

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY ADVERTISED PUBLIC HEARING, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE AND WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(A) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING, IN SUBSTANTIAL FORM, A NEW LEASE BETWEEN THE CITY (LANDLORD) AND LIVING ARTS TRUST, INC. D/B/A O CINEMA (TENANT), FOR THE SPACE CURRENTLY OCCUPIED BY MIAMI FILM SOCIETY, INC. D/B/A MIAMI BEACH CINEMATHEQUE, CONSISTING OF APPROXIMATELY 2,523 SQUARE FEET, LOCATED AT 1130 WASHINGTON AVENUE, FIRST FLOOR SOUTH, MIAMI BEACH, FLORIDA, FOR A TERM NOT TO EXCEED NINE (9) YEARS; AND APPROVING, IN SUBSTANTIAL FORM, A CONCESSION AGREEMENT FOR THE ADJACENT OUTDOOR COURTYARD, HAVING APPROXIMATELY 300 SQUARE FEET, COTERMINOUS WITH THE LEASE TERM; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL NEGOTIATED AGREEMENTS.

WHEREAS, Miami Film Society, Inc. d/b/a Miami Beach Cinematheque ("Cinematheque"), currently occupies approximately 2,523 square feet on the ground floor of Historic City Hall, located at 1130 Washington Avenue, pursuant to a Lease Agreement, dated December 9, 2009, for an initial term of three (3) years, with two (2) renewal options for a period of three (3) years each, as authorized by City Commission Resolution No. 2009-27282, dated December 9, 2009; and

WHEREAS, pursuant to a Concession Agreement, authorized by City Commission Resolution No. 2012-28036, Cinematheque briefly operated an outdoor café in the adjacent courtyard immediately south of the Historic City Hall building, but the café ceased operating and the Concession Agreement terminated after several months in 2013; and

WHEREAS, on October 22, 2014, the City Commission adopted Resolution 2014-28790, waiving the development regulations under Section 6-4(4) of the City Code, to allow for alcohol sales for onsite consumption at the premises leased by Cinematheque, provided that the site is continually used for its non-profit, cultural purpose; and

WHEREAS, on March 11, 2015, the City Commission adopted Resolution No. 2015-28942, authorizing Amendment No. 1 to Cinematheque's Lease Agreement, which permitted beer and wine sales for onsite consumption at the premises (during film screenings and indoors only), in an effort to help the nonprofit boost revenue and pay rent during the initial term; and

WHEREAS, O Cinema currently operates a cinema at the Byron Carlyle Theater, pursuant to a Management Agreement with the City, dated October 24, 2014, as amended on February 8, 2019, pursuant to Resolution No. 2018-30657; and

WHEREAS, on December 17, 2018, Cinematheque advised the City it would not seek another long-term lease of the premises after expiration of its then-current Lease and that it was conducting discussions with O Cinema to take over the premises upon expiration of Cinematheque's Lease; and

WHEREAS, on January 3, 2019, City staff met with O Cinema to discuss various terms and conditions of a potential O Cinema lease of the premises; and

WHEREAS, on February 28, 2019, pursuant to Resolution No. 2019-30730, the City Commission approved Amendment No. 2 to the Cinematheque Lease, whereby the lease term was extended on a month-to-month basis, until the new tenant occupies the premises or until August 31, 2019 (whichever occurs first), and Cinematheque's total collective gross rental payment was reduced from \$4,792.60 to \$2,500.00 per month; and

WHEREAS, on February 22, 2019, O Cinema presented its initial proposal to the Finance and Citywide Projects Committee (FCWPC), which was receptive to the concept, but requested that O Cinema propose increased public benefits, specifically benefiting seniors and children, in exchange for discounted or free rent; and

WHEREAS, on April 22, 2019, O Cinema presented a revised proposal to the FCWPC, including a public benefits package of the following: (1) 20% discount offered once per month to Miami Beach residents; (2) one free screening event per year open to the whole community entitled "Celebrate Miami Beach;" (3) 100 free or discounted tickets per year for seniors (County Golden Ticket program); (4) 100 free or discounted tickets per year for youth (County Culture Shock program); (5) participation in the City's monthly Culture Crawl event, to include free indoor films, a free outdoor projection in the courtyard, and the curating of short films to broadcast inside the Culture Crawl trolley; (6) one summertime film screening organized with the City's Tourism & Culture Department on the beachfront; (7) educational programming of independent films and guest lecturers at every Miami Beach public school; and (8) quarterly matinee screenings for Miami Beach senior citizens, including free film, refreshments, and post-film discussion; and

WHEREAS, the FCWPC recommended favorably for the lease, subject to the following conditions:

1. reduced rent in the amount of \$1,000 during contract years 1 and 2, then, \$2,500 throughout the remainder of the initial term;
2. the rental rate during any renewal periods must be negotiated with the City upon renewal;
3. fifteen percent (15%) of gross revenue from all outdoor concession business paid to the City, with similar restrictions placed on the café use as those imposed on Cinematheque, except that the FCWPC recommended O Cinema be permitted to sell beer and wine outdoors;

4. no free or discounted parking; and
5. exterior advertising subject to the design review approval process; and

WHEREAS, in exchange for O Cinema sharing percentage revenue with the City, the FCWPC suggested that beer and wine sales be permitted in the outdoor area café, and that whenever possible, O Cinema's participation in the County Golden Ticket program should offer free tickets, rather than discounted, in order to ensure the program is attractive to the public; and

WHEREAS, O Cinema requests use of exterior illuminated poster stands for the advertising of films currently playing at the cinema, which would require signage approval pursuant to the design review process mandated by the City Code; and

WHEREAS, if the City Commission is inclined to incorporate use of the outdoor courtyard for the sale of food and beverage into the lease, the Administration would recommend including standards similar to those in Cinematheque's Concession Agreement, including: operation only during the cinema's regular business hours, 30-day termination of convenience at the City's sole option, and prohibition of alcohol in the outdoor concession area; and

WHEREAS, the Administration recommends that the Mayor and City Commission accept the recommendation of the FCWPC and approve, in substantial form, the proposed new lease and concession agreement, incorporated herein by reference and attached to this Resolution as Composite Exhibit "1," in accordance with the conditions proposed by the FCWPC and the foregoing terms outlined herein, including design review of any signage and concession agreement restrictions consistent with those of Cinematheque's Concession Agreement; and

WHEREAS, in the interest of maintaining the premises activated with a cultural amenity serving the public, the City Manager recommends that the Mayor and City Commission waive the formal competitive bidding requirement, by a 5/7th vote, as permitted under Section 82-39(a) of the City Code, as being in the best interest of the City.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission, following a duly advertised public hearing, accept the recommendation of the Finance and Citywide Projects Committee and waive, by 5/7th vote, the competitive bidding requirement in Section 82-39(a) of the City Code, finding such waiver to be in the best interest of the City, and approving, in substantial form, a new lease between the City (Landlord) and Living Arts Trust, Inc. d/b/a O Cinema (Tenant), for the space currently occupied by Miami Film Society, Inc. d/b/a Cinematheque, consisting of approximately 2,523 square feet, located at 1130 Washington Avenue, First Floor South, Miami Beach, Florida, for a term not to exceed nine (9) years; and approve, in substantial form, a concession agreement for the adjacent courtyard, having approximately 300 feet, coterminous with the lease term; and further authorize the Mayor and City Clerk to execute the final negotiated agreements.

