

MANAGEMENT AGREEMENT BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
LIVING ