the Term hereof. The City hereby agrees that the use of the Park as a publicly accessible Sculpture Park within a structure of parks in Miami Beach constitutes “public recreational purposes” within the meaning of the above stated restrictive covenant.

- b. To provide programming that will attract a wide variety of age groups to the park, with a suggested theme of cultural arts.

Altos Del Mar Sculpture Park with its clearly defined cultural arts theme is geared towards all age groups, from children to senior citizens (as more fully described and delineated in the attached hereto and incorporated herein Exhibit “C” entitled “Sculpture Park Programming”).

- c. To provide the facilities, infrastructure, maintenance and security necessary to support the proposed programs at no cost to the City.

ADMSP hereby agrees to provide the facilities, infrastructure, maintenance and security necessary to support the proposed sculpture park at no cost to the City pursuant to the provision of this Agreement.

- d. To complement activities and programs in nearby parks and open spaces, including North Shore Open Space Park, Ocean Terrace and Bandshell Park, as described in the North Beach Oceanfront Parks Master Plan (the “Master Plan”).

ADMSP hereby warrants and represents that ADMSP has studied the Master Plan and hereby agrees that the Sculpture Park shall be compatible with the above mentioned parks and Master Plan. The Sculpture Park will result in creating a pedestrian link to the public spaces to the north and south, and providing current and future residents with a cultural programs destination in conjunction with the other parks (as more fully described and delineated in the attached hereto and incorporated herein Exhibit “C” entitled “Preliminary Sculpture Park Site Plan and Design”).

- e. To keep the park open and free to the general public during daylight hours.

ADMSP hereby agrees that the Sculpture Park will continue to be open and free to the general public during daylight hours.

- f. To provide safe and convenient access to the public beach and to the North Beach Recreational Corridor (the “Beachwalk”).

ADMSP hereby agrees that the Sculpture Park will provide safe and convenient access to the public beach and the Beachwalk by creating a pedestrian link to these areas. The Sculpture Park is naturally divided into three natural sculpture “rooms” where the sculptures will be exhibited. The visitor can stroll down paths that will change as the sculptures change from contemporary to figurative to abstract and which lead to the beach and Beachwalk from all directions (as more fully described and delineated in Exhibit “D”).

- g. To showcase the natural environment and beauty of the site.

ADMSP hereby agrees that the Sculpture Park will showcase the natural environment and beauty of the site. The sculpture park will continue to provide a quiet and relaxing oasis in a

sculpture setting. The openness of the space, views of the ocean and sky, and gently rolling topography will continue per the site plan and design of ARQGEO. It will combine to provide a sense of peace and tranquility, even though Collins Avenue runs along its western edge (as more fully described and delineated in Exhibit “D”).

- h. To preserve views to the ocean.

ADMSP hereby agrees that the Sculpture Park will preserve views to the ocean per the site plan and design of ARQGEO (as more fully described and delineated in Exhibit “D”).

- i. To be appropriate in design and programming for the historic district where the Park is located – Harding Townsite / South Altos Del Mar - and compatible with the adjoining historic districts – Altos Del Mar and the pending North Shore National Register District.

ADMSP hereby agrees that the Sculpture Park will be appropriate in design and programming for the historic district where the park is located as stated above. The design also takes into account that the Park is ocean front property within the historic framework all of which inform the aesthetics and layout of the space: An allee, dunes and a maritime planting palette provide a landscape design appropriate to the site making the Sculpture Park as unique as is the site of the Park (as more fully described and delineated in Exhibit “D”).

- j. To be compatible with the residential neighborhoods located to the north and west of the Park.

ADMSP hereby agrees that the Sculpture Park will be compatible with the residential neighborhoods located to the north and west of the Park. The design also takes into account that that the Park is within the residential framework of the North Beach community. The park will continue to serve the community as a Park but in addition it will also provide current and future residents with a cultural programs destination.

- k. To assist with financing a move of the North Shore Branch Library to the Town Center area. The North Shore Branch Library building, located on the southwest corner of the Park, is owned by the City of Miami Beach; and leased to the Miami-Dade County Library System. The City is considering options for moving the library to another location, which may make the library building available for integration into programming for the Sculpture Park.

ADMSP hereby agrees that ADMSP will consider jointly with the City financing a move of the North Shore Branch Library to the Town Center area and is ready to develop plans should both parties agree in moving the library to another location. The current library building could be used by ADMSP as the Sculpture Park's museum building.

#### **4.2 Approved Uses.**

**4.2.1** The parties hereto have determined that it is in the City's best interest to bring together the City's resources, together with ADMSP's (i) team having a unique mix of expertise from sculpture park project design, art curating, park project development, investment project development, executive project management, legal affairs, financial management, marketing and sales, media, sponsorship, fundraising and grant management; (ii) financial resources which ADMSP has agreed to commit toward the design, development and construction of Sculpture Park; and (iii) commitment to manage, operate and maintain the Park, at its sole cost and expense.

**4.2.2** The Sculpture Park shall be designed, developed and constructed (and thereafter managed, operated, and maintained) as a public recreational amenity.

The Sculpture Park is intended to include the following programs, services, activities, and uses:

1. Changing exhibitions of ten (10) large and heavy sculptures every three (3) years;
2. Changing exhibitions of small to midsize sculptures at least every eighteen (18) months.
3. Guided park tours by an art historian, available from Monday through Saturday from 10:30 a.m. to 12:00 p.m. and 3:00 p.m. to 4:30 p.m.;
4. Art classes on Monday, Wednesday and Saturday from 5:00 p.m. to 6:00 p.m.;
5. Chamber music events every three (3) months;
6. Book author readings every three (3) months;
7. Kite flying every three (3) months;
8. Outdoor Cinema three (3) to four (4) times per year;
9. Tai Chi and/or meditation classes on Saturdays at 9am;
10. Yoga classes on Sundays at 9am;

In addition the Sculpture Park will be available for rental for wedding ceremonies on Easter, Christmas Day, Saturdays and Sundays from 3:30 p.m. to 5:00 p.m. Furthermore, ADMSP shall utilize the Sculpture Park for its bi-annual black tie fundraising events to take place two (2) times per year, as designated by ADMSP.

(hereinafter, all such City approved programs, activities, services, and uses by ADMSP of the Premises, shall be collectively referred herein to as the “uses” and/or the “approved uses”).

**4.2.3** In the event that ADMSP seeks to use the Premises for additional programs, services, activities, and uses which are materially different than the approved uses (as enumerated in Section 4.2.2), then each such proposed new program, service, activity and use shall be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld or delayed, and provided such proposed program, service, activity and/or use is for a public purpose and is consistent with the approved uses herein. In the event of approval by the City Manager, all such new program(s), service(s), activity(ies), and use(s) shall be memorialized by written amendment to this Agreement.

**4.2.4** Notwithstanding Section 4.2.3, ADMSP shall not be required to obtain the City Manager’s prior written consent if a proposed new program, service, activity, or use is reasonably related to the approved uses set forth herein. For purposes of this Section 4, the term “reasonably related” shall refer to a proposed new use that, in the reasonable judgment and discretion of the City Manager, does not represent either a substantive change in the approved uses, or does not represent a material programmatic change in said approved uses.

**4.2.5** The Premises shall be used by ADMSP solely and exclusively for the uses set forth in this Section 4 (or such other uses as may be approved by the City), and such other uses that are reasonably related thereto. It is understood and agreed that the Premises shall be used by ADMSP during the entire term of this Agreement only for the purposes and/or uses described in (and/or otherwise approved pursuant to) this Section 4, or reasonably related thereto, and for no other purposes or uses whatsoever. In the event that ADMSP uses the Premises for any purpose(s) and/or use(s) not expressly permitted in (or reasonably related to) this Section 4, such use(s) shall be considered a default under this Agreement, and the City shall be entitled to all remedies, including termination of this Agreement, as set forth in Section 27 hereof. In addition, notwithstanding any other terms of this Agreement, the City shall be entitled to seek immediate relief, whether at law or equity, to restrain such improper use(s).