PASSED and **ADOPTED THIS** ____ day of _____ 2019.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

5/7/19
Date

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this ____ day of May, 2019, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation (hereinafter referred to as "City" or "Landlord"), and **LIVING ARTS TRUST, INC. d/b/a O CINEMA**, a Florida not-for-profit corporation (hereinafter referred to as "Tenant").

1. Demised Premises.

The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

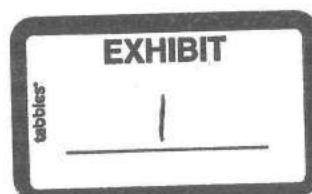
Approximately 2,523 square feet of City-owned property (the "Building" a/k/a "Historic City Hall"), located at 1130 Washington Avenue, 1st Floor South, Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1," attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of five (5) years, commencing on the 1st day of ____, 2019 (the "Commencement Date"), and ending on the ____th day of ____, 2024. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "Contract Year" shall be defined as that certain period commencing on the 1st day of ____ and ending on the ____ day of ____.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for two (2) additional two (2) year renewal terms. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.



3. Rent.

Tenant's responsibility for payment of Rent, as defined in this Section 3, shall commence on the Commencement Date and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

3.1.1 Throughout the first two (2) Contract Years, the Base Rent for the Demised Premises shall be One Thousand Dollars and 00/100 (\$1,000.00) per month.

3.1.2 Commencing with the third Contract Year, the Base Rent amount shall be increased to Two Thousand Five Hundred Dollars and 00/100 (\$2,500.00) per month.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Intentionally deleted.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The Property Tax Payment for Property Tax Year 2019 is estimated at Zero Dollars (\$0.00). Notwithstanding the preceding sentence, the City makes no warranty or representation, whether express or implied, that the Historic City Hall building, the Land, and/or the Demised Premises will not be subject to ad valorem (or other) taxes in subsequent years.

3.2.3 Intentionally deleted.

3.3 Sales Taxes:

Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue

any other remedies enforced by law.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.

Tenant may request, from the City's Parking Department, the use of no more than six (6) parking spaces, if available, at Municipal Parking Garage G-2 located at 1130 Washington Avenue, at the prevailing rates, plus applicable sales and use tax per space. Rates for said spaces are subject to change.

6. Security Deposit.

Tenant shall furnish the City with a Security Deposit, in the amount of Three Thousand Five Hundred Dollars and 00/100 (\$3,500.00). The Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

7. Use and Possession of Demised Premises.

- 7.1 The Demised Premises shall be used by the Tenant primarily as a cinema for O Cinema, with ancillary uses for retail and gallery/exhibition space, library / bookstore, gift shop, and café / concession stand. Notwithstanding the preceding, no ancillary use shall be permitted and/or allowed unless Tenant continues to use the Demised Premises for the operation of the cinema, which shall be the primary use throughout the Term. Said Premises shall be open for operation seven (7) days a week, with minimum hours of operation being as follows:

Monday - Sunday: 11:00 AM to 10:30 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 Prohibited Uses.

It is understood and agreed that the Facility shall be used by Tenant during the term of the Lease Agreement only for the permitted uses set forth in subsection 7.1, and for no other purposes or uses

whatsoever. Notwithstanding anything contained in subsection 7.1, or any other term or condition of this Lease Agreement: (1) Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by any Governmental Requirement, or that may be dangerous to life, limb or property; (2) Tenant shall not present for observation by patrons motion pictures, films, or video media, distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual conduct or specified anatomical areas ("Adult Motion Picture Theater"); (3) Tenant shall not sell books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videocassettes, slides or other visual representations; recordings, other audio matter; and novelties or devices; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to sexual conduct or specified anatomical areas ("Adult Materials"); and (4) Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, commit a nuisance on the Demised Premises, or allow any toxic, hazardous or dangerous substance to be brought into the Demised Premises or stored therein (other than small quantities of materials customarily used in the operation of a live theatrical performance venue, which shall be used and stored in compliance with applicable law). In the event that Tenant uses the Demised Premises for any purposes not expressly permitted herein, then the City, through its City Manager, may declare this Lease Agreement in default and, in addition to all other remedies available to City, restrain such improper use by injunction or other legal action, with or without notice to Tenant.

7.3 Tenant shall also maintain its not-for-profit status in full force and effect, and in good standing, throughout the Term herein.

7.4 Beer and Wine Privileges.

Pursuant to Resolution No. 2014-28790 and 2019-_____, permission to sell beer and wine for consumption within the Demised Premises ("Beer and Wine Privileges") is limited and hereby granted only for Living Arts Trust, Inc., for so long as Living Arts Trust, Inc. (under its current ownership) shall continue to have a leasehold interest in the Demised Premises during the Term of this Lease Agreement, and shall not extend to any other entity (including any successors and/or assigns of Living Arts Trust, Inc.). Any change in ownership including, without limitation, a successor or assign of Living Arts Trust, Inc., shall be required to secure the prior written consent from the City of Miami Beach Commission in order to continue to maintain these Beer and Wine Privileges. Living Arts Trust, Inc.'s Beer and Wine Privileges are further subject to Living Arts Trust, Inc. securing the requisite authorization to sell alcohol for consumption pursuant to Section 6-4(a)(4) of the City Code, as may be amended, which includes, without limitation, compliance with the following criteria:

- i. the sale of alcohol for consumption off the Leased Premises is prohibited;
- ii. a Minor Control Plan, setting forth hours of operation and alcohol

sales, alcohol service and monitoring procedures, food service, and staff training must be approved by the City Manager or designee prior to issuance of a license for alcohol sales or consumption;

- iii. the Leased Premises must have designated alcohol beverage consumption areas;
- iv. no "Happy Hour" type of reduced-price alcohol beverage promotion shall be allowed;
- v. Living Arts Trust, Inc. shall obtain the requisite state licenses;
- vi. Living Arts Trust, Inc. shall collect and remit resort taxes to the City, as required pursuant to Section 102-306 of the City Code; and
- vii. Living Arts Trust, Inc. shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m.

Failure to comply with the provisions of this subsection 7.4 shall be deemed to be a default under this Lease Agreement.

7.5

Public Benefits.

Every Contract Year, within 60 days from the end of the Contract Year, Tenant shall be required to provide an annual report documenting how Tenant has achieved the following Public Benefits:

- i. Twenty percent (20%) discount offered once per month to Miami Beach residents;
- ii. One (1) free screening event per year open to the whole community ("Celebrate Miami Beach");
- iii. One Hundred (100) free or discounted tickets per year for seniors, in conjunction with the Miami-Dade County Golden Ticket program;
- iv. One Hundred (100) free or discounted tickets per year for youth, in conjunction with the Miami-Dade County Culture Shock program;
- v. Monthly Miami Beach Culture Crawl—provide free indoor films, free outdoor projection in the courtyard, and curate short films to play on the Culture Crawl trolley;
- vi. One (1) summertime film screening organized with the City's Tourism & Culture Department on the beachfront;
- vii. Implementation of an educational program bringing independent films and guest lecturers to every Miami Beach public school; and
- viii. Quarterly matinee screenings for Miami Beach senior citizens, including free film, refreshments, and post-film discussion.

8. Improvements.

8.1

Tenant accepts the Demised Premises in their present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first

submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law. Notwithstanding the preceding sentence, the above requirements for submission of plans and the use of specific contractors shall not apply to the placement, maintenance and/or upgrading of audio visual and/or stereo equipment, provided that any work related thereto is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to

perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to

the approval of the City's Risk Manager.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

- 11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.
- 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.
- 11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City within fifteen (15) days of receipt of request for said payment from the City.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

- 13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

- 13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.
- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses).
Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities (i.e. electric, internet and telephone services) for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

- 13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.

Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security shall be posted by Tenant within fifteen (15) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

- 17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

- 17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

- 18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter;

- 18.1.9 The leasehold interest is levied on under execution; or
- 18.1.10 Tenant fails to maintain its not-for-profit status in current and good standing, as required pursuant to Subsection 7.3 herein.
19. Rights on Default.
- 19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;
- 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
- 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.

- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days from the due date. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the grace period.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.
- 19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.
- 19.2 Default by City:
The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.
- However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of

circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

- 21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.
- 21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.
22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.
23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.
24. Damage to the Demised Premises.
- 24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

- 24.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.
- 24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.
25. Quiet Enjoyment.
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.
26. Waiver.
- 26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.
- 26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.

The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:

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

With copy to:

City of Miami Beach
Attn: Division Director
Real Estate Division
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT:

Vivian Marthell
Living Arts Trust, Inc.
6815 Biscayne Boulevard
Suite 103-461
Miami, FL 33138

All notices shall be delivered by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.

This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as 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.

30. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is

necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised 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 within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the 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 Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

38. Prohibitions Regarding Sale or Use of Expanded Polystyrene Food Service Articles.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

Expanded polystyrene is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection

molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Tenant agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Demised Premises or in connection with this Lease Agreement. Tenant shall ensure that all vendors operating in the Demised Premises abide by the restrictions contained in this Section 38. A violation of this section shall be deemed a default under the terms of this Lease Agreement. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Tenant or its vendors.

10.6 **TENANT'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

- (A) Tenant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Tenant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Tenant shall:
 - (1) Keep and maintain public records required by the City to perform the service;
 - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Tenant does not transfer the records to the City;
 - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Tenant or keep and maintain public records required by the City to perform the service. If the Tenant transfers all public records to the City upon completion of the Agreement, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Agreement, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Tenant of the request, and the Tenant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Tenant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) A Tenant who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(E) CIVIL ACTION.

(1) If a civil action is filed against a Tenant to compel production of public records relating to the City's contract for services, the court shall assess and award against the Tenant the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the Tenant unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Tenant has not complied with the request, to the City and to the Tenant.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Tenant at the Tenant's address listed on its contract with the City or to the Tenant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Tenant who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBeachFL.GOV
PHONE: 305-673-7411**

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

FOR O CINEMA:

**LIVING ARTS TRUST, INC. d/b/a O
CINEMA, a Florida nonprofit corporation**

ATTEST:

By: _____

Title

Title

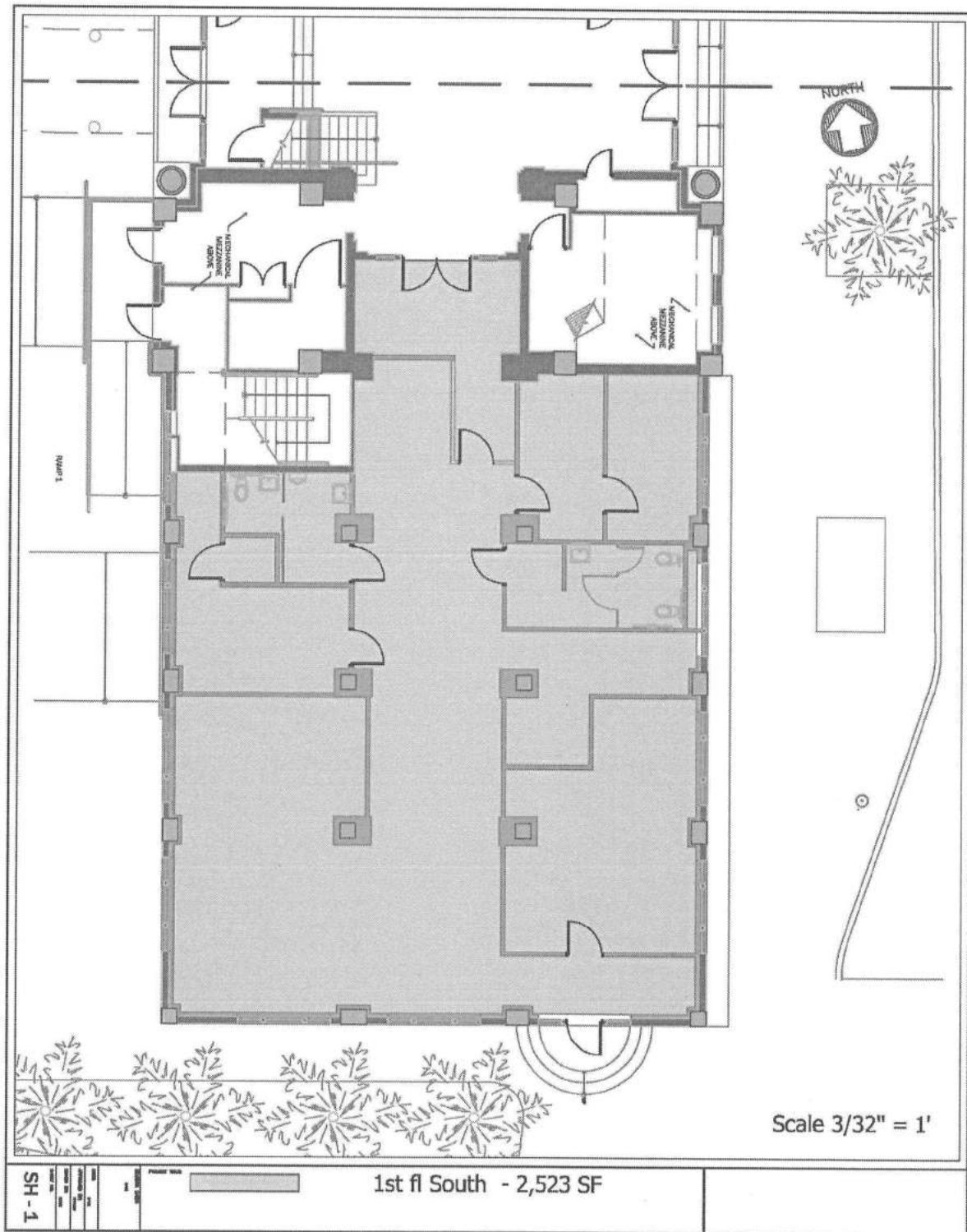
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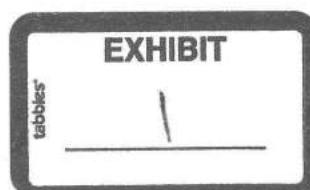
EXHIBIT 1

