

**MOODY GARDENS CONVENTION CENTER
TWO HOPE BOULEVARD
GALVESTON, TEXAS 77554
(409) 683-4243**

THIS Agreement (the "Agreement") is made this _____ between _____ (the "Promoter"), and **Moody Gardens, Inc.**, a Texas non-profit corporation of Two Hope Boulevard, Galveston, Texas 77554 (the "Operator"). This Agreement is a license made and entered into upon the following covenants and conditions, all and every one of which the parties hereby covenant and agree to:

1. PREMISES AND PURPOSE. Operator shall furnish the _____ ("Premises") within the Moody Gardens Convention Center ("Complex") lighted, cleaned, heated and air-conditioned, without scenery and equipment contained thereon and without attendants, ticket sellers and ushers for the sole purpose of presenting _____ (the "Event"), commencing at _____ and ending at _____ unless sooner terminated elsewhere herein provided. Either party may terminate this agreement for material breach or default as outlined in Sec. 21. The schedule of events is as follows:

Date	Start Time	End Time	Function	Room	# of People
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2. PAYMENT. Promoter hereby covenants and agrees to pay to Operator at Operator's address the sum of \$_____ upon execution of the Agreement and \$_____ to be paid fourteen (14) days prior to the commencement of the Event. Any additional sums due to Operator for additional services, accommodations or materials agreed to and furnished to Promoter shall be immediately due and payable upon request of the Operator. Additional services or equipment requested on the days of the event must be paid for by cash or credit card upon request.

The contract amount is \$_____ which includes the rental of the specified space, with the set up of required tables and/or chairs, and liability insurance. If any additional equipment is used, additional payment will be due. If Promoter has its own liability insurance and sends a copy of such policy with the agreement and deposit, Operator will deduct from the \$_____ making the total due \$_____. Please sign and send one copy of this Agreement back with a deposit of \$_____ to the Convention Center by_____. The balance of \$_____ is due on_____.

3. POSSESSION.

(a) Operator shall permit Promoter to peaceably and quietly enjoy the use of the Premises for the purpose, use and term aforesaid. In no event shall Promoter enter or use any portion of the Complex without first obtaining Operator's approval. Promoter shall provide

Operator with schedule of set-up and Event times at least **14** days prior to the Event, to be approved by Director.

(b) The corridors, ramps, sidewalks, entrances, lobby, or any other portion of the Complex shall not be obstructed by Promoter nor used for any other purposes than ingress or egress, and, without limiting the foregoing, Promoter will not permit any chairs or moveable seats to be or remain in the corridors, and will keep the same corridors clear at all times.

(c) Operator, through its Director, and designated employees, agents or contractors, including without limitation, police officers, firemen, and security guards shall have the right at any time to enter the Premises for any purpose and shall at all times be subject to the charge and control of the Director, or his authorized agent, who shall have the right, but not the obligation to exercise the same. The keys to the Premises shall remain in possession of Operator or the Director, but during the period covered by this Agreement, the entrances and exits of the Premises shall be controlled under the direction of Promoter in accordance with the terms of this Agreement.

(d) If the Promoter, being entitled to possession hereunder shall fail for any reason to take possession of or use of the Premises, without the written consent of Operator, no rent refund shall be made and any payment made to Operator shall be taken by the Operator and in addition to any other legal or equitable remedies available to Operator, the full rent called for by this Agreement, including any costs or expenses incurred by Operator in connection therewith, shall be payable by the Promoter to the Operator.

(e) If all or any part of the Premises or the Complex is destroyed or damaged by any cause (“Casualty”), including without limitation, fire, flood, windstorm, public disturbance, war, declared or undeclared, strike, riot, Act of God or unforeseen or improbable occurrence, or if any casualty shall cause Operator to deem the fulfillment of this Agreement by Promoter impossible or impractical, in Operator’s exclusive judgment, then Operator may terminate this Agreement by written notice and the Promoter shall be liable to pay rent only up to the time of such termination, whereupon neither party shall have any further obligation to the other. Promoter hereby waives and releases any claims for damages or compensation on account of such termination.

