

SENT VIA: ELECTRONIC MAIL AND U.S. CERTIFIED MAIL

June 22, 2018

Mark Milisits
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

SUBJECT: RESPONSE TO THE LETTER DATED APRIL 12 FROM THE CITY OF MIAMI BEACH (THE “CITY”) AND REGARDING CERTAIN COMMUNICATION THAT TOOK PLACE REGARDING THE RENTAL ORGANIZED BY LIVING ARTS TRUST, INC. D/B/A O CINEMA (“O CINEMA)

Dear Mr. Milisits,

On or around June 1, 2018, the O Cinema directors communicated with your colleagues at the City to address some issues brought by the City regarding the meeting that took place on March 20, 2018, the letter dated April 12, the use of Byron Carlyle Theater by a particular non-profit entity, and the Management agreement.

As you recall, the March 20th meeting discussed the default of the management agreement. The result from said meeting were as follows:

- Six month extension for O Cinema to come into compliance with the management agreement
- Future compliance with the management agreement
- Obtaining registration of the sales tax, resort tax and compliance with the state
- Ceasing all beverage and wine until/unless a alcohol license was acquired
- Amending the management agreement to allow for future compliance with specific emphasis on the milestones

A letter dated April 12, 2018 was sent out apparently to summarize the March 20th meeting. In the letter were additional demands that were inconsistent with the discussion of the March 20th meeting such as providing monthly updates due on the 15th of each month and seemingly requiring O Cinema to obtain an alcohol license despite no requirement existing in the management agreement for such act. Furthermore, it was never mentioned these amendments would need to be made as a condition of the extension to cure the default under the management agreement. This letter also omitted any mention of the agreed upon amendments to the management agreement, which included updates to the benchmarks. Finally, the letter requested a signature, which was never discussed at the March 20th meeting.

It should be noted, O Cinema has since obtained sales a tax certificate number and will be deemed in compliance with the state once the state provides the final documentation to O Cinema. Furthermore, while O Cinema has every intention of obtaining an alcohol license, they are under no obligation to do so.

In addition to the discussions regarding the default, you requested that O Cinema either discontinue its once-monthly rental of the Byron Theatre to Casa de Jesus (“Casa”) on the basis Casa’s use of the Byron Theater was in violation of the zoning for the building, or obtain a variance to allow this use to continue.

First, it should be noted the management agreement permits rental of the premises as per Section 4.2.1(b)(ii). Additionally, it should be noted Casa has previously rented the Byron-Carlyle Theater on multiple occasions, prior to O Cinema managing the facility. In fact, Casa leased the premises directly from the City when the City was in charge of the Byron-Carlyle Theater’s management. Please see the attached letter from the Pastor Ezequiel Fattore as well as photographs from the events held there.

Casa’s use of the facility is the same as it was when Casa leased the facility directly from the City. Their current activities are consistent with the activities that took place when the City was managing the Byron-Carlyle Theater. As these activities were previously permissible when the City was renting the Byron-Carlyle Theater to Casa, we assume they are still permissible now that O Cinema is managing the venue. One would presume O Cinema’s managing of the building would make it more permissible considering O Cinema is not a government entity.

O Cinema has a healthy and strong relationship with Casa that has led to Casa hosting their monthly events at the facility; and O Cinema is not inclined to end the relationship when the precedent set by the City is that this rental is a completely acceptable use of the facility. In fact, one could argue that Casa has an even longer standing relationship with the Byron-Carlyle Theater due to long history of using the premises. As a partner in good faith and representative of the City and as managers of the building, O Cinema does not want to break agreements or create undue hardship for its renters and fellow community members, who have already scheduled events in the space and put significant financial resources into their event plans (such as purchasing new musical equipment especially for their performances at the theater, and committed advertising dollars in their community toward these events).

If the City were to attempt to limit O Cinema’s ability to rent the facility to Casa, when the City has done this exact same thing, it would seem as though the City is attempting to unfairly limit O Cinema’s ability to generate revenue.

If you could provide to O Cinema any documentation that allowed the City to lease the premises previously to Casa, it would be most helpful. O Cinema does not believe a variance would be required in this case, given the nature of the activities previously mentioned, but if one is, we may assume the City already obtained one given the previous rentals conducted by the City. In fact, if the City already obtained a variance, then it should already be in place and needing to perform any redundant process would be unnecessary. O Cinema is eager to continue its relationship with Casa, a large and popular Miami Beach church that serves the North Beach community, and fulfill the terms of their agreement with them.

Regarding the management agreement, employees of the City have recently claimed to O Cinema directors that revenue earned by rentals is owed to the City as part of the use fee O

Cinema pays to the City as a percentage of ticket sales and concessions. Upon carefully reviewing the management agreement, O Cinema respectfully disagrees with this claim. According to the relevant portions of Section 6.1(b)&(c) of the management agreement, the use fee only requires that O Cinema pay the City 10% of all **Net Ticket Revenues** and **Net Concession Revenues** generated at the facility per year starting with the 4th year of the Management Agreement with 1% increments not to exceed 20% of the Net Ticket Revenues and Net Concession Revenues.

When determining the Net Ticket Revenues and Net Concession Revenues for the purposes of the use fee, the Management Agreement states Net Ticket Revenues are defined as, “all box office revenues, inclusive of ticket sales” and Net Concession Revenues are defined as “merchandise sales, equipment rentals, food service and concession revenues.”

“Revenues generated from separate agreements with O Cinema pertaining to the Facility; sponsorship revenues; interest revenues; rentals, and advertising sales” are not considered part of Net Concession Revenues.

Thus, rentals do not fall in the category of Net Ticket Revenues, or Net Concessions Revenues.

It should be noted on May 30, Justin Karr wrote to Vivian Marthell that, “Page 4 of the Agreement includes ‘any and all revenues of every kind or nature derived from promoting, operating and managing the Facility, including, but not limited to revenues from merchandise sales, equipment rentals, food service and concession revenues (collectively “Concession Revenues).” However, what Mr. Karr referred to was the section of the agreement that provides a working definition of “Operating Revenues.” Operating Revenues is not what O Cinema is required to base its Use Fee on that it pays to the City. Hence, this is not an accurate description of the compilation of the Use Fee paid by O Cinema.

As they've shown repeatedly, my client is committed to ensuring compliance with the management agreement. It is their wish we can find quick remedies to these issues quickly that will not impede their ability to conduct business, generate revenue and best serve the community.

Thank you for your time and I await your response.

Sincerely,

Senen Garcia, Esq.

Encl.