Demised Premises



Living Arts Trust, Inc.
d/b/a O Cinema

Concession
Agreement



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**CONCESSION AGREEMENT
BETWEEN
CITY OF MIAMI BEACH, FLORIDA
AND
LIVING ARTS TRUST, INC. D/B/A O CINEMA
FOR MANAGEMENT AND OPERATION OF A FOOD & BEVERAGE CONCESSION
IN THE COURTYARD SPACE ADJACENT TO CONCESSIONAIRE'S DEMISED
PREMISES**

THIS AGREEMENT made the _____ day of _____, 2019, between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **LIVING ARTS TRUST, INC. (d/b/a O CINEMA)**, a Florida not-for-profit corporation (hereinafter called "Concessionaire").

WITNESSETH

WHEREAS, on _____, the Mayor and the City Commission adopted Resolution No. 2019-_____, approving that certain Lease Agreement (the "Lease") between the City and O Cinema for approximately 2,523 square feet of ground floor space in the City-owned building known as Historic City Hall, located at 1130 Washington Avenue, Miami Beach, Florida (the "Leased Premises"); and

WHEREAS, the Lease is for an initial term of five (5) years, which commenced on _____, and terminates on _____, with two (2) additional two (2) year renewal terms; and

WHEREAS, the Leased Premises include two large doors that open out on to steps and an outdoor courtyard immediately to the south of Historic City Hall, but the Leased Premises do not include the outdoor space; and

WHEREAS, Concessionaire has requested use of the outdoor courtyard space, which is adjacent to the Leased Premises, to place eight (8) tables and sixteen (16) chairs for the purpose of operating and maintaining a café, which will serve Concessionaire's patrons, and the general public, light fare including, without limitation, baked goods, specialty chocolates, coffee, tea, and alcoholic beverages; and

WHEREAS, at its April 19, 2019 meeting, the Finance and Citywide Projects Committee recommended entering into a concession agreement with Concessionaire for use of the outdoor courtyard space.

WHEREAS, accordingly, the City and Concessionaire have negotiated the following Concession Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and

adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the right to maintain, manage and operate a food and beverage concession within the Concession Area (as hereinafter defined), in accordance with the purpose(s) and for the term(s) stated herein, and subject to all the terms and conditions herein contained.

SECTION 1. TERM.

1.1 This Agreement shall commence on the 1st day of _____ (the "Commencement Date"), and terminate on the ____ day of _____ (the Term).

For purposes of this Agreement, the first "Contract Year" shall be defined as that certain period commencing on the 1st day of _____ 2019, and ending on the ____ day of February, 2024. Thereafter, a "contract year" shall be defined as the one (1) year period commencing on the 1st day of March, and ending on the 28th day of February.

It is the intent of the parties hereto that, unless otherwise terminated pursuant to the provisions of this Agreement, the Term of this Agreement is intended to run concurrent with the term, including any extensions thereof, of that certain Lease Agreement by and between the City of Miami Beach and Living Arts Trust, Inc. d/b/a O Cinema., dated _____, 2019 (hereinafter, the "Lease Agreement").

If, at any time during the Term of this Concession Agreement, the Lease Agreement is terminated or otherwise ceases to be of any legal force and effect, for whatever reason whatsoever, then this Concession Agreement shall automatically terminate, and shall be null and void and of no further force and effect.

The City and Concessionaire shall each have the right to terminate this Agreement for any reason whatsoever upon providing thirty (30) days written notice to the other party. Notwithstanding anything to the contrary contained herein, in the event the Lease Agreement is terminated for any reason whatsoever, this Agreement shall also be terminated effective immediately.

SECTION 2. CONCESSION AREA.

The City hereby grants to Concessionaire the right, during the Term herein, to maintain, manage and operate a food and beverage concession in the following Concession Area:

2.1 Concession Area:

Approximately 200 square feet of outdoor courtyard space adjacent to and south of the O Cinema Theatre, located at 1130 Washington Avenue, 1st Floor South, Miami Beach, Florida; which outdoor courtyard space is further

delineated in Exhibit 2.1 hereto and hereinafter referred to as the "Concession Area".

Concessionaire shall have the right to place a maximum of eight (8) tables with seating for sixteen (16) people within the Concession Area, subject to approval of a site plan by the City, and compliance with applicable ADA requirements. The approved site plan is also delineated in Exhibit 2.1 hereto. No material change in the approved site plan (or in Exhibit 2.1) shall be permitted without prior written consent of the City Manager or her designee, which consent (if given at all) shall be at the Manager's (or her designee's) sole and reasonable judgment and discretion.

- 2.2 Concessionaire hereby agrees and acknowledges that the Concession Area shall be open and available to all members of the general public choosing to enjoy Concessionaire's food and beverage services as well as patrons of Cinematheque Theatre.

SECTION 3. USE(S).