4. INDEMNITY, DISCLAIMERS AND INSURANCE.

(a) Promoter agrees to defend, indemnify and hold harmless Operator, the Park Board of Trustees of the City of Galveston, and the City of Galveston, and their respective present and future officers, directors, employees, mayors, council members, representatives, agents, invitees, guests, customers, contractors, and any person or entity to the extent, if any, permitted by the Texas Tort Claims Act of the Constitution of the State of Texas assisting Operator, whether paid or voluntary, (collectively, “Indemnified Parties”, or, individually, an “Indemnified Party”) from all claims, losses, suits, actions, liabilities, damages, causes of action, judgments, liens, costs, obligations and expenses, of whatever kind or nature, whether joint, several or otherwise (including, but no limited to, court costs, attorneys' fees, expert witnesses; fees and expenses and costs of investigation, whether such attorney's and expert witnesses' fees, court costs and costs of investigation are incurred in defending such claims or in enforcing this indemnification provision and whether or not a lawsuit is filed, and amount paid in settlement of any claims) (hereinafter collectively “Claims”) for injury to persons (including death) or damage to property which arises from or in connection with the Event or any act, omission or

neglect of Promoter or Promoter's officers, directors, agents, employees, contractors, or any other person assisting Promoter, whether paid or voluntary, including without limitation any invitees, customers, guests and any artist, performer or participant appearing in the Event (including support personnel in connection with presentation of the Event) and Promoter's *Employees*, and including without limitation those Claims arising from or in connection with the negligence, gross negligence, or breach of any common law, contractual, statutory, regulatory or other duties of any type or nature whatever of or by any Indemnified Party (such matters are collectively referred to as "Indemnified Party Acts") provided, however, an Indemnified Party shall not be indemnified hereunder for any portion of the Claims caused solely by such Indemnified Party's Indemnified Party Acts, whether such Indemnified Party Acts are committed by the Indemnified Party acting alone or in concert with an unidentified third party.

Promoter agrees the Operator shall not be liable to Promoter or its officers, directors, agents, employees, contractors, customers, guests, invitees or any other person assisting Promoter, whether paid or voluntary, including without limitation any artist, performer, or participant appearing in or any support personnel for the presentation of the Event for injury to persons (including death) or damage to property arising from or in connection with (i) the Event or the acts, omissions or neglect of any other licensee or tenant or such licensee's or tenant's officers, directors, agents, employees, contractors, customers, guests or invitees or any person assisting them, whether paid or voluntary, with the Premises, the Complex and all drives and other areas appurtenant thereto, or (ii) flood, windstorm, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, or order of governmental body or authority, or any other cause beyond the control of the Operator (all of the preceding collectively "Force Majeure").

(b) Without limiting the generality of Section 4 (a) or other provisions of this Agreement and notwithstanding anything to the contrary contained herein, Promoter **HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PREMISES AND THE COMPLEX ANY MATERIALS, EQUIPMENT OR SERVICES FURNISHED BY OPERATOR INCLUDING BUT NOT LIMITED TO WARRANTIES FOR FITNESS FOR A PARTICULAR PURPOSE AND/OR MERCHANTABILITY AND WARRANTIES OF SUITABILITY FOR INTENDED COMMERCIAL PURPOSE** and Promoter accepts the Premises and the Complex and any such materials, equipment or services in an "as is, where is" condition, with all faults and defects. Promoter has inspected or been afforded an opportunity to inspect the Premises and Complex and any such materials or equipment, all of which are in suitable repair and condition.

(c) Promoter shall provide Worker's Compensation Insurance protecting employees of Promoter and all others as required by the laws of the State of Texas. Promoter agrees to pay or cause to be paid all compensation, medical, or hospital bills which may become due or payable hereunder, and without limiting the generality of any other provision of this Section 4 or of this Agreement, Promoter hereby waives and releases, and agrees to defend, indemnify, and hold harmless Operator, its officers, directors, employees, contractors, agents and any person or entity assisting Operator, whether paid or voluntary, with respect thereto, including without limitation those Claims arising from or in connection with the sole negligence of Promoter or its officers, directors, employees, agents, contractors, or any other person assisting Promoter, whether paid or voluntary.

(d) Promoter shall not be entitled to undertake the responsibility of parking automobiles for customers, invitees or guests.

(e) Operator shall have the exclusive right to sell soft drinks, alcoholic drinks, food, snack food or other related merchandise.

(f) If the event Operator, in writing, expressly permits the use by Promoter of any contractor, including, but not limited to food caterers, Promoter shall be required to furnish to Operator evidence that each contractor has (1) Comprehensive Public Liability Insurance in the minimum amount of One Million and No/100ths Dollars (\$1,000,000.00) combined single unit, and (2) Worker's Compensation Insurance protecting the contractor's employees, and others, as required by the laws of the State of Texas, and (3) such other insurance as Operator may in its exclusive judgment require.

All insurance policies required by this Section 4, Indemnity and Insurance, shall be written and issued by a solvent insurance company with a minimum of "A:VIII" rating in Bests Insurance Guide and shall name Owner, the Park Board of Trustees of the City of Galveston, and The City of Galveston as additional insured and loss payee, and shall contain a waiver of subrogation in favor of Operator and shall be irrevocable for the term hereof. Proof of all such insurance shall be provided to Operator at least seventy-two (72) hours prior to the commencement of the Event or at such earlier time as Operator may specify.

5. EXPIRATION.

(a) At the expiration of the move-out time specified herein or any other termination of this Agreement, Promoter shall quit the premises and return to the Director the Premises and any additional accommodations or materials furnished or loaned to Promoter in as good condition and repair as when acquired, except for ordinary wear and use.

(b) Operator may, but is not obligated, after the termination hereof, to remove from the Premises all effects of Promoter or any third party remaining therein and to store the same wherever Operator sees fit in its name, or at its option, in the name of Promoter, but at the cost, expense and risk of Promoter, and Operator shall not be liable in any way to Promoter by reason of or in connection with such removal and storage. Any such effects remaining after the termination hereof shall not extend the term hereof except that Promoter shall be liable for such sum as the Director shall determine is due as storage costs for each day (including any part thereof) the effects remain on the Premises.

6. UTILITIES.

(a) Operator shall use reasonable efforts to furnish, at Operator's expense, available heat, water, lights and air conditioning as deemed necessary by the Director and all janitorial services deemed necessary by the Director, and cause the Premises to be kept clean and generally cared for during the term hereof and, without limiting the generality of Section 4 (a) or Section 4 (b) or any other provision hereof, Operator shall not be liable to Promoter for any Claims for any damage or injury to persons (including death) or property arising from or in connection with (i) an excess or lack of heat, water, lights, air conditioning, plumbing, gas, electricity or other utilities (collectively the "Utilities") or for any other cause including, without limitation, the negligence of the Operator or its officers, directors, employees, agents, contractors or any other person assisting Operator whether paid or voluntary, or (ii) any Force Majeure. All Utilities will be furnished from present openings on the Premises and no gasoline, oil flashlights, or any other artificial lighting or light plants or electrical equipment shall be permitted. No engine, motor, or machinery shall be operated on the Premises without the written consent of the Director.

(b) Unless otherwise authorized by the Director, all plumbing, electrical, or carpentry work to be done on the Premises in connection with the use authorized herein and all electrical current, domestic gas, or other energy source required shall be done or furnished by Operator, or its approved designee, for which Promoter shall pay Operator according to the schedule of rates on file in the office of the Director.

7. PARKING LOTS. Operator expressly reserves the right to maintain and operate the Complex parking lots under the supervision and control of the Director and in accordance with such rules and regulations as the Director may from time to time designate.