**SECTION 5. OPERATION AND MANAGEMENT OF THE PREMISES.**

**5.1** Subject to the approved uses in Section 4 (as same may be amended from time to time), and any and all other terms, limitations and required approvals contained in this Agreement, ADMSP is authorized and required, and shall have the exclusive right to:

- a. Manage and operate the Premises, and ADMSP's activities, services, and programs thereon, for the purpose of coordinating, implementing, and supervising all approved uses;
- b. Maintain and provide for the day-to-day maintenance and housekeeping of the Premises; **[NOTE: SHOULD WE ALSO SPECIFICALLY INCLUDE LANDSCAPING? ANY SPECIAL MAINTENANCE AND SECURITY FOR ART WORK?]**
- c. Supervise and direct all ADMSP and/or Sculpture Park employees, officers, agents, contractors, volunteers, invitees, visitors, and guests on the Premises;
- d. Maintain and supervise detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles. All financial records maintained pursuant to this Agreement shall be retained by ADMSP as long as such records are required to be retained pursuant to Florida Public Records Law, and shall be made available upon reasonable notice by the City;
- f. INTENTIONALLY OMITTED;
- g. Develop and implement programs and activities which support and promote the goals and priorities and approved uses (as set forth in Section 4, as same may be amended from time to time); and
- h. Coordinate and cooperate with the City for use of the Premises by the City, as set forth in Section 10.3 hereof, which coordination and cooperation shall not be unreasonably withheld or delayed, and provided that such City use(s) does not materially interfere with the operations of the Sculpture Park by ADMSP. Such use of the Premises by the City shall be conducted pursuant to policies and procedures, which shall be established and mutually agreed

upon by ADMSP and the City, within six (6) months of execution of this Agreement by the parties hereto. **[TBD]**

**5.2.** The parties agree and acknowledge that, in furtherance of, and consistent with, the goals and priorities and approved uses, ADMSP and the City may agree to mutually coordinate, sponsor and provide certain additional recreation and leisure activities and/or programs on the Premises. The City and ADMSP shall mutually agree upon and approve any such activities and/or programs in advance of their implementation; the programs and/or activities must be consistent with the operation of the Park and the Sculpture Park; and may not materially interfere with the operations of the Park and the Sculpture Park. Subject to the preceding criteria, ADMSP and the City hereby agree to use best efforts in mutually determining and agreeing upon the time, place, and manner in the coordination of such activities and/or programs within the Premises, and further agree that each party will be responsible for its respective costs associated with the provision of said activities and/or programs.

**5.3 Hours of Operation.** The City and ADMSP herein agree that normal hours of operation for the Sculpture Park for the general public shall be from 10:00 PM to Sunset, 365 days a year. The parties recognize and acknowledge that, under certain circumstances (i.e. special events, special programming, receptions etc.), ADMSP may be permitted to extend its hours of operation, but any prolonged extension shall be subject to the prior written consent of the City Manager (which consent shall not be unreasonably withheld or delayed). Additionally, in no event shall the Sculpture Park's hours of operation be shortened without the prior written consent of the City Manager (which consent shall not be unreasonably withheld or delayed).

## **SECTION 6. REVENUE FROM SCULPTURE PARK RELATED ACTIVITIES/FINANCIAL RECORDS AND REPORTS.**

**6.1 Revenue from Sculpture Park Related Businesses/Activities.** The City herein acknowledges that ADMSP may derive additional revenues from business(es) it conducts upon or from the Premises, including, but not limited to, event rental of the Premises, gift shop sales, plant sales, classes, tours, and sale of food and beverages **[NOTE TO CITY: VERIFY THAT THESE ARE OK]**. ADMSP herein acknowledges that any and all business(es) conducted upon the Premises shall be directly related to and consistent with the customary operation and management of a public Sculpture Park; consistent with the goals and priorities in Section 4; and consistent with the overall recreational purposes and character of the Park. Notwithstanding the preceding, any business

conducted, or contemplated to be conducted, upon the Premises shall first be approved, in writing, by the City Manager or his designee, prior to commencement of same, which approval, if given at all, shall be at the City's sole discretion. Said approval shall initially be obtained concurrent with the execution of this Agreement by the parties, by submittal of proposed uses/business(es) to be conducted by ADMSP on the Premises, which submission shall be attached and incorporated hereto as Exhibit "■" to the Agreement. Thereafter (and subject to approval by the City Manager), said exhibit shall be updated by ADMSP, to include any new proposed use/business(es) on the Premises. Additionally, the City's approval of any proposed uses/business(es) to be conducted on the Premises by ADMSP shall not excuse ADMSP from the requirements pertaining to event programming and other event scheduling requirements, as set forth in Section 10 of the Agreement.

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

Notwithstanding anything contained or this Agreement, in the event that a particular use and/or business activity(ies) has been approved by the City Manager, and the City Manager thereafter, upon reasonable inquiry, determines that the continuation of such use(s) and/or activity(ies) is, or may be, inconsistent, contrary to and/or detrimental to the goals and priorities set forth in Section 4; and/or to the health, safety and/or welfare of the residents of and visitors to the City of Miami Beach; and/or to the overall recreational purposes and character of the Park, then the City Manager and/or his designee, upon thirty (30) days prior written notice to ADMSP of same may revoke, suspend, and/or otherwise disallow the objectionable uses(s) and/or business activity(ies), and ADMSP shall immediately cease and desist in providing, and/or continuing with, said use(s) and/or business activity(ies) within the time period and in the manner prescribed in the City's notice. In the alternative, the City Manager and/or his designee may allow ADMSP to continue with the subject use, or business activity(ies), subject to such additional guidelines, as may be determined and established by the City Manager, in his sole and reasonable discretion and judgment.

**6.2 Financial Records and Reports.** ADMSP shall maintain on the Premises, or at the location set forth in the Notices section of this Agreement, or at such other place within Miami Dade County, Florida, true, accurate, and complete records and accounts of all receipts and expenses for any and all uses, services, programs, events, and activities (including, without limitation all revenue generating uses) being conducted on the Premises, and shall give the City Manager, or his authorized representative, access during reasonable business hours to examine and audit such records and accounts.

Throughout the term of this Agreement, and no later than one hundred and twenty (120) days following the closing of the City's fiscal year (October 1<sup>st</sup> – September 30<sup>th</sup>), ADMSP shall provide the City Manager with an annual report of all uses, services, programs, events and activities (including, without limitation, all revenue generating uses) conducted upon the Premises for the prior year, along with audited financial statements. Said statements shall be certified as true, accurate and complete by ADMSP and by its certified public accountant.

**SECTION 7. BUDGET AND FUNDING FOR THE CLUB.**

**7.1** Throughout the Term of this Agreement, ADMSP shall prepare and present, by May 15<sup>th</sup> of each year, a proposed, detailed line item annual operating budget for the Sculpture Park for each City fiscal year (October 1<sup>st</sup> – September 30<sup>th</sup>) during the Term hereof, for review and approval by the City Manager. Said budget shall include a projected income and expense statement; projected year end balance sheet; statement of projected income sources; and application of funds. Additionally, the budget shall also include, without limitation, the following detailed projections:

- a. Gross revenues by categories from all revenue sources and revenue generating uses derived on the Premises;
- b. Operating expenses for the Sculpture Park;
- c. Administrative, labor and general expenses;
- d. Marketing, advertising and promotion expenses;
- e. Utility costs;
- f. Regular repairs and maintenance costs, and costs related to capital improvements and infrastructure; and
- g. In addition to subsection (f) above, ADMSP shall identify for the City, such long term capital repairs and maintenance of the Proposed Improvements (as defined herein). In conjunction with this subsection (g), ADMSP agrees to allow the City and/or its authorized representative(s) access to the Premises, as the City Manager may deem necessary, in his reasonable judgment and discretion and upon at least 24 hours prior notice (written or verbal), for the purpose of the City conducting its own facility assessment.

**7.2 Programmatic Plan.** Accompanying ADMSP’s proposed annual budget shall be the Club’s programmatic plan for the upcoming City fiscal year, detailing the then-known (planned) uses, services, activities, events, programs, and operations, and the number of users anticipated.

**SECTION 8. [INTENTIONALLY DELETED]**

**SECTION 9. MAINTENANCE, REPAIRS, AND ALTERATIONS.**

**9.1 General Maintenance and Repair.** It is understood by the parties hereto that during the Term, ADMSP shall be responsible, and required to pay for, any costs related to maintenance of the Sculpture Park. Throughout the Term of the Agreement, ADMSP shall maintain the Premises, and every part thereof, in good condition, and will not suffer or permit any strip or waste of the Premises.

**9.2 Day to Day Maintenance.**

**9.2.1 Generally.** ADMSP shall, at its sole cost and expense, and to the reasonable satisfaction of the City, keep, maintain, and repair the Premises, and all improvements, fixtures, and equipment thereon, in good, clean, and sanitary order .

ADMSP assumes sole responsibility and expense for day to day housekeeping, janitorial services, and routine maintenance of the Premises (and all improvements, fixtures, and equipment thereon). This shall include, without limitation, daily removal of litter, garbage and debris generated by ADMSP’s use of the Premises, including all garbage disposal generated by its operations and activities.

**9.2.2 Landscaping.** ADMSP shall, at its sole cost and expense, have the sole responsibility for maintaining the grounds and horticulture of the Sculpture Park. To that end, the parties herein acknowledge, and ADMSP herein agrees to be bound by, the minimum maintenance standards as set forth in Exhibit “[REDACTED]” to this Agreement, entitled “City of Miami Beach Minimum Specifications for Maintenance of the Altos del Mar Sculpture Park”. It is further understood that the ADMSP shall provide the City with a monthly maintenance report, in a format to be approved by the City Manager and/or his designee. Notwithstanding ADMSP’s responsibility with regard to maintenance of the Premises and the grounds and horticulture of the Sculpture Park, the City retains the right to review and approve plans for all major horticultural material installations, removals, etc., and ADMSP shall comply with any and all State, Miami-Dade County, and City laws, codes, rules and regulations, etc. with regard to its respective maintenance and horticultural rights and

obligations in this Agreement including, but not limited to, tree removal permits, use and storage of pesticides, chemicals, etc.

**9.2.3 Art Work Maintenance? [TBD]**

**9.3 Additional Improvements/Alterations.**

In the event that ADMSP desires or deems it appropriate to make alterations, additions, or improvements to the Premises (other than the Proposed Improvements contemplated in Section 9.7), it will submit plans for same to the City, for the prior written approval of the City Manager. No such alterations, improvements, or additions shall be made without the express written approval of the City Manager and, if approved, shall be made at ADMSP's sole cost and expense, and shall become the property of the City upon completion of same. ADMSP shall not have the right to create or permit the creation of any lien attaching to the City's interest in the Premises as a result of any such alterations, improvements, or additions.

**9.4 Labor/Personnel/Materials/Equipment/Furnishings.**

ADMSP must provide and maintain, at its sole cost and expense, all labor, personnel, materials, equipment, and furnishings, as reasonably required, to operate the Premises, in accordance with the objectives and approved uses set forth herein. In the event any materials, equipment, and/or furnishings are lost, stolen, or damaged, they shall be promptly replaced or repaired at the sole cost and expense of the ADMSP .

**9.5 Orderly Operation.**

ADMSP shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Premises. There shall be no living quarters nor shall anyone be permitted to live within the Premises. ADMSP shall make the Premises available for inspection by the City Manager or his authorized representatives during hours of operation.

**9.6 Security.**

**9.6.1 Generally.** ADMSP shall be responsible for and provide reasonable security measures as may be required to protect and secure the Premises and any materials, equipment, and furnishings thereon. Under no circumstances shall the City be responsible for any stolen or damaged materials, equipment, and furnishings, nor shall the City be responsible for any stolen or damaged

personal property of ADMSP and/or the Sculpture Park’s officials, employees, contractors, volunteers, patrons, guests, invitees, and/or any other third parties.

**9.6.2 Special Security for Art Work? [TBD]**

**9.7 ADMSP’s Proposed Improvements, Funding, and Responsibilities.**

**9.7.1** The Sculpture Park will commence operations pursuant to this Agreement upon the completion of the proposed capital improvements and construction of the Sculpture Park, as hereinafter set forth.

The intended scope of the improvements and construction will be to construct:

- a. Eleven (11) foundations for the large sculptures. The size of each foundation will be 5 meters by 5 meters by 1/2 to maximum 1 meter. The foundations will be constructed in concrete and steel;
- b. Twenty-five (25) foundations for the medium to small size sculptures. The size of each foundation will be 1 meter by 1 meter by 0.30 meter;
- c. A one level entrance pavilion with 1,200 square feet;
- d. Facilities such as toilets, water fountains and benches all of which are to be incorporated in the Sculpture Park design;

(the proposed new improvements are hereinafter referred to as the “Proposed Improvements”). **[NOTE: PROPOSED IMPROVEMENTS SEEM INCOMPLETE. THEY SHOULD INCLUDE THE ACTUAL SCULPTURE PARK ELEMENTS [I.E. “GALLERIES”] AS DESCRIBED IN THE RESPONSE TO THE RFP. ALSO, WE SHOULD INSERT “LIBRARY OPTION” HERE AS WELL].**

**9.7.2** This Agreement is made with the understanding and agreement that ADMSP will, at its sole cost and expense, design, develop, and construct the Proposed Improvements.

**9.7.3** The Proposed Improvements will be approved by the City Commission prior to commencement of the project (as hereinafter set forth in Section 9.7.5). The Proposed Improvements shall be the sole cost and expense of ADMSP.

**9.7.4** ADMSP shall be solely responsible for the design of the Proposed Improvements, and shall obtain all final, non-appealable approvals from City and other applicable regulatory agencies

therefore, including approvals by the City acting in both its proprietary regulatory capacity under the City Code and other applicable laws.

**9.7.5 Concept Plan Design Approval/Planning Board Review. [NOTE: TIMELINES NEED TO BE REVIEWED AND MUTUALLY AGREED TO BY THE PARTIES]**

ADMSP shall submit, for review and approval by the Mayor and City Commission at a regularly scheduled meeting, a Concept Plan Design detailing the Sculpture Park and including, without limitation, Proposed Improvements, in sufficient detail; the layout and siting.

It is agreed and understood that the current Preliminary Sculpture Park Site Plan and Design attached herein as Exhibit “    ” shall serve as the basis of the Concept Plan design, but which may be altered to include such other Proposed Improvements such as the bathrooms, water fountains, park benches and entrance pavilion pursuant to paragraph 9.7 hereunder [NOTE: NEEDS TO BE CLARIFIED. THIS WAS ADMSP’S LANGUAGE].