Concessionaire is hereby authorized to conduct the following kind of businesses and provide the following kind of services within the Concession Area, all at its sole expense and responsibility:

3.1 Food and Beverage Service.

- 3.1.1 Concessionaire shall prepare, or cause to be prepared, for sale within the Concession Area, such pre-cooked, prepared, and/or prepackaged foods, and such beverages as those set forth in Exhibit 3.1.1. The City Manager hereby approves the types of food and beverages, and prices for same as those set forth in Exhibit 3.1.1. Any amendments to Exhibit 3.1.1, whether as to type of food and beverages to be sold, or as to changes in prices for same, must be approved in writing by the City Manager or her designee prior to such changes being implemented within the Concession Area, and a new updated Exhibit 3.1.1 will be incorporated into this Agreement.
- 3.1.2 All food and beverages sold within the Concession Area will be properly prepared and served in compliance with all applicable health and sanitary standards, laws and regulations.
- 3.1.3 The quality of food, beverages, and service offered will be first-rate and comparable to that available at other public concession facilities in the City of Miami Beach.
- 3.1.4 In addition to Concessionaire's general maintenance obligations for the Concession Area, as set forth in Section 10 herein, the Concession Area, **and** the immediately surrounding ten (10) foot adjacent areas, shall at all times be maintained by Concessionaire in a clean and sanitary manner.

3.1.5 At least one (1) supervisory employee must possess a Food Service Management Certification issued by a County Public Health Department in Florida. In addition, the Concession Area must be licensed by the Florida Department of Business Regulation, Division of Hotels and Restaurants, and/or the Department of Agriculture, and/or as may further be required by State law and/or by corresponding agencies.

3.1.6 Concessionaire agrees not to place any speakers, or any other device used to amplify sound, in, on or around the Concession Area.

3.3 City Business Tax Receipts.

Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City for the proposed use(s) contemplated herein.

SECTION 4. CONCESSION FEES.

4.1 Minimum Guarantee (MG):

In consideration of the City's granting of the rights provided in this Agreement, the Concessionaire shall pay to the City a Minimum Guaranteed Annual Concession Fee (MG) of Three Thousand Dollars (\$3,000.00), payable in quarterly installments of Seven Hundred Fifty Dollars (\$750.00); payable quarterly on the 1st day of the month during the Term. The first MG payment shall be due on _____ 2019.

4.2 Percentage of Gross (PG) vs. MG:

For each contract year during the Term, in the event that the amount equal to fifteen (15%) percent of Concessionaire's gross receipts (PG) exceeds the MG amount, then Concessionaire shall also pay to the City the difference between the PG amount and the MG amount; which payment shall be received no later than sixty (60) days after the end of each contract year.

The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by Concessionaire under this Agreement, or any licensee, sub-concessionaire, or sub-tenant, as Concessionaire, from all business conducted upon or from the Concession Area, including but not limited to receipts from sale of food and beverages. The term "gross receipts" shall exclude amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority.

4.3 Interest for Late Payment.

Any payment which Concessionaire is required to make to the City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve (12%) percent per annum, or the maximum amount allowable under Florida law, whichever is greater,

from the due date of payment until such time as payment is actually received by the City.

4.4 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and Use Tax.

SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls; all accounting records shall be maintained in accordance with generally accepted accounting principles; and shall be open to inspection, copying, and audit by the City Manager or her designee upon reasonable verbal or written notice, during normal hours of operation. Concessionaire shall maintain all such records at its principal office, currently located at 1130 Washington Avenue, Miami Beach, Florida, 33139 or, if moved to another location, all such records shall be relocated, at Concessionaire's sole expense, to a location in Miami Beach, within ten (10) days from notice of request for inspection from the City. Such records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. Concessionaire shall maintain accurate receipt-printing cash registers (or a like alternative) in the Concession Area which will record and show the payment for every sale made or service provided in such Area. Such other records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. Concessionaire records shall also be maintained for a period of three (3) years following expiration (or other termination) of this Agreement (regardless of whether such termination results from the expiration of the Term or for any other reason).

Concessionaire shall submit to the City Finance Department's Revenue Manager, within sixty (60) days of the end of each contract year, an annual statement of gross receipts, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be audited by an independent CPA.

SECTION 6. INSPECTION AND AUDIT.

The City Manager or her designee shall be entitled to audit Concessionaire's records as often as deemed necessary by the City throughout the Term, and three (3) times within the three (3) year period following expiration (or other termination) of this Agreement. The City shall be responsible for paying all costs associated with such audit(s), unless the audit(s) reveals a deficiency of five (5%) percent or more in Concessionaire's statement of gross receipts for any year or years audited, in which case Concessionaire shall pay to the City, within thirty (30) days of the City deeming the audit final, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest. These audits are in addition to periodic City audits of Resort Tax collections and payments (which are performed separately). Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of each contract year, Concessionaire and the City may meet to review Concessionaire's performance under the Agreement for the previous contract year. At the meeting, Concessionaire and the City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

Concessionaire agrees and shall pay, before delinquency, all taxes and assessments of any kind (including, without limitation, ad valorem taxes, if assessed, and/or Resort Taxes) levied or assessed upon Concessionaire and/or the Concession Area including, without limitation, any such taxes and/or assessments that may be levied and/or assessed against Concessionaire and/or the Concession Area by reason of this Agreement, or by reason of the business or other operations and/or activities of Concessionaire upon or in connection with the Concession Area.

Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings, which Concessionaire shall conduct diligently and continuously, in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax (if so ordered).

Concessionaire shall be solely responsible for and shall promptly pay when due all charges for utility service(s) provided to the Concession Area (including all hook-up fees and impact fees) for gas, electricity, water, sewer, cable, telephone, trash collection, etc., if applicable.

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for such utility services when due, the City may elect to pay same and Concessionaire shall promptly reimburse the City upon demand. In no event shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply or service of any utilities to the Concession Area.

SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

- 8.1 Concessionaire shall select, train, employ (or otherwise hire or retain) such number of employees and/or independent contractors as is necessary and appropriate for Concessionaire to satisfy its responsibilities hereunder, and as necessary to maintain the same levels of service as exist in similar first-class concession facilities and operations. Concessionaire's employees and/or independent contractors shall be employees and/or independent contractors of Concessionaire and not of the City, and Concessionaire shall be solely responsible for their supervision and daily direction and control. Concessionaire shall be solely responsible for, and have the sole authority to hire, terminate and discipline any and all personnel and/or contractors employed or retained by Concessionaire.

- 8.2 All employees and/or independent contractors shall observe all the graces of personal grooming. Concessionaire shall hire people to work in its operation who are neat, clean, well groomed, and comport themselves in a professional and courteous manner. Concessionaire and any persons hired and/or retained by Concessionaire shall never have been convicted of a felony.

Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

SECTION 9. HOURS OF OPERATION.

The Concession Area shall be open for business only during Concessionaire's regular business hours at the Leased Premises which, as of the Commencement Date, are as follows:

Monday - Sunday: 11:00 AM to 10:30 PM

Any change in the hours of operation including, without limitation, any request by Concessionaire for an increase or decrease in same, shall be subject to the prior written approval of the City Manager or her designee, which approval, if granted at all, shall be at the City Manager's (or her designee's) sole option and discretion.

SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

Concessionaire accepts the use of the Concession Area in its "AS IS" "WHERE IS" condition. Concessionaire assumes sole responsibility and expense for maintenance of the Concession Area (including all furniture, fixtures, equipment and any other improvements thereon). This shall include, without limitation, daily (i.e. 365 days) removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

10.1 Improvements.

- 10.1.1 Any improvements to the Concession Area shall be at Concessionaire's sole expense and responsibility; provided, however, that any plans for such improvements shall be submitted to the City Manager or her designee for prior written approval. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by Concessionaire without causing damage to the Concession Area.

All permanent (fixed) improvements to the Concession Area shall remain the property of the City upon termination and/or expiration of this Agreement, except as provided in Subsection 10.1.2.

Concessionaire will permit no liens to attach to the Concession Area arising from, connected with, or related to, the design, construction, and installation of any improvements.

Construction of any approved improvements shall be diligently

prosecuted to completion and accomplished through the use of licensed, reputable contractors who are acceptable to the City Manager or her designee. In addition to obtaining the prior approval of the City Manager or her designee (acting on behalf of the City, in a proprietary capacity), Concessionaire shall also be solely responsible for obtaining, at its sole cost and expense, any and all permits, licenses, and/or regulatory approvals; such regulatory approvals which may include, without limitation, land use board and/or the approvals of other required regulatory agencies having jurisdiction) required for the construction of improvements.

10.1.2 Notwithstanding Subsection 10.1.1 hereof, upon termination and/or expiration of this Agreement, Concessionaire shall immediately remove any permanent improvements made to the Concession Area during the Term, at Concessionaire's sole expense and responsibility. In such event, Concessionaire shall also restore the Concession Area to its original condition prior to the improvements being made, reasonable wear and tear excepted.

10.1.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this subsection 10.1.3 only, shall also include improvements necessary for Concessionaire's ongoing maintenance and repair of the Concession Area) which do not exceed Five Hundred (\$500.00) Dollars; provided that the work is not structural, and provided further that it is permitted by applicable law.

10.2 Garbage Receptacles.

With respect to litter, garbage and debris removal, Concessionaire shall provide, at its sole expense, a sufficient number of trash receptacles for its own use and for the use of its patrons. Determination of the "number" of receptacles shall at all times be within the City Manager or her designee's sole discretion. Disposal of the contents of said receptacles (and removal of litter, garbage and debris within the Concession Area), shall be done on a daily (i.e. 365 days) basis. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do so, will be assessed to, and become the responsibility of, the Concessionaire.

The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of Concessionaire's operations, into any of the Historic City Hall trash dumpster shall be the sole responsibility of Concessionaire.

10.3 Maintenance/Repair.

Concessionaire shall maintain, at its sole expense and responsibility, all furniture, fixtures, and equipment (FFE) and any other improvements (whether permanent or not) required to operate the concession. In the event any FFE and/or other improvement(s) is lost, stolen, or damaged, it shall be

replaced or repaired promptly, at the sole expense of Concessionaire.

- 10.3.1 All damage or injury of any kind to the Concession Area, and/or to any improvements and/or FFE thereon, except damage caused by the willful misconduct or gross negligence of the City, shall be the sole obligation of Concessionaire, and shall be repaired, restored and/or replaced promptly by Concessionaire, at its sole expense, to the satisfaction of the City Manager or his designee.
 - 10.3.2 All of the aforesaid repairs, restoration and replacement shall be in quality and class equal to or better than the original work (or FFE, as the case may be) and shall be done in good and workmanlike manner.
 - 10.3.3 If Concessionaire fails to make any repairs, restoration and/or replacement, the same may be made by the City, at the expense of Concessionaire, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Concessionaire within ten (10) days after receipt of a bill or statement thereof. Notwithstanding that the City may elect to make such repairs, restoration, and/or replacement, the City shall have no obligation and/or affirmative duty to do so.
 - 10.3.4 It shall be Concessionaire's sole obligation to ensure that any renovations, repairs and/or improvements made by Concessionaire to the Concession Area comply with all applicable permitting, building codes and life safety codes of governmental authorities having jurisdiction.
- 10.4 No Dangerous Materials.
Concessionaire agrees not to use or permit in the Concession Area 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 within the Concession Area shall be immediately removed.

In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify and hold the 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 Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon the Concession Area as those terms are defined by applicable Federal and State statutes, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this

subsection 10.4 shall survive the termination or earlier expiration of this Agreement.

10.5

Security.

Concessionaire shall be responsible for and provide such reasonable security measures as may be required to protect the Concession Area and any improvements and FFE thereon. Under no circumstances shall the City be responsible for any stolen or damaged FFE; damage to or loss of any improvements; or any stolen, lost, or damaged personal property of Concessionaire's employees, contractors, patrons, guests, invitees, and/or any other third parties.

10.6

Inspection.

Concessionaire agrees that the Concession Area (and operations thereon) may be inspected at any time during hours of operation by the City Manager or his designee, or by any other municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspection of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operations, whether by the City or by any public agency or official, in enforcing their respective duties, or enforcing compliance with any applicable laws, or ordinances, or regulations.

SECTION 11. INSURANCE.

Concessionaire shall maintain, at all times throughout the Term, at its sole expense and responsibility, the following types of insurance coverage:

- a. Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000.00) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. This policy must also contain coverage for alcohol, premises operations, products and contractual liability.
- b. Workers Compensation Insurance shall be required in accordance with 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):

Bodily Injury	\$1,000,000.00 per person
Bodily Injury	\$1,000,000.00 per accident
Property Damage	\$1,000,000.00 per accident

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire

shall provide the City with a Certificate of Insurance for each such policy. **ALL POLICIES 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's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

Should Concessionaire 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 Concessionaire to the City, plus ten (10%) percent of the amount of premiums paid to compensate the City for its administrative costs. If Concessionaire fails to repay the City's expenditures following written demand from the City (and within the time specified in the City's demand notice), such failure shall be deemed an event of default hereunder and the total sum owed shall accrue interest at the rate of twelve (12%) percent until paid.

SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in the performance of services under this Agreement.
- 12.2 In addition, and in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officers, employees, contractors, subconcessionaire(s), agents or servants not included in Subsection 12.1 herein and for which the City, its officers, employees, contractors, subconcessionaire(s), agents or servants are alleged to be liable.
- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its officers, employees, contractors, agents or servants.
- 12.4 Subrogation.
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective

officers, employees, contractors, agents or servants.

12.5 Force Majeure.

Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire (as applicable), the City or Concessionaire (as applicable), shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of City or Concessionaire (as applicable). The foregoing shall not apply to any payments of money due under this Agreement.

12.6 Waiver of Loss from Hazards.

Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure (as defined herein), and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4 and Section 14. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5.

13.1 Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2 Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of Fifty (\$50.00) Dollars per day

for such late payment, in addition to interest at the highest rate allowable by law. If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract, and may begin procedures to collect the Performance Bond required in Section 14 herein.

13.3

Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

13.4

City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such default(s) and to compensate the City for damages resulting from such default(s), including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement by the City, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 14 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and/or

- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5 Concessionaire's Remedies for City's Default.

If an event of default, as set forth in this Section, by the City shall occur, Concessionaire may, after the expiration of the cure period, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of the written notice of termination by the City. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to the City pursuant to the provisions of Subsection 13.7.

13.6 Termination for Convenience.

13.6.1 Notwithstanding any other provision of this Section 13, this Agreement may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to Concessionaire.

13.6.2 In the event of termination by the City pursuant to this subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Concessionaire for any indirect, incidental, special, lost profits or consequential damages.

13.7 Surrender of Concession Area.

At the expiration of this Agreement, or earlier termination in accordance with the terms of this Agreement, Concessionaire shall surrender the Concession Area in the same condition as the Concession Area was prior to the Commencement Date of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its personal property, upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area after termination of the Agreement shall constitute trespass by the Concessionaire and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

SECTION 14. Intentionally Omitted.

SECTION 15. ASSIGNMENT.

Concessionaire shall not assign, sublease, grant any sub-concession or license, permit the use of by any other person other than Concessionaire, or otherwise transfer all or any

portion of this Agreement and/or of the Concession Area (all of the forgoing are herein after referred to collectively as "transfers"), without the prior written consent of the City Manager, which consent shall not be unreasonably withheld.

Concessionaire shall notify the City Manager of any proposed transfer prior to consummation of same. In the event that any such transfer is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer made without complying with this section shall be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer under any provision of this section, unless expressly released by the City Manager, Concessionaire shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against Concessionaire or any transferee of Concessionaire without proceeding in any way against any other person.

SECTION 16. SPECIAL EVENTS / SPONSORSHIPS.

16.1 The parties agree and acknowledge that Concessionaire's proposed use(s), as defined in Section 3 hereof, **do not** contemplate nor allow the production, promotion or sponsorship by the Concessionaire of special events in or around the Concession Area, unless otherwise allowed by a special events permit from the City.

16.2 City Special Events.

Notwithstanding Subsection 16.1 herein, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to displace the Concessionaire for City produced and/or sponsored special events and/or City produced and/or sponsored productions. Additionally, the aforesaid events may also require additional time for load-in and load-out of the event. In such cases, the City may request that Concessionaire cease and desist operations during the term of, and in the area of, the special event and/or production, and Concessionaire shall cease and desist during such time. To the extent that Concessionaire is displaced, and/or required to cease and desist operations, City shall provide, calculated on a per diem basis for the period of time the Concession Area is non-operational, a credit against Concessionaire's PG amount, as delineated in Section 4.2 herein. If the Concessionaire is not required to close, or the City Manager or his designee determines that Concessionaire may remain open in such a manner as prescribed by the City, that will not interfere with the special event and/or production, Concessionaire shall use its best efforts, in either case, in cooperating with the City. If Concessionaire is allowed to remain open during special events and/or productions, Concessionaire may be allowed to have in operation its normal daily complement of equipment and staff. "Normal" shall be defined as equipment and staff that the Concessionaire

customarily has available to service its patrons within the Concession Area on a normal business day (during its hours of operation).

16.3

Sponsorships.

The City reserves unto itself all present and future rights to negotiate all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation. Any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City trademark, property, brand, logo and/or reputation, shall belong exclusively to the City. Concessionaire shall be specifically prohibited from entering into, or otherwise creating any, sponsorships and/or endorsements with third parties which are based solely or in any part on the marketing value of a City trademark, property, brand, logo and/or reputation.

SECTION 17. NO IMPROPER USE.

Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area 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. Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, employees, contractors, agents or servants, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Concessionaire, or any of its officers, employees, contractors, agents or servants. In the event of any violation by Concessionaire, or if the City shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City Manager or his designee shall have the right to suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or his designee within twenty-four (24) hours after receiving written or verbal notice of the nature and extent of such violation, conduct, or practice; such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City Manager or his designee.

SECTION 18. PRICE SCHEDULES.

18.1

Concessionaire agrees that prices charged for the sale of food and beverage service will be consistent with the price schedule(s) herein submitted by the Concessionaire and approved by the City and incorporated herein as exhibits to this Agreement. All subsequent price approvals and changes must be approved in writing by the City Manager or his designee. Prices shall be reasonably consistent with those charged for similar items in other similar public concessions in the City. The City shall have the final right of approval for all such prices and changes. Concessionaire agrees to refrain from the sale of any item identified as prohibited by the City and to sell only those items approved by the City. Concessionaire agrees to maintain an adequate supply necessary to accommodate park patrons.

- 18.2 Notwithstanding Subsection 18.1, Concessionaire acknowledges that the City has existing agreements, which entitle the vendors to the placement of vending machines within Historic City Hall. Concessionaire shall at all times price products of similar type and/or volume in a manner equal or greater to the pricing of the vending machine item(s). At no time shall Concessionaire's item(s) be sold at a lower price than similar items sold in the vending machines.

SECTION 19. NOTICES.

All notices from the City to Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to Concessionaire at the following addresses:

Vivian Marthell
Living Arts Trust, Inc.
6815 Biscayne Boulevard
Suite 103-461
Miami, FL 33138

All notices from Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

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

With copy to:

City of Miami Beach
Attn: Division Director
Real Estate Division
1700 Convention Center Drive
Miami Beach, Florida 33139

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

SECTION 20. LAWS.

20.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations, as same may be amended from time to time.

20.2 Equal Employment Opportunity.
Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

20.3 No Discrimination.
Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Area. All facilities and services offered shall be made available to the public.

SECTION 21. MISCELLANEOUS.

21.1 No Partnership.
Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

21.2 Modifications.
This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager.

21.3 Complete Agreement.
This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

21.4 Headings.
The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

21.5 Binding Effect.
This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21.6 Clauses.
The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause

were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

21.7

Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement shall be so modified.

21.8

Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purpose of examining the same for any reason relating to the obligations of parties to this Agreement.

21.9

Not a Lease.

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

Accordingly, Concessionaire hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by Concessionaire or otherwise, Concessionaire shall surrender and yield unto the City the Concession Area, in accordance with Subsection 13.7 hereof, and the City shall in no way be required to evict and/or otherwise remove Concessionaire from the Concession Area as if this were a tenancy under Chapter 83, Florida Statutes, nor shall Concessionaire 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 concession agreement and is in no way intended to be a lease).

21.10

Signage.

Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire shall be subject to the prior approval of the City as to size, shape and placement of same.

21.11 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operation(s) contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire.

21.12 No Waiver.

21.12.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

21.12.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

21.12.3 The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation (and not as rent), unless such breach be expressly waived in writing by the City.

21.13 No Third-Party Beneficiary.

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

SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the management and operation of the Concession Area in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a Ten Thousand (\$10,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of Ten Thousand (\$10,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of Ten Thousand (\$10,000.00) Dollars, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in

Florida Statutes, Section 768.28.

SECTION 23. VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **THE CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA.**

SECTION 24. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

Expanded polystyrene is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Concessionaire agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Demised Premises or in connection with this Concessionaire Agreement. Concessionaire shall ensure that all vendors operating in the Leased Premises and Concession Area abide by the restrictions contained in this Section 38. A violation of this section shall be deemed a default under the terms of this Lease Agreement. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Concessionaire or its vendors.

10.6 CONCESSIONAIRE'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

(A) Concessionaire shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(C) Pursuant to Section 119.0701 of the Florida Statutes, if the Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:

(1) Keep and maintain public records required by the City to perform the service;

(2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Concessionaire does not transfer the records to the City;

(4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform the service. If the Concessionaire transfers all public records to the City upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Concessionaire failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) A Concessionaire who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(E) CIVIL ACTION.

(1) If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services, the court shall assess and award against the Concessionaire the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Concessionaire has not complied with the request, to the City and to the Concessionaire.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Concessionaire at the Concessionaire's address listed on its contract with the City or to the Concessionaire's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) A Concessionaire who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

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

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

FOR O CINEMA:

**LIVING ARTS TRUST, INC. d/b/a O
CINEMA, a Florida nonprofit corporation**

ATTEST:

By: _____

Title

Title

Print Name

Print Name

Date

EXHIBIT 2.1

Concession Area

EXHIBIT 2.1

Concession Area

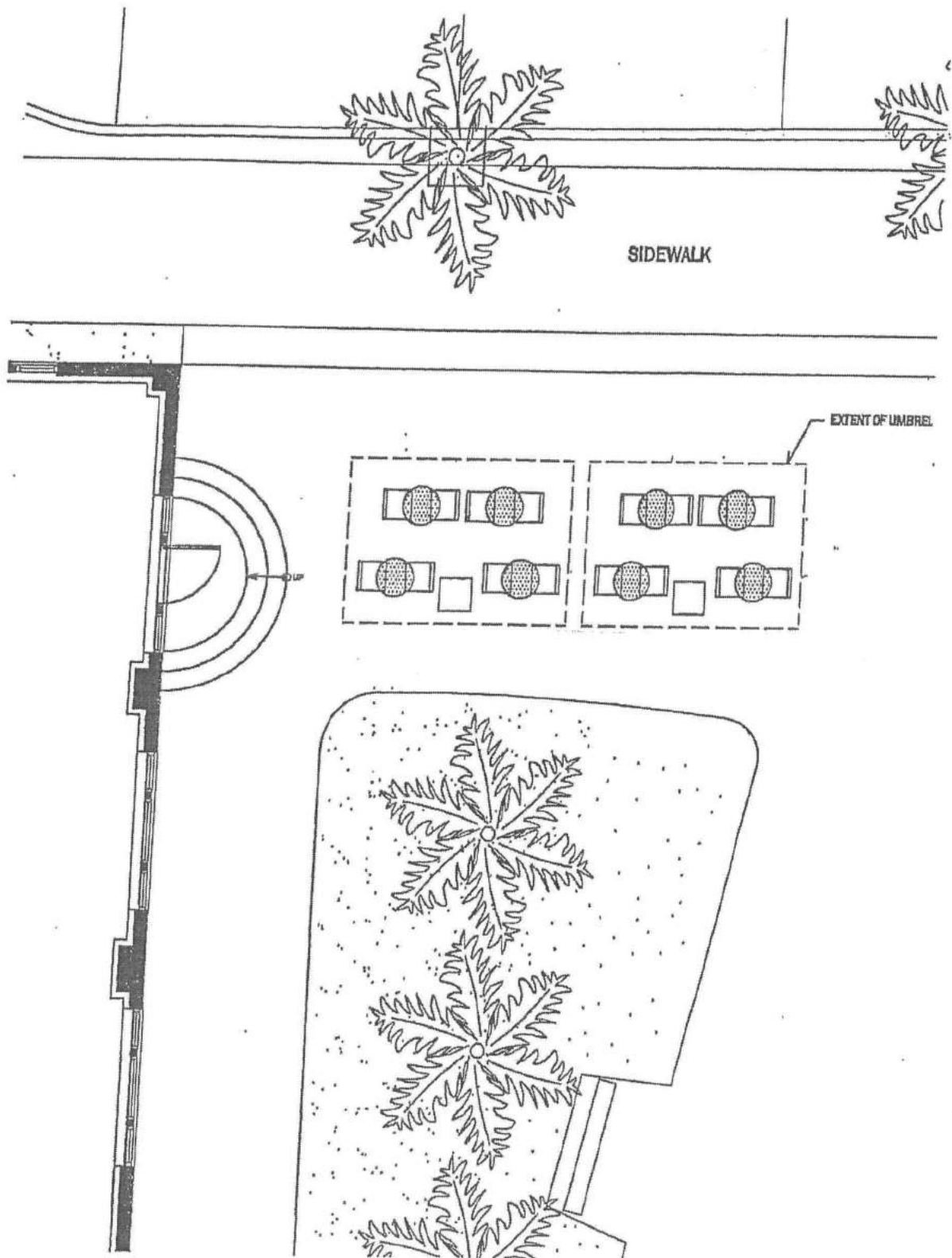


EXHIBIT 3.1.1

Menu & Prices