8. PERSONNEL.

(a) The Director may, in his discretion, furnish at no extra cost services of certain employees of The Galveston Island Convention Center at Moody Gardens. Promoter shall hire and pay the salaries of all other persons required, in sufficient number, in connection with the Event including, without limitation (where applicable), the salaries of all stage hands, gatemen, front lamp operators, projectionists, clean-up persons, doormen, security guards watchmen, construction workers, fork lift operators and other personnel necessary to produce the Event in an orderly professional manner (collectively "Promoter's Employees").

(b) Operator shall have the right at all times to prevent or limit any activity or action of Promoter's Employees which might, in Operator's reasonable judgment, harm the Premises, the Complex, the good will or reputation of the Complex or interrupt or disturb Operator's operations or those of any other tenant or licensee of the Complex. Operator shall have the right at all times to remove from the Premises any of Promoter's Employees and to eject any objectionable person or persons from the Premises; however, Operator shall not be under any obligation to so prevent, limit, remove or eject.

9. SCHEDULING. The Director shall be privileged to schedule other similar events both before and/or after the dates of this Agreement without notice to Promoter.

10. SEATING CAPACITY. Promoter shall not distribute tickets or passes in excess of the seating capacity of the Premises, nor shall Promoter allow any excess person inside the premises.

11. EXHIBIT ENTRANCES. All articles, exhibits, fixtures, materials, displays, etc. shall be brought in or out of the Leased Premises only at such entrances and at such times as may be designated by the Director.

12. MOVIE PROJECTORS. No moving picture machines or films in excess of 16mm in size or any nitro-cellulose film will be permitted in the Complex unless same shall have been first approved by the Director and no moving picture machine shall be permitted on the Premises or in the Complex unless it has received prior approval of the fire department or other municipal regulatory departments.

13. FIRE HAZARDS. Promoter shall not bring or permit anyone to bring into the Complex or keep therein anything that will increase Operator's fire and extended coverage insurance or the rate therefore on the Complex. No gasoline, acetylene or other fuel or combustible substance shall be brought on the Premises or into the Complex without the approval of Operator and the Galveston Fire Department. Promoter shall not bring or permit any person to bring into the Complex any animals or other property of any kind, without the consent of the Director and shall not place or put any decorations without the prior consent of the Director. All such decorations must be fireproofed. Operator reserves the right to require Promoter to prohibit or remove from the Complex any animals, furniture, fixtures, furnishings, equipment, or any other things placed therein that, in the Operator's sole and absolute discretion, may violate the Fire Code, cause a fire hazard, or increase Operator's fire and extended coverage insurance without the consent of the Promoter. If Promoter fails to promptly remove the same, Operator may cause such removal with the removal costs to be borne by Promoter.

14. HANGING OR POSTING.

(a) Promoter will not permit any nails, screws, bolts or fasteners to be affixed or driven into any portion of any building or improvement in the Complex, nor any signs to be affixed either to the exterior or interior thereof or to any property thereof nor cause or permit any changes, alterations, repairs, painting, or staining of any of the Complex, nor do, not permit to be done, anything which will damage or change the appearance of the Complex. Promoter shall pay the cost of repairing all damages which may be done to the Complex or any materials or equipment loaned hereby, by the act of Promoter or its officers, directors, employees, agents, contractors or any person assisting Promoter, whether paid or voluntary, including without limitation its customers, guests, invitees, artists, performers, participants, support personnel and Promoter's Employees. The parties stipulate that the Director exclusively shall determine whether any such damage has been done, the amount thereof, and the reasonable cost of repairing the same. The decision of the Director shall be final.

(b) If any portion of the stage, floor, ceiling tiles, seats or other furnishings, fixtures or equipment are moved or removed from the Complex, Promoter agrees to pay the

cost of replacing or repairing the same and putting them back in the same condition and place as they were before such removal.