The Concept Plan Design review process shall commence with ADMSP’s submission to the City, through the City Manager, no later than \_\_\_\_\_, 2009. The City Manager shall have fourteen (14) Business days to review the Concept Plan Design. Upon conclusion of his review and approval, and prior to consideration of the Concept Plan Design by the Mayor and City Commission, ADMSP shall submit the Concept Plan Design to the Planning Board, for its review and recommendation, which recommendation shall be no later than \_\_\_\_\_, 2009.

Notwithstanding the preceding paragraph, final approval of the Concept Plan Design will rest with the City Commission. In the event that ADMSP fails to make its submissions timely, the City Manager may, at his sole option and discretion, (i) grant ADMSP a good faith extension for said submittal, or (ii) declare the Agreement in default pursuant to Section 27 herein. Additionally, should the City Commission fail to approve the Concept Plan Design by the date which is three (3)) months from the Planning Board’s recommendation(s) regarding said Plan, or \_\_\_\_\_ 2009, whichever is later, then this Agreement shall automatically terminate and be of no further force or effect, unless the City Commission deems to grant an extension, at its sole discretion. In the event of automatic termination of this Agreement pursuant to this subsection, each party shall bear its own

costs and expenses incurred in connection with this Agreement, and neither party shall have any further liability to the other.

**[NOTE: DO SCULPTURE PARK AND/OR PROPOSED IMPROVEMENTS NEED TO BE APPROVED BY DRB OR H.P.; AND/OR ANY OTHER CITY BOARDS [AIPP?!?]**

**9.7.6 Preliminary Plans and Specifications.**

Upon the City Commission's approval of the Concept Plan Design, ADMSP shall submit to the City (acting in its proprietary capacity through the City Manager) Preliminary Plans and Specifications for the Proposed Improvements, which shall be in accordance with the approved Concept Plan Design (the "Preliminary Plans and Specifications").

ADMSP shall submit its Preliminary Plans and Specifications to the City Manager for approval within **120 days** of the approval of the Concept Plan Design by the City Commission (hereinafter, for purposes of this Section 9.7.6, such date shall be referred to as the "Commencement Date"). The City Manager shall have **thirty (30) Business days** to review the Preliminary Plans and Specifications. If the City Manager disapproves the Preliminary Plans and Specifications, then ADMSP and the City shall confer in good faith to develop and submit revised Preliminary Plans and Specifications which shall be submitted and reviewed as provided above. Failure of ADMSP to obtain the City's final approval of the Preliminary Plans and Specifications within **120 days** from the date of City's disapproval shall constitute a termination of this Agreement without any further liability of either party to the other.

ADMSP shall, within **sixty (60) days** of City Manager's approval of the Preliminary Plans and Specifications, submit an application for approval of the design for the Proposed Improvements to the applicable City boards, including, without limitation, the applicable City land use boards (collectively, any and all such City boards shall be hereinafter referred to as the "applicable City boards"). ADMSP shall pursue approval of its applications to the applicable City boards, diligently and in good faith. Failure of ADMSP to submit its application(s) to the applicable City boards, by the date which is **sixty (60) days** from the receipt of City's final approval, as provided above, shall constitute a default under this Agreement.

**9.7.7 Plans and Specifications.**

Upon receipt of the City's, and the applicable City boards', approval of the Preliminary Plans and Specifications, ADMSP shall prepare construction Plans and Specifications for construction of the Proposed Improvements, consistent with the Preliminary Plans and Specifications (as approved by the City and the applicable City boards)

**9.7.8 Construction Commencement/ADMSP's Right to Terminate.**

**9.7.8.1** As conditions precedent to ADMSP's commencement of construction of the Proposed Improvements, ADMSP shall obtain a final Full Building Permit for the Proposed Improvements by not more than **one (1) year** from the Commencement Date, and failure to do so shall constitute a default under this Agreement. ADMSP shall not commence construction of the Proposed Improvements unless and until (a) ADMSP shall have obtained and delivered to City copies of all final permits and approvals required to commence construction; (b) ADMSP shall have delivered to City original certificates of the policies of insurance required to be carried by ADMSP's contractor(s) (as set forth in Exhibit "█" to this Agreement, attached hereto and incorporated); and (c) ADMSP shall have obtained and furnished to City a payment and performance bond from ADMSP's general contractor (the Payment and Performance Bond), in a form reasonably acceptable to City, issued by a surety listed in the most recent U.S. Dept. of Treasury listing of approved sureties, guaranteeing the performance by the general contractor for construction of the Proposed Improvements. The City of Miami Beach, Florida, shall be named as a dual obligee under the Payment and Performance Bond.

The City (solely in its proprietary and not in its regulatory capacity) shall reasonably cooperate with ADMSP in obtaining the permits and approvals required to construct the Proposed Improvements; shall sign any application reasonably made by ADMSP that is required in order to obtain such permits and approvals; and shall provide ADMSP with any information and/or documentation not otherwise reasonably available to ADMSP (if available to City) that is necessary to procure such permits and approvals. Any such accommodation by City shall be without prejudice to, and shall not constitute a waiver of City's rights to exercise its discretion in connection with its regulatory functions.

**9.7.8.2** ADMSP shall, at its expense, (a) commence construction of the Proposed Improvements on or before **sixty (60) days** after all permits and approvals necessary for the commencement of construction are issued, but no later than **eighteen (18) months** from the

Commencement Date (the “Construction Commencement Date”), and (b) thereafter continue to prosecute construction of the Proposed Improvements with diligence and continuity to completion. “Commence Construction” or “Commencement of Construction” means the commencement of major work (such as pilings or foundations) for construction of the Proposed Improvements. Promptly after commencement of construction, ADMSP shall notify the City Manager, in writing, of the actual date of such commencement. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be commencement of construction. If, after ADMSP has commenced construction, ADMSP fails to diligently prosecute construction of the Proposed Improvements (subject to unavoidable delays), and such failure continues (subject to unavoidable delays) for thirty (30) consecutive days after ADMSP’s receipt of notice of such failure, the City shall, in addition to all of its other remedies under this Agreement, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of construction of the Proposed Improvements (subject to unavoidable delays) by ADMSP, it being understood that construction of the Proposed Improvements is a material inducement for the City to enter into this Agreement, and monetary damages shall be inadequate to compensate the City for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if ADMSP fails to substantially complete construction of the Proposed Improvements by the date provided for in this Agreement, then the same shall constitute a default under this Agreement.

**9.7.8.3** "Unavoidable delays" shall mean delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, eminent domain, catastrophic weather conditions, a court order that actually causes a delay in the application of any requirement (unless resulting from disputes between or among the party alleging an unavoidable delay, present or former employees, officers, members, partners or shareholders of such alleging party, or of affiliates of such alleging party). The party alleging unavoidable delay shall notify the other within twenty (20) days of such occurrence; however, failure to do so shall not waive any rights caused by such delay. The times for performance related to the Proposed Improvements set forth in this Agreement shall be extended to the extent performance is delayed by unavoidable delays.

**9.7.9 ADMSP’s Right to Terminate.**

Notwithstanding anything to the contrary contained herein, ADMSP shall have the right to be released from its liability and to terminate this Agreement at any time prior to obtaining a final Full Building Permit for construction of the Proposed Improvements because: (a) changes to the Preliminary Plans and Specifications required by any or all of the applicable City boards, or any other governmental authority (including the City), render the project economically unfeasible in the reasonable business judgment of ADMSP; (b) ADMSP, after good faith efforts, has been unable to obtain a final Full Building Permit for the Proposed Improvements pursuant to the Plans and Specifications submitted by ADMSP; or (c) ADMSP, after diligent, good faith efforts, has been unable to raise the funding required for the Proposed Improvements. In the event of termination of this Agreement pursuant to this subsection, each party shall bear its own costs and expenses incurred in connection with this Agreement, and neither party shall have any further liability to the other.

