

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139, www.miamibeachfl.gov

Jimmy L. Morales, City Manager
Tel: 305-673-7010, Fax: 305-673-7782

July 5, 2018

Senen Garcia, Esq.
2665 S. Bayshore Drive, Ste. 220
Coconut Grove, FL 33133

Sent Via US Certified Mail
Return Receipt No. 70151730000182951468

Living Arts Trust, Inc. d/b/a O Cinema
2401 Swanson Avenue
Miami, Florida 33133

Re: Management Agreement between the City of Miami Beach (“City”) and Living Arts Trust, Inc. d/b/a O Cinema (“O Cinema”), dated October 24th, 2014 (“Agreement”), for the management and operation of a portion of the Byron Carlyle Theater located at 500 71 Street, Miami Beach, Florida 33141 (the “Property”)

Dear Mr. Garcia:

This shall serve as the City of Miami Beach’s response to your letter dated June 22, 2018 where you discuss (1) O Cinema’s default of the Agreement; (2) O Cinema’s rental to Casa de Jesus (“Casa”) and (3) rental revenue as part of use fee. Below is the City’s response.

1. O Cinema’s Default and Opportunity to Cure

To be clear, the City’s position remains unchanged. O Cinema remains in default of the Agreement until it has cured all defaults on or before September 21, 2018, and in the meantime, O Cinema remains obligated to provide the City with monthly cure updates. Despite this, the City remains willing to work with O Cinema through its defaults of the Agreement and only seeks O Cinema’s progress, cooperation and communication. The purpose of the City’s April 12, 2018 letter to O Cinema was merely to provide the City with a mechanism to receive ongoing updates regarding O Cinema’s headway in overcoming its defaults of the Agreement.

Despite your assertion to the contrary, O Cinema providing assurances of its steps to cure its defaults was discussed at the meeting between O Cinema and the City on March 20, 2018. This request appears warranted because it has been over 3 months since this meeting and O Cinema has yet to provide any documentation of its progress in curing its defaults under the Agreement.

Your letter alluded to the fact that O Cinema has obtained a Florida tax certificate number; please provide this to the City together with any documentation related your assertion that O Cinema will be “deemed in compliance with the state once the state provides the final documentation to O Cinema.”

Additionally, related to the City’s request to receive updates on O Cinema’s progress on obtaining an alcohol license, you are correct that O Cinema is not contractually obligated

to acquire an alcohol license. However, the City is not demanding that O Cinema obtain this license, rather the City is merely seeking O Cinema's progress in obtaining same, a condition that was discussed in our meeting.

Accordingly, please provide the documentation requested in the City's April 12, 2018 letter to verify O Cinema's progress in curing the defaults. O Cinema's ongoing failure to provide this documentation will result in the City seeking its available remedies under the Agreement.

2. O Cinema's Rental to Casa de Jesus

City staff is currently reviewing this matter to identify and verify whether this rental to Casa is in violation of the Agreement, the City's Code of Ordinances and the City's Land Development Regulations. In that regard, can you provide us with more information on Casa's use of the space, including the events held at the space by Casa and the length of time of Casa's use, to assist the City's staff in this determination.

In the meantime, I will have staff research the circumstances which may have allowed the City to lease the premises previously to Casa. However, please note that previous rentals of the space do not play a factor in terms of what is considered an allowable, main permitted use or conditional use under the City Code or the City's Land Development Regulations.

3. Rental Revenue as Part of Use Fee

We will review the terms of the Agreement regarding O Cinema's obligation to pay a percentage of private rental revenue and provide a response once we have reached a determination.

Conclusion

Notwithstanding the outcome of items 2 and 3 above, O Cinema remains in default of the Agreement and is obligated to provide the City with relevant documentation demonstrating efforts to cure O Cinema's default on or before September 21, 2018. We look forward to receiving the requested items.

Sincerely,



Jimmy L. Morales
City Manager

cc: Eva Silverstein, Director of Tourism, Culture and Economic Development (via E-mail only)
Mark Milisits, Asset Manager (via E-mail only)
Jason Jacobson, Assistant City Attorney II