(c) Except as otherwise agreed to by the Director in writing, Promoter will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters, cards, or printed matter of any description ("Printed Materials"), inside or in front of or on any part of the Complex or the Premises except upon the regular billboard or similar area provided by the owner, and will use, post, or exhibit only such printed materials, or upon said billboards or similar areas as relate to the Event taking place in the Premises and in a form approved by Operator in writing; and Promoter shall promptly take down and remove forthwith all Printed Materials objected to by the Director or his authorized representative.

15. BROADCASTING. Promoter shall not broadcast or telecast or permit to be broadcast or telecast from the Premises or Complex over any radio or television system any part of any event or program or speech of any nature, until and unless the Director shall give permission in writing. Written permission will not be required for radio or television stations to tape or film segments of the performance, event, program, or speech for news reporting purposes.

16. POLICE PROTECTION. Promoter, at its expense, shall furnish salaried security personnel for such police protection as may be required by the Director during the occupancy of such Promoter; if Promoter fails to or refuses to furnish salaried security guards for police protection satisfactory to the Director, the Operator may furnish same and charge the cost thereof to Promoter.

17. LOST ARTICLES. The Director or his representative shall have sole right to collect and retain custody of articles left in the Premises by persons attending the Event.

18. STORAGE. Any storage of Promoter's property on the Premises must have prior approval of the Director and any watchmen and security guards desired by Promoter must be arranged for by special arrangement with the Director. Without limiting the generality of Section 4 or any other provisions of this Agreement, the Operator assumes no responsibility for such property nor the acts of any such watchmen or security guards and Promoter waives, releases and Operator, its officers, directors, employees, agents, contractors and other persons assisting Operator, whether paid or voluntary, from any Claims for any damage or injury, including death, to the person or property of Promoter arising from or in connection with such storage, watchman or security guards, including without limitation for any negligence of Operator, its officers, directors, employees, contractors, agents and any other person assisting Operator, whether paid or voluntary, (including, without limitation, watchmen and security guards) without respect thereto and for theft and vandalism.

19. COMPLIANCE WITH LAWS; USAGE; LIENS. Promoter, at its cost, shall comply with all federal, state, municipal and other laws and ordinances applicable to the Premises and the Event or program conducted therein by Promoter, and with any Building Rules and Regulations as may from time to time be promulgated and will not commit any act which is a nuisance or annoyance to Operator or to other licensees or a tenant in or which might, in the exclusive judgment of Operator, appreciably damage Operator's goodwill or reputation, or tend to injure or depreciate the value of the Complex. Promoter has no authority to encumber the Premises or any other portion of the Complex with any lien, and Promoter shall not suffer or

permit any such lien to exist. Should any such lien hereafter be filed, Promoter shall immediately discharge the same at its sole cost, or in Operator's exclusive judgment, Operator may discharge it and Promoter shall upon demand reimburse Operator for all costs, including attorneys' fees, by reason of or in connection therewith, which costs shall be additional rent hereunder.

20. ACCESS BY OPERATOR. Promoter shall permit Operator or its agents or representatives to enter into and upon any part of the Premises at all reasonable hours to inspect same; to clean, to make repairs, alterations or additions thereto, as Operator may deem necessary or desirable; to show the Premises to prospective Promoters or other tenants; or for any other purpose deemed reasonable by Operator; and Promoter shall not be entitled to any abatement or reduction of any payment hereunder by reason thereof.

21. DEFAULT, CURE, ACCELERATION BY PROMOTER. The Promoter covenants and agrees that if (i) it shall fail to pay any payment due hereunder or any part thereof or fails to perform any other covenant, agreement or warranty contained herein at the times herein specified or (ii) Promoter, or any Guarantor, shall make an assignment for the benefit of creditors or (iii) a petition shall be filed or Promoter shall otherwise be adjudicated a bankrupt, whether voluntary or involuntary, or if an execution issue against Promoter and it shall fail to procure a stay thereof within thirty (30) days after the entry of same or otherwise fail to satisfy a judgment against it, (iv) a petition is filed or proceeding commences against Promoter, or any Guarantor, or the property of either (A) for appointment of a trustee, receiver or liquidator, or (B) by any government authority for dissolution or liquidation of Promoter or any Guarantor, or (vi) Promoter vacates or deserts the Premises (surrender of keys not being necessary), then and in such events this Agreement, at the option of the Operator, shall terminate and Operator may, but shall not be required to, license the Premises to others. In the event of such termination, the entire unpaid portion of the total rental as set forth in Article 2 of this Agreement shall thereupon immediately become due and payable.