**9.7.10 Substantial Completion/Completion of Construction.**

Substantial completion of the Proposed Improvements shall be accomplished in a diligent manner and, in any event, no later than **eighteen (18) months** from the issuance of a final Full Building Permit. “Substantial completion”, as used herein, shall require the issuance of a temporary or final certificate of occupancy by the City of Miami Beach Building Department. Such date may be extended for good cause shown upon request in writing to the City Manager, which extension by the City Manager shall not be unreasonably withheld. Final completion of the Proposed Improvements, shall be accomplished in a diligent manner, in a good and workmanlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), and at ADMSP’s sole cost and expense.

Upon Substantial Completion of Construction of the Proposed Improvements, ADMSP shall furnish the City Manager with the following:

- (a) a certification from ADMSP’s architect (certified to City on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Proposed Improvements has been Substantially Completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Proposed Improvements comply with all applicable codes and laws;
- (b) a copy or copies of the temporary and final certificates of occupancy for the Proposed Improvements issued by the City of Miami Beach Building Department;

- (c) lien waivers (in form and substance reasonably satisfactory to the City Manager) from each contractor, subcontractor, supplier or materialman retained by or on behalf of ADMSP in connection with the construction of the Proposed Improvements, evidencing that such persons have been paid in full for all work performed or materials supplied in connection with the construction of the Proposed Improvements;
- (d) a complete set of “as built” plans and a survey showing the improvement(s) for which the construction of the Proposed Improvements has been completed. The City shall have an unrestricted license to use such “as built” plans and survey for any purpose related to the Premises without paying any additional cost or compensation therefore, The foregoing requirement with respect to “as built” plans shall be satisfied by ADMSP furnishing to the City Manager, a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the construction of the Proposed Improvements; and
- (e) a Contractor’s Final Affidavit (in form and substance reasonably satisfactory to the City Manager) executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of ADMSP in connection with the construction of the Proposed Improvements have been paid in full for all work performed or materials supplied in connection with the construction of the Proposed Improvements, and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

Construction of the Proposed Improvements shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer as required by applicable requirements.

Upon Substantial Completion of the Proposed Improvements, ADMSP shall certify to City that it has, in fact, expended not less than the required minimum amount(s) for total construction costs.

Any and all construction, once commenced, must be carried through continuously to completion, but any interruption or delay in the doing and completion of the work which shall have been caused by act of God, public enemy, or strike, or natural casualty, or other circumstances not occasioned by or attributable to the fault, default or neglect of ADMSP shall not be deemed to cause

ADMSP to be in default under this Agreement, so long as ADMSP exercises due diligence to cause the work of construction to be carried through to completion as promptly and expeditiously after the commencement thereof as possible.

**9.7.11 Extensions for Performance.**

The times for performance related to the design and construction of the Proposed Improvements, as set forth in this Section 9.7, may be extended for good cause shown, upon request in writing to the City Manager, which extension by the City Manager shall not be unreasonably withheld.

**SECTION 10. ANNUAL REPORTS/USE OF PREMISES FOR SPECIAL EVENTS/RECEPTIONS/CITY USE OF PREMISES.**

**10.1** ADMSP shall provide an annual written report of the activities, services, programs, uses and events scheduled on the Premises and, with each such report, shall report on the activities, services, programs, uses and events which actually occurred, and the number of persons participating. **[Q: WHEN IS ANNUAL REPORT DUE?]**Any revenue-generating uses conducted from the Premises must be in accordance with the approved uses in Section 4 and consistent with Section 6.1 of the Agreement. All revenues received by ADMSP in connection with such uses shall be dedicated exclusively to help fund ADMSP’s management, operation, and maintenance of the Premises. In the event that revenue(s) pertaining to the Sculpture Park exceed expenses during a particular budget year, the City and ADMSP agree that such excess, if any, shall first be applied to offset any of the capital improvements and/or infrastructure maintenance costs (as set forth in Section 9.1), and may, thereafter, be applied by ADMSP to support other programming in the Sculpture Park. For purposes herein, “revenues” shall also be deemed to include public/private grant funding, and unrestricted donations and contributions received by ADMSP specifically ear-marked toward the operation, management and programming of the Sculpture Park. No portion of the net earnings resulting from the activities of ADMSP on the Premises shall inure to the benefit of any private individual.

Notwithstanding the foregoing, the City Manager, shall have the absolute and final authority in overseeing ADMSP’s activities with regard to this Agreement and its operation and management of the Premises, such that the City is assured that the Premises are being operated and utilized in accordance with the terms of this Agreement.

**10.2 [NOTE TO CITY: REVIEW 10.2 TO MAKE SURE IT ACCURATELY REPRESENTS PARTIES' UNDERSTANDING WITH REGARD TO RENTAL OF PREMISES]**Pursuant to Section 4.2, ADMSP shall have the exclusive right to allow, permit, rent, and otherwise book any and all areas of the Sculpture Park, for the purpose of allowing individuals and/or organizations to utilize the Sculpture Park for special events, receptions, community meetings, and any other uses generally consistent with use(s) associated with a public Sculpture Park. ADMSP shall follow and adhere to the rental rates and policies and procedures established and approved by the City and which are attached hereto as Exhibit "E". The City reserves the right to amend said rental rates and other policies and procedures in its sole discretion and, in such event, the City shall require ADMSP to amend its version of same, which will be attached as a new Exhibit "      " to this Agreement.

In particular, ADMSP shall require that all users of the Sculpture Park (excepting the City) provide Certificates of Insurance evidencing appropriate insurance, as shall be determined by the City's Risk Manager and referenced within the attached Exhibit "      ". Copies of these certificates shall be furnished to the City Manager or his designee. Such insurance shall be kept in full force at all times throughout the period of intended use. All such liability policies shall name the City as additional insured.

ADMSP shall provide a monthly written report of all events scheduled in and pertaining to the Garden and, with each such report, shall report on the events which actually occurred and the number of persons participating in those events during the previous month. Any commercial activity at the Garden shall be undertaken for the purposes of furthering the purposes set forth in Section 4 herein, and must be approved by the City (as provided in Section 4.2 of this Agreement), and may be disapproved and/or otherwise redefined (as also provided in Section 4.2 of the Agreement). All revenues received by ADMSP in connection with the operation, and management of the Sculpture Park shall be dedicated exclusively to support the operation and improvement of the Sculpture Park. For purposes herein, "revenues" shall also be deemed to include unrestricted donations and contributions received by the ADMSP, as well as membership fees and dues (if any). No portion of the net earnings resulting from the activities of ADMSP at the Sculpture Park shall inure to the benefit of any private individual. In the event that revenue(s) pertaining to the Sculpture Park exceeds expenses during an annual accounting period, the City and ADMSP agree that such excess will be applied by ADMSP to offset any of the capital improvements and/or infrastructure

maintenance costs.

Notwithstanding the foregoing, the City Manager or his designee, shall oversee ADMSP's activities with regard to this Agreement and its operation and management of the Sculpture Park, such that the City is assured that the purposes intended by this Agreement are being achieved and the Sculpture Park is being operated in the best interest of the City.

**10.3 Use by the City.** [NOTE TO CITY: REVIEW CITY USES]The City shall have the right to use the Sculpture Park, or any part thereof, subject to availability, for the benefit of the community for such purposes including, but not limited to, meetings, training classes, activities sponsored in conjunction with the Miami Beach Convention Center, City-sponsored special events, receptions, and other purposes, as deemed necessary by the City in its sole and absolute discretion, without the payment of any rental or use fee, except the direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City. City uses of the Sculpture Park shall not be competitive with, nor conflict with, events booked or sponsored by ADMSP and shall be booked in advance upon reasonable notice, and shall not be inconsistent with maintenance of the grounds and facility of the Sculpture Park.

