

REVOCABLE LICENSE

THIS REVOCABLE LICENSE granted this _____ day of _____, 2018, by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation, 100 North Andrews Avenue, Fort Lauderdale, FL 33301, hereinafter "CITY";

and

BEACH MAJORS USA, LLC, 888 Las Olas Blvd, Fort Lauderdale, FL 33301, hereinafter "LICENSEE"

WHEREAS, the parties have entered into a Beach License and Outdoor Event Agreement dated September 4, 2018, pursuant to which the CITY agreed to permit LICENSEE to organize and carry out the Swatch Beach Volleyball Major Series from Thursday, January 17, 2019 to Thursday, February 21, 2019 at the Fort Lauderdale Beach Park (on Seabreeze Boulevard) (the "Site"); and

WHEREAS, in order to promote the event the CITY authorizes LICENSEE to erect a statue as identified herein at the Site upon the terms and conditions set forth in this Revocable License, with setup of the statue on Monday, January 7, 2019 and removal on Thursday, February 14, 2019;

NOW, THEREFORE, in consideration of \$10.00 and the mutual covenants and conditions contained in this Revocable License, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are hereby ratified and incorporated herein.
2. **DEFINED TERMS.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

Effective Date means the effective date of this Revocable License, which shall be the date upon which the Revocable License has been executed by LICENSEE and the authorized CITY official(s) on behalf of the CITY.

License Area means that area or portion of the Site where the LICENSEE may erect and maintain the statue, such License Area being specified in Exhibit "A" attached hereto.

Statue means that certain statue specified in Exhibit "B" attached hereto to which this Revocable License applies.

3. **REVOCABLE LICENSE.** From the Effective Date hereof, the CITY grants unto LICENSEE a revocable license for the erection and occupancy of the Statue within the License Area during the term of the license, subject to the terms and conditions contained herein (the "*Revocable License*").

4. **TERM.**

4.1 Due to the need to keep the public safe and to make certain improvements within the License Area and allow public access, CITY grants to LICENSEE the Revocable License for a period of 39 days.

4.1.1 The Revocable License period shall commence on January 7, 2019 and terminate on February 14, 2019_(the "Term").

4.1.2 Subject to Section 4.2 hereof, CITY shall not permit any third party to use or interfere with the License Area during the Term.

4.2 In the event that the license granted herein or the actions of the LICENSEE or any of its agents, employees, guests or invitees shall (a) conflict with a municipal interest of the CITY or public, or (b) at any time the CITY requires the use of the License Area or publicly dedicated thoroughfare for a municipal purpose, or (c) determines that continuation of the Revocable License is no longer in the best public interest, all as determined by the City Manager or designee, then, in that event, the Revocable License granted herein shall be terminable at the will of the City Commission upon forty-eight (48) hours advance written notice to the LICENSEE.

4.3 In the event LICENSEE is (a) in violation of any of the material terms or conditions of this Revocable License or (b) the license granted herein or the actions of the LICENSEE or any of its agents, employees, guests or invitees conflict with a municipal interest of the CITY, or (c) at any time the CITY requires the use of the License Area for a municipal purpose, or (d) continuation of the Revocable License is no longer in the best public interests determined on a reasonable basis, then, the Revocable License granted herein shall be terminable at the will of the City manager or designee upon forty-eight (48) hours advance written notice to the LICENSEE.

5. **CONDITIONS.** The Revocable License granted herein is subject to compliance with the following conditions:

5.1 To the extent required by law, no placement, installation or construction of the Statue within the License Area shall be commenced prior to issuance of a building permit, as applicable.

5.2 Any damage to the License Area caused by the LICENSEE by the installation, movement or removal of the Statue shall be repaired to the satisfaction of the CITY and the cost of such repairs shall be borne by the LICENSEE.

5.3 LICENSEE shall provide CITY with twenty-four (24) hour access to the Site.

6. **COMPLIANCE WITH REGULATIONS OF PUBLIC BODIES.** LICENSEE shall, at its sole cost and expense, possess, use, construct, operate, maintain and repair the License Area and the Statue and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the License Area in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, City of Fort Lauderdale Engineering Standards, Americans with Disabilities Act requirements, environmental requirements and other similar regulatory requirements.

7. **NO PROPERTY OR CONTRACT RIGHT.** LICENSEE expressly acknowledges that pursuant to the terms hereof, it gains no property or contract right through this Revocable License to the continued possession, use, operation and maintenance of the License Area.