22. DEFAULT, CURE, ACCELERATION BY OPERATOR. The Operator covenants and agrees that if (i) it shall fail to perform any covenant, agreement or warranty contained herein at the times herein specified or (ii) Operator shall make an assignment for the benefit of creditors or (iii) a petition shall be filed or Operator shall otherwise be adjudicated a bankrupt, whether voluntary or involuntary, or if an execution issue against Operator and it shall fail to procure a stay thereof within thirty (30) days after the entry of same or otherwise fail to satisfy a judgment against it, (iv) a petition is filed or proceeding commences against Operator or the Premises (A) for appointment of a trustee, receiver or liquidator, or (B) by any government authority for dissolution or liquidation of Operator then, in such events this Agreement shall terminate at the option of the Promoter and Operator shall be required to return all payments made by Promoter in accordance with the terms hereunder. In the event of such termination, no further payments by Promoter shall be due and payable.

23. ATTORNEYS' FEES. If either party should default in the performance of any of its obligations under this Agreement and the non-defaulting party should employ one or more attorneys to assist it in enforcing its rights and remedies, the prevailing party shall be entitled to a recovery of all reasonable attorney's fees and costs irrespective of whether the matter is litigated or taken to final judgment.

24. COPYRIGHTED MATERIAL. Promoter warrants that all copyrighted material to be performed or used has been duly licensed or authorized by the owners thereof or their representatives, and agrees to defend, indemnify and hold harmless Operator from any Claims incurred with regard thereto.

25. EVACUATION OF FACILITY. Should it become necessary, in the judgment of Operator, to evacuate the Premises because of bomb threats or other explosives or for other reasons of public safety, the Promoter will regain possession of the Premises for sufficient additional time to complete presentation of the performance, attraction, Event, or affair without additional rental charge providing such addition time does not interfere with another licensee or tenant. If it is not possible to complete presentation of the performance, attraction, Event, or affair ("Performances") rental shall be equitably abated and Operator shall have no further obligation or duty to Promoter hereunder and the Promoter hereby waives and releases any claim for losses or damages or other compensation therefore from the Operator.

26. NO PARTNERSHIP. Nothing herein contained shall be deemed to create any partnership, joint venture, other similar relationship between the parties or to constitute either as the agent of the other; and neither party shall impute such relationship by advertising or otherwise.

27. NON-WAIVER OF DEFAULTS AND REMEDIES. The failure or delay by either party at any time after a default has occurred, to exercise or enforce any of the rights, remedies and obligations provided for in this Agreement shall not be deemed or construed to be a waiver of any such default, right, remedy or obligation or to affect the right of the party thereafter to exercise or enforce each and every such right, remedy and obligation. No waiver of any provision under this Agreement shall be deemed or construed to be a waiver of any default; and no such waiver shall be valid or binding upon either party unless it is set forth in a written instrument signed by both parties. The receipt by Operator of less than the full payment due at the time shall not be deemed or construed to be other than the receipt of a payment on account of the payment then due, nor shall any statements on or in any letter accompanying Promoter's check be deemed or construed to be an accord and satisfaction; and Operator may accept such payment without prejudice to Operator's right to recover the remaining balance of the rent then due and to pursue any of its other rights and remedies available to Operator under this Agreement, at law or at equity.

28. NOTICES AND ADDRESSES. All notices to be given under this Agreement shall be deemed given when mailed by certified mail, return receipt requested, properly addressed to the proper party as set forth on the first page this Agreement.

29. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Neither party shall have the right to transfer and assign, in whole or in part, any of its rights and obligations hereunder without prior written consent from the other party.