#### **SECTION 11. ADMSP'S FINANCIAL CONTRIBUTION.**

The City and ADMSP herein agree that a vital component of ADMSP's mission statement with respect to this Agreement is to use its best efforts to obtain public/private funding contributions for the design and construction of the Proposed Improvements and, thereafter, for the continuous operation, management, and maintenance of the Sculpture Park in accordance with the highest levels of service. Accordingly, ADMSP hereby represents that it shall use its best efforts with respect to undertaking a coherent and consistent grants writing and submittal effort, not only to fund the Proposed Improvements, but to fund the continued management, operation, and maintenance of the Sculpture Park and of the Premises.

Throughout the Term of this Agreement, and as further consideration for this Agreement, ADMSP shall also use its best efforts to obtain public/private grant funding and individual/corporate contributions, not only for such other capital renovations and improvements as may be mutually agreed to by the parties hereto but, more importantly, for the continued operation, support and maintenance of the Premises (as required to effectively sustain the and approved uses contemplated in this Agreement). ADMSP hereby represents that such approved uses shall,

throughout the Term of this Agreement, be funded and operated at ADMSP's sole cost and expense. It is the intent of the City and ADMSP that ADMSP will use best efforts to increase its funding for the maintenance, management/operation, and programming of the Premises, and toward sustaining and increasing the goals and priorities and approved uses, on a continuing basis.

ADMSP further acknowledges and understands that the City shall in no way be obligated to supplement and/or otherwise contribute any funds for the Proposed Improvements, or for ADMSP's day-to-day operation and maintenance of the Premises.

During the term of this Agreement, the ADMSP shall include, in its annual proposed budget and/or Programmatic Plan, the funding that it anticipates raising, and the City shall use such representations in evaluating its respective level of contribution for the upcoming fiscal year, which amount shall be approved as part of the City's own annual budget process.

**[NOTE: ALSO NEED TO INCLUDE AND FURTHER DISCUSS ADMSP'S REQUIRED DEMONSTRATION/PROOF OF FINANCIAL CAPABILITY, PRIOR TO COMMENCEMENT OF CONSTRUCTION]**

**SECTION 12. ASSIGNMENT.**

ADMSP may not assign this Agreement, or any part thereof, without the prior written approval of the City, which approval shall be given, if at all, at the sole discretion of the Mayor and City Commission. This Agreement is made with the understanding that ADMSP shall at all times, throughout the Term of this Agreement, remain a not-for-profit corporation. In the event that ADMSP ceases to be a not-for-profit corporation, or the City, through the City Manager, in his reasonable discretion and judgment, determines that the Club is not being used for the stated purposes in Section 4, this Agreement shall be subject to termination upon thirty (30) days written notice by the City to ADMSP.

**SECTION 13. USE OF THE PARK IS PRIMARY/SECURITY.**

**13.1** The Park is for the use of the public. Accordingly, the Sculpture Park shall only be used for purposes consistent with Section 4 and the public's right to use the Park shall not be infringed upon by any act of ADMSP. ADMSP shall use reasonable efforts to assure that the activities conducted by ADMSP on the Premises shall not unduly interfere with the public's right to use the Park.

**13.2 Security.** ADMSP shall provide reasonable security to protect the Premises and its equipment, materials and facilities (including any City equipment, furnishings, and fixtures used by ADMSP), and shall be solely responsible to the City for any loss or damage to any City equipment, furnishings, and fixtures so used by ADMSP. **[NOTE: OTHER “SPECIAL” AND/OR UNIQUE SECURITY REQUIREMENTS?]**

**SECTION 14. PERMITS; LICENSES.**

ADMSP agrees to obtain and pay for all permits and licenses necessary for the conduct of its operation and activities on the Premises and agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by ADMSP and/or the Sculpture Park. ADMSP shall also be solely responsible for payment of any and all taxes levied on the Premises and its operations. In addition, ADMSP shall comply with all rules, regulations and laws of the City; Miami-Dade County; the State of Florida; and the U.S. Government, now in force or hereafter to be adopted, and as same may be amended from time to time.

**SECTION 15. LICENSES/PERMITS, UTILITIES, TAXES, AND ASSESSMENTS.**

**15.1 Licenses, Permits, Utilities.**

ADMSP shall pay any fees imposed by law for licenses or permits for any uses or activities of ADMSP upon the Premises, and shall pay to the City, before delinquency, any and all charges for utilities on the Premises (including, without limitation, water, electricity, gas, heating, cooling, sewer and telephone, trash collection, etc.). **[NOTE: HOW WILL PAYMENT OF UTILITIES WORK? WILL ADMSP PAY DIRECTLY TO UTILITIES OR WILL THEY PAY TO CITY?]**

**15.2 Procedure If Taxes Assessed.**

ADMSP agrees to, and shall pay before delinquency, all taxes and assessments of any kind assessed or levied, whether upon ADMSP or the Premises, by reason of this Agreement or by reason of any business(es) or other activity(ies) of ADMSP upon or in connection with the Premises.

The parties agree that ADMSP's operation and use(s) of the Premises is for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, said taxes are assessed by the Property Tax Appraiser, ADMSP shall be solely responsible for payment of same.

**SECTION 16.            SIGNAGE.**

ADMSP shall provide, at its sole cost and expense, any required signage on the Premises, subject to the prior written consent of the City Manager (which shall not be unreasonably withheld or delayed), and subject further to all applicable planning and zoning requirements of the City.

**SECTION 17.            FORCE MAJEURE.**

**17.1** The performance of any act by ADMSP or the City hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God (including without limitation hurricanes), the elements of war, rebellion, strikes, lockouts, fire, explosion, or any other casualty or occurrence not due to ADMSP's and/or the City's negligence and beyond the reasonable control of the parties; provided, however, that if the condition of Force Majeure exceeds a period of 180 days, then either the City or ADMSP may, at their respective option and discretion, terminate this Agreement upon written notice to the other party.

**17.2    Premises Unusable.**

In the event a Force Majeure renders the Premises unusable, in whole or in part, as determined in the reasonable judgment and discretion of the City Manager, the City may, at its sole option and discretion: (i) elect, as soon as practicable, to compel ADMSP to utilize insurance proceeds to repair the damaged property, and the Term of the Agreement shall be abated until such time as ADMSP may re-open the Sculpture Park after restoration or repair of the damaged property; or (ii) elect not to have ADMSP repair or restore the damaged property and, in such event, this Agreement shall be terminated as of the date of said occurrence of damage or casualty. In the event the City elects option (i) above: (1) ADMSP must give written notice to the City Manager, within sixty (60) days receipt of the City's notice of election of option (i), that ADMSP is willing to undertake the repair of the damage with its own or other available funds; (2) within twelve (12) months following such notice, ADMSP shall prove, to the City Manager's reasonable satisfaction

and discretion, that it has adequate funds immediately available to undertake the repair; and (3) the City and ADMSP, each acting in its reasonable discretion, shall agree within a reasonable time (but not to exceed six (6) months unless otherwise extended in writing by City Manager) after the City Manager deems that ADMSP has demonstrated that it has adequate funds to undertake the repair, to the conditions, timing, plans, procedures, contractors, subcontractors, disbursement mechanisms, and other matters with respect to the repair; and (4) ADMSP must complete any and all repairs and/or restoration no later than eighteen (18) months from the date of the City Manager's approval of ADMSP's funding capability.