8. **REPAIRS AND MAINTENANCE.** LICENSEE shall not commit or suffer waste or injury to the License Area or the use, operation and maintenance of the Statute maintained therein. LICENSEE

shall, at its own cost and expense, at all times during the Term cause the License Area to be safely and securely maintained, kept in good condition, repair, clean, and free of rubbish and other hazards. The License Area shall be maintained in a neat and orderly appearance at all times.

9. EMERGENCIES. If an emergency arises with respect to the License Area or any condition thereof present an imminent threat to the health or safety of persons or property, the CITY shall make reasonable efforts to provide notice to the LICENSEE. If, following such notice, the LICENSEE fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to persons or property, CITY may undertake such actions as are necessary to eliminate the emergency.

10. DAMAGE TO PUBLIC PROPERTY. In the event the use, operation, construction, demolition or reconstruction of the Statue within the License Area cause(s) any damage whatsoever to any other public property and is caused by LICENSEE, then LICENSEE shall be responsible for the reasonable cost of repair and shall, at CITY's option, make said repairs and reimburse CITY for the cost of same.

11. LIENS AGAINST THE LICENSE AREA. LICENSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the License Area, and no person shall be entitled to any lien, directly or indirectly derived through or under the LICENSEE, or its agents, employees, contractors or officers or on account of any act or omission of said LICENSEE as to the License Area. All persons contracting with LICENSEE, or furnishing materials, labor or services to said LICENSEE, shall be bound by this provision of the Revocable License. Should any such lien be filed, LICENSEE shall discharge the same within thirty (30) days thereafter. LICENSEE shall not be deemed to be the agent of CITY, so as to confer upon a laborer bestowing labor upon or within the License Area, or upon material men who furnish material incorporated into the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes, or an equitable lien upon the CITY's right, title or interest in and to the License Area. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes (2016) as same may be amended from time to time as to the "non-liability" of CITY.

12. REMOVAL. Except as may be otherwise expressly provided herein, LICENSEE shall remove the Statue and its components upon revocation or termination of this Revocable License, and upon demand of CITY for removal of the Statue. Such removal shall be at LICENSEE's sole cost and expense. In the event LICENSEE fails to remove all or any part of the improvements placed by LICENSEE or their agents within the License Area within fifteen (15) days after written demand by the CITY to do so, the CITY is hereby authorized to remove such improvements and all reasonable costs associated with the removal thereof shall be reimbursed by LICENSEE. Notwithstanding the foregoing, LICENSEE shall have the obligation of promptly removing any of its equipment, materials, temporary fixtures, or fencing within the License Area upon termination of this Revocable License. In the event LICENSEE fails to do so, CITY shall have the right to remove same, recouping the reasonable cost thereof from LICENSEE in the manner set forth herein.

13. LICENSE, NOT LEASE. It is acknowledged and stipulated by and between the parties hereto that this Revocable License shall not be deemed a lease of the License Area by the CITY but rather a license granted to LICENSEE by the CITY for the possession, use, occupancy, operation, maintenance and repair of the License Area for the installation, occupation and removal of the Statue

under the terms and conditions stated herein, such terms and conditions including termination of the Revocable License in the manner set forth herein.

14. INDEMNITY. LICENSEE shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including reasonable attorneys' fees or liabilities of every kind, nature or degree arising out of LICENSEE'S negligence or intentional misconduct in connection with the rights, responsibilities and obligations of LICENSEE under this Revocable License (collectively, "*Claims*"), conditions contained therein, location, construction, removal, demolition, maintenance, use or occupancy of the License Area, or the breach or default by LICENSEE of any covenant or provision of this Revocable License except for any Claims arising out of or resulting from the intentional torts of the CITY, its officers, agents and employees. Without limiting the foregoing, any and all such Claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction of the Statue, operation, maintenance of the Statue, alleged infringement of any patents, trademarks, copyrights or any other tangible or intangible personal or real property right, or any actual violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court is included in the indemnity. LICENSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such Claims, and if called upon by the CITY, LICENSEE shall assume and defend not only itself but also the CITY in connection with any Claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY; provided. The indemnification obligations set forth herein shall survive termination of this Revocable License for a period coincident with the statute of limitations period applicable to the offending act, omission or default.