30. TEXAS LAW TO APPLY; JURISDICTION; VENUE. This Agreement shall be construed under and in accordance with the laws of the State of Texas. All aspects of this

Agreement are performable exclusively in Galveston, Galveston County, Texas and venue shall lie therein exclusively.

31. LEGAL CONSTRUCTION. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term of provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Promoter and Operator hereby waive any legal presumptions construing any apparent ambiguities in this Agreement against the drafting party.

32. PRIOR AGREEMENTS SUPERSEDED. This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

33. AMENDMENT. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by both parties.

34. RIGHTS AND REMEDIES CUMULATIVE. Either party may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of the other party herein contained without the necessity of providing the inadequacy of any legal remedy or irreparable harm. The rights and remedies of the parties hereunder shall be deemed cumulative and no right or remedy of Operator, whether exercised by Operator or not, shall be deemed to be an exclusion of any other. All rights and remedies of Operator shall survive any termination or expiration of this Agreement.

35. TIME OF ESSENCE. Time is of the essence in each and every provision of this Agreement.

36. SPECIAL CONDITIONS. Smoking is permitted only in designated areas outside the Complex.

37. TERMINOLOGY AND CAPTIONS. Pronouns used herein of whatever gender shall include natural persons, corporations, partnerships and associations of every kind and character, and the singular shall include the plural and vice versa where and as may be appropriate. Article and section headings under this Agreement are for the convenience of reference and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof", "hereby", "herein", or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to as particular section or provision, unless the context specifically indicates to the contrary. Any reference to particular "article" or "section" or words of similar import shall be construed as referring to the indicated article or section of this Agreement. Any reference to the "Complex" shall include the Premises whether or not the Premises are specifically referenced. Any reference to a "person" shall include natural persons, corporations, partnerships and associations of every kind or character. Any reference to "Operator" in a waiver, release, defense, indemnity, hold harmless

or similar provision in favor of Operator shall include Operator, its officers, directors, employees, contractors, agents, and any other person assisting Operator, whether paid or voluntary.

38. RIGHT OF RE-ENTRY. Upon the expiration or termination of the term for whatever cause, Operator shall have the right to immediately re-enter and reassume possession of the Premises and remove Promoter's property therefrom, and Promoter expressly acknowledges such right.

39. NO ASSIGNMENT. Neither party shall assign this Agreement or any part thereof, without the written consent of the other party.

40. RECOURSE LIMITATION. Promoter acknowledges that in no event will the Park Board of Trustees of the City of Galveston or the City of Galveston be liable, directly or indirectly, for any claim, or cost arising out of the performance or nonperformance of any act contemplated by this Agreement, and Promoter shall look solely to Operator for any payment thereof.

41. HOLDING OVER. In the event the Promoter shall fail to return the Premises or fail to vacate the Premises upon expiration of the license granted hereunder, the Operator is authorized, at the Promoter's expense, to remove therefrom and to store or return to the Promoter or, except where the Promoter's ability to do so is rendered impossible by an event beyond the Promoter's control, to treat the same as abandoned and discarded property and accordingly dispose of the property. The Operator shall not be liable for any damages or loss to the property which may be sustained either in the course of such removal or in the course of storage, or by virtue of the Operator's disposal of the property and the Operator is hereby expressly released from any and all such claims for damages of any kind and nature. Promoter shall be responsible for any costs for loss, damage or expense incurred by Operator in connection herewith including but not limited to the cost of removal of the property, storage costs and loss of rent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate originals, each constituting one and the same agreement, this _____.

MOODY GARDENS, INC.

By: _____

Name: Michael E. Boles

Title: Convention Center Coordinator

By: _____

Name:

Title: _____

“The undersigned does hereby acknowledge that this contract, and any records or documents associated therewith may be considered public records for purposes of the Texas Public Information Act (Open Records Act), and may be subject to inspection or copying by any member of the public. The undersigned does hereby consent to the release of such records.”

Signed: _____ Date: _____