**SECTION 18. INSPECTION.**

ADMSP agrees that the Premises may be inspected at any time upon reasonable notice (whether written or verbal) by the City Manager and/or or his authorized representatives, or by any other State, County, Federal, and/or municipal officer or agency having responsibilities for inspections of the Premises and/or any operations thereon. ADMSP agrees to immediately undertake the correction of any deficiency cited by such inspectors on the Premises, which is the sole responsibility of ADMSP pursuant to this Agreement.

The City Manager and/or his authorized representatives, shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof (including, without limitation, for the purpose of assessing the condition of the facility, as also referenced in Section 7.1(g), provided that such right shall be exercised in such manner so as not to materially interfere with ADMSP's activities on the Premises.

Notwithstanding the preceding paragraph or anything contained in this Agreement, if the Premises are damaged by fire, windstorm or by other casualty that causes the Premises to be exposed to the elements, then the City may enter upon the Premises, without notice to ADMSP, to make emergency repairs; but if the City exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse ADMSP from its obligation to keep the Premises in repair. If City makes any emergency repairs pursuant to the terms hereof, ADMSP shall reimburse the City for all such repairs upon receipt by ADMSP of City's notice of repairs made and statement and proof of costs incurred.

**SECTION 19. WAIVER OF INTERFERENCE.**

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

**SECTION 20. INSURANCE REQUIREMENTS. [NOTE: NEED TO REVIEW/VERIFY TYPES AND AMOUNTS OF COVERAGE. ALSO, WHAT – IF ANY – TYPE OF COVERAGE DO WE NEED ADMSP TO MAINTAIN FOR ARTWORK?]**

**20.1** ADMSP shall maintain, at ADMSP's sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement:

- a. General liability insurance with not less than the following limits, subject to adjustment for inflation:
 

General aggregate	\$2,000,000
Personal and advertising (injury)	\$1,000,000
(Per occurrence)	\$1,000,000
Fire damage	\$ 100,000
Medical Expense	\$ 5,000
- b. Workers Compensation Insurance shall be required under the Laws of the State of Florida.
- c. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits, subject to adjustment for inflation (only if ADMSP provides transportation services):
 

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$ 500,000 per accident
- e. Fire Insurance shall be the responsibility of ADMSP.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage, except upon at least thirty (30) days written notice to the City, and then subject to the prior

written approval of City Manager. ADMSP shall provide City with a Certificate of Insurance for each such policy, which shall name the City of Miami Beach, Florida as an additional named insured. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City, through its Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City, through its Risk Manager. Should ADMSP fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by the City in obtaining said insurance, shall be repaid by ADMSP to the City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If ADMSP does not repay the City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall also be deemed an event of default hereunder.

#### **20.2 Adjustment of Limits.**

All of the limits of insurance required pursuant to this Section 20 shall be subject to review by the City and, in connection therewith, ADMSP shall carry or cause to be carried such additional amounts as City may reasonably require from time to time, but City may not impose such new limits any more frequently than once in every five (5) year period from the Commencement Date. Any request by City that ADMSP carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Premises.

#### **SECTION 21. INDEMNIFICATION. [NOTE: WHAT ADDITIONAL HOLD HARMLESS DO WE NEED FROM ADMSP AND/OR THIRD PARTY LENDERS (OF ART) FOR ARTWORK EXHIBITED IN SCULPTURE PARK, SO THAT CMB ASSUMES NO RESPONSIBILITY?]**

**21.1** ADMSP shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatsoever kind or nature, including, but not limited to, reasonable attorneys fees and cost(s) arising out of error, omission, or negligent act of ADMSP, and/or its officers, agents, servants, employees, contractors, or volunteers under this Agreement.

**21.2** In addition, ADMSP shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any willful misconduct of ADMSP not included in Section 21.1 and for which the City, its officers, agents, servants or employees are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the gross negligence or willful misconduct of the City, its officers, agents, servants or employees.

**21.3 Subrogation.** The terms of insurance policies referred to in Section 20 shall preclude subrogation claims against ADMSP, the City and their respective officers, agents, servants, and employees.

**21.4** The provisions of this Section 21 shall survive the termination and/or expiration of this Agreement.

**SECTION 22. NO LIENS.**

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

**SECTION 23. ADMSP EMPLOYEES AND MANAGERS.**

**23.1** The City and ADMSP recognize that in the performance of this Agreement, it shall be necessary for ADMSP to retain qualified individuals to effectuate and optimize ADMSP's management and operation of the Premises. Any such individuals, whether employees, agents, independent contractors, volunteers, and/or other, retained by ADMSP for such purpose(s) shall not be deemed to be agents, employees, partners, joint venturers or associates of the City, and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City; further they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, ADMSP, and/or any employees, agents, independent contractors, volunteers, and/or others, acting under the authority and/or with the permission of ADMSP for the purpose set forth herein, shall never have been convicted of any offense involving moral turpitude or felony. Failure to comply

with this Section shall constitute cause for the termination of this Agreement. ADMSP shall have an experienced manager or managers overseeing the Premises at all times. Any criminal activity on the Premises caused by or knowingly permitted by ADMSP shall result in automatic termination of this Agreement.

**23.2 Contract Administration.**

- a. The City's contract administrator shall be the City Manager and/or his authorized designee. ADMSP shall name a specific individual to serve as its contract administrator.
- b. The City's contract administrator shall have the authority to give all approvals for the City while administering this Agreement, with the exception of items which would require City Commission approval. The City's contract administrator:
  - (i) Shall be the liaison between the City and ADMSP on all matters relating to this Agreement.
  - (ii) Shall be responsible for ensuring that any information supplied by ADMSP is properly distributed to the appropriate City departments.
  - (iii) Shall be responsible for contract compliance by ADMSP (including, without limitation, ADMSP's activities, programming, operations, management, and maintenance of the Premises).
- c. ADMSP shall name an individual who shall serve as the general manager of the Club and who:
  - (i) Shall be the liaison between the City and ADMSP on all matters relating to this Agreement.
  - (ii) Shall be responsible for the day-to-day management and supervision of the Premises.
  - (iii) Shall be responsible for providing supervision and direction to ADMSP and/or the Sculpture Park's employees, agents, contractors, volunteers, and/or others.

**SECTION 24. NO IMPROPER USE.**

ADMSP will not use, and shall use its reasonable efforts to not suffer or permit any person to use, in any manner whatsoever, the Premises for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Should ADMSP become actually aware of any such use by any person, it shall take corrective action in a reasonable amount of time to stop such use. ADMSP shall not use the Premises for any unlawful purpose and shall comply with all laws, permitting, and licensing requirements now in force or hereafter adopted, applicable to the Premises or the uses and activities conducted on the Premises. ADMSP agrees not to use (or to permit operation of) the Premises for any offensive or dangerous activity, nuisance, or anything against public policy. Except as may result from acts of force majeure, ADMSP agrees that it will not allow the Premises to become unoccupied or vacant.

**SECTION 25. NO DANGEROUS MATERIALS.**

ADMSP agrees not to use or permit in, on, or within the Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found in, on, or within the Premises shall be immediately removed.

ADMSP shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by ADMSP of any "hazardous substance" or "petroleum products" in, on, or within the Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, ADMSP shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Section 25 shall survive the termination or earlier expiration of this Agreement.

**SECTION 26. NO CLAIM AGAINST CITY OFFICERS, EMPLOYEES, INDIVIDUALS.**

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

**SECTION 27.            DEFAULT AND TERMINATION.**

If either party fails to perform in accordance with any of the terms and conditions of this Agreement, and such default is not cured within thirty (30) days after written notice is given( or if not curable within thirty (30) days, the party has begun to take curative action within thirty (30) days and is continuing to pursue such cure), the aggrieved party shall have the right to terminate this Agreement and, as the case may be, either vacate or re-enter the Premises, without further notice or demand. At its option, either party may also pursue any and all legal remedies available to seek redress for such default. The default and termination rights afforded the parties in this Section 27, shall in no way limit or otherwise preclude the City from exercising such other rights to terminate this Agreement, as may be expressly provided in other sections hereto.