15. REQUIREMENT FOR NOTICE. LICENSEE shall give CITY prompt notice of any incidents arising out of LICENSEE'S activities or use of the License Area in which damage to property or injury to a person occurs, upon having knowledge of such accident.

16. NOTICES.

16.1 Except as provided in subparagraph (16.3) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Revocable License, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by either mailing the same (i) by registered or certified mail, postage prepaid, return receipt requested, or (ii) overnight air mail service such as Federal Express or similar carrier addressed to the party at the address or addresses and to such other person or firm as CITY may from time to time designate by notice as herein provided.

16.2 All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited with (i) the United States mail, postage prepaid, in the manner aforesaid, provided, or (ii) an overnight air mail service such as Federal Express or similar carrier.

AS TO CITY:

City Manager
City of Fort Lauderdale 100
North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City Attorney City
of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

AS TO LICENSEE:

Beach Majors USA, LLC
888 Las Olas Blvd
Fort Lauderdale, FL
33301

16.3 As to activities under paragraph 9, Emergencies, notice need not be given in accordance with subparagraph 16.1 above, but notice shall be sufficient if given pursuant to paragraph 9.

17. COMPLIANCE WITH LAWS AND REGULATIONS. LICENSEE shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Fort Lauderdale, and any other public authority that may be applicable to this Revocable License and the possession, use, occupancy and maintenance of the License Area and the conduct of the activity permitted herein.

18. ENTIRE REVOCABLE LICENSE. This Revocable License, together with any other agreements entered into contemporaneously herewith, constitutes and represents the entire Revocable License and any other agreements between the parties hereto and supersedes any prior understandings or licenses or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Revocable License may be amended, supplemented, modified or discharged only upon amendment in writing executed by all of the parties hereto. This Revocable License shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject, however, to the limitations contained herein.

19. INTERPRETATION OF REVOCABLE LICENSE; SEVERABILITY. This Revocable License shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Revocable License, or the application of the remainder of the provisions, shall not be affected. Rather, this Revocable License is to be enforced to the extent permitted by law. The captions, headings and title of this Revocable License are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Revocable License, unless otherwise expressly provided. All terms and words used in this Revocable License, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

20. SUCCESSORS. This Revocable License shall be binding on and inure to the benefit of the parties, their successors and assigns.

21. NO WAIVER OF SOVEREIGN IMMUNITY. Nothing contained in this Revocable License is intended to serve as a waiver of the CITY'S sovereign immunity or by any agency to which sovereign immunity may be applicable.

22. NO THIRD PARTY BENEFICIARIES. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Revocable License. CITY does not intend to directly or substantially benefit a third party by this Revocable License. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

23. NON-DISCRIMINATION. LICENSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Revocable License because of race, age, religion, color, gender, national origin, marital status, disability or sexualorientation.

24. TERMINATION. In the event of emergency, either party may cancel this Revocable License during the term hereof upon forty-eight (48) hours written notice to the other party of its desire to terminate this Revocable License.

25. RECORDS. Each party shall maintain its own respective records and documents associated with this Revocable License in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorneys' fees of non-compliance with that law.

26. PREPARATION OF AGREEMENT. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations under herein and that the preparation of this Revocable License has been their joint effort.

27. WAIVER. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Revocable License and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Revocable License shall not be deemed a waiver of such provision or modification of this Revocable License. A waiver of any breach of a provision of this Revocable License shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Revocable License.

28. GOVERNING LAW. This Revocable License shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Revocable License and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

29. FORCE MAJEURE. Neither party shall be obligated to perform any duty, requirement or obligation under this Revocable License if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force

Majeure"). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF FORT LAUDERDALE

JEFFREY A. MODARELLI
City Clerk

By: _____
LEE R. FELDMAN, City Manager

Approved as to form:
ALAIN BOILEAU, City Attorney

By: _____
KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney

LICENSEE

WITNESSES:

BEACH MAJORS USA, LLC, a Florida
limited liability company.

By _____

Print Name

[Print Name] as Managing Member

Print Name

STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by as Managing Member of BEACH MAJORS USA, LLC, a Florida limited liability company, on behalf of the company. ☐ Who is personally known to me or ☐ has produced as identification. _____

(NOTARY SEAL)

Notary Public, State of Florida
(Signature of Notary Taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____
Commission Number: _____

EXHIBIT "A"



EXHIBIT "B"

STATUE