**SECTION 28.            PROCEDURE UPON EXPIRATION AND/OR TERMINATION BY CITY [NOTE: DO WE KEEP ANY ARTWORK UPON TERMINATION OR EXPIRATION. WOULD LIKE TO DISCUSS THIS SECTION FURTHER, SO I KNOW WHAT EXPECTATIONS CITY HAS – AS TO PREMISES AND THE CONDITION ADMSP LEAVES THEM IN – UPON TERMINATION OR EXPIRATION]**

**28.1** ADMSP shall, on or before the last day of the Term herein, or the sooner termination thereof, peaceably and quietly leave, surrender and yield unto the City, the Premises, together with any and all fixtures located at or on the Premises and used by ADMSP in the maintenance, management or operation of the Premises, excluding any equipment, furnishings, appliances or other

personal property which can be removed without material injury to the Premises, free of all liens, claims and encumbrances and rights of others, and broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Premises, in good order, condition and repair, reasonable wear and tear excepted; subject, however, to the subsequent provisions of this subsection. Any property which pursuant to the provisions of this subsection is removable by ADMSP on or at the Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by ADMSP, and either may be retained by the City as its property, or may be removed and disposed of by City, at the sole cost of ADMSP, in such manner as the City may see fit. If the Premises are not surrendered at the end of the Term as provided in this subsection, ADMSP shall make good to the City all damages which the City shall suffer by reason thereof, and shall indemnify the City against all claims made by a succeeding occupant (if any), so far as such delay is occasioned by the failure of ADMSP to surrender the Premises as and when herein required.

**28.2** ADMSP covenants and agrees that it will not enter into agreements (whether express or implied) relating to the Premises for a period of time beyond the stated expiration date of this Agreement.

**SECTION 29.            TERMINATION FOR LACK OF FUNDS.**

In the event that ADMSP loses its funding, such that it can no longer manage, operate, and maintain the Sculpture Park and the Premises in accordance with the goals and priorities and uses herein, then the City may, at its sole option and discretion: (i) supplement any lack or loss of funds in order to allow ADMSP to continue to manage and operate the Sculpture Park; or (ii) terminate this Agreement pursuant to Section 27 hereof.

**SECTION 30.            NOTICES.**

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

Altos del Mar Sculpture Park, Inc.  
Attention: \_\_\_\_\_  
7701 Collins Avenue  
Miami Beach, FL 33141

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

City of Miami Beach  
City Manager  
1700 Convention Center Drive  
Miami Beach, Florida 33139

with copies to: City of Miami Beach  
Attention: Max Sklar, Director of Tourism and Culture  
1700 Convention Center Drive  
Miami Beach, Florida 33139

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

**SECTION 31. NO DISCRIMINATION.**

ADMSP agrees that there shall be no discrimination as to race, sex, color, creed, national origin, physical handicap, or sexual orientation in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation of the Premises. All facilities located on the Premises shall be made available to the public; subject to the right of ADMSP to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation, and security of the facilities.

**SECTION 32. VENUE/WAIVER OF JURY TRIAL/DISPUTE MEDIATION.**

**32.1** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

BY ENTERING INTO THIS AGREEMENT, CITY AND ADMSP EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

**32.2** If a dispute arises out of, or related to, this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association, or other similar

alternative dispute resolution organization, person or source agreeable to the parties, before resorting to litigation or other dispute resolution procedure.

**SECTION 33. INTENTIONALLY OMITTED**

**SECTION 34. MISCELLANEOUS PROVISIONS.**

**34.1 City's Governmental Capacity.**

Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

**34.2 Entire Agreement.**

(a) Entire Agreement. This Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between City and ADMSP concerning the operation and management of the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, or waived except by a written instrument of change, modification, alteration, or waiver executed by City and ADMSP. No waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

**34.3 Remedies Cumulative.**

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

**34.4 Performance at Each Party's Sole Cost and Expense.**

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

**34.5 Time is of the Essence.**

Time is of the essence with respect to all matters in, and requirements of, this Agreement as to both City and ADMSP including, but not limited to, the times within which ADMSP must commence and complete construction of the Proposed Improvements.

**34.6 No Representations.**

City and ADMSP have made no representations herein as to the condition of the Premises.

**34.7 Partnership Disclaimer.**

ADMSP acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of this Agreement, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, shall be construed or deemed to create, or to express an intent to create a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship of any kind or nature whatsoever

between the parties hereto. The provisions of this Section 34.7 shall survive termination and/or expiration of this Agreement.

**34.8 Not a Lease.**

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

Accordingly, ADMSP hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by ADMSP or otherwise, ADMSP shall surrender and yield unto the City the Premises, in accordance with Section 28 hereof, and the City shall in no way be required to evict and/or otherwise remove ADMSP from the Premises as if this were a tenancy under Chapter 83, Florida Statutes, nor shall ADMSP be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a management agreement and is in no way intended to be a lease).

**34.9 No Third Party Rights.**

Nothing in this Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

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

Attest:

**CITY OF MIAMI BEACH**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Matti Herrera Bower, Mayor

Attest:

**ALTOS DEL MAR SCULPTURE PARK,  
INC.**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI-DADE            )        SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Mayor \_\_\_\_\_ and \_\_\_\_\_, City Clerk, or their designees respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

STATE OF FLORIDA                    )  
  )     SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, on behalf of the Altos del Mar Sculpture Park, Inc., known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2008.

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



**EXHIBIT "A"**  
**[SKETCH OF PREMISES]**

**EXHIBIT "B"**

## **INSURANCE REQUIREMENTS**

1. Worker's compensation insurance covering all employees of the Contractors (as required by the laws of the State of Florida) and employer's liability insurance of not less than One Million Dollars (\$ 1,000,000) per occurrence.

2. Comprehensive general liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate covering personal injury and property damage. Such coverage shall include, but not be limited to, the following:

- i. Blanket contractual liability insurance covering all indemnity or hold harmless agreements.
- ii. Protective liability insurance for the operation of the Independent Contractors.
- iii. XCU coverage (explosion, collapse or damage to underground property).
- iv. Products and completed operations (for two (2) year extension beyond completion of project).

3. Excess umbrella liability insurance with a limit of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per occurrence and in the aggregate in excess of the above mentioned insurance, which shall be required only in any "wrap up" policy.

- a) ADMSP may cause the insurance listed in this subsection to be provided through an overall "wrap up" policy, in lieu of individual policies provided by Contractors.
- b) Comprehensive automobile insurance in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage covering all owned, non-owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.

4. Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of construction, written on a completed value basis or a reporting basis, for property damage protecting ADMSP, City, and ADMSP's General Contractor, with a deductible of not more than Fifty Thousand Dollars (\$50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount).

5. Comprehensive automobile insurance in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage covering all owned, non-owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.

Document comparison by Workshare Professional on Thursday, October 23, 2008  
2:41:34 PM

<b>Input:</b>	
Document 1 ID	file://C:/Users/Barry Stein/Documents/Boy & Girls Clubs Representation/Boys & Girls Club Management Agreement (10-16-08).doc
Description	Boys & Girls Club Management Agreement (10-16-08)
Document 2 ID	file://C:/Users/Barry Stein/Documents/Boy & Girls Clubs Representation/Boys & Girls Club Management Agreement ADMSP VERSION 10-23-2008.doc
Description	Boys & Girls Club Management Agreement ADMSP VERSION 10-23-2008
Rendering set	standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	63
Deletions	41
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>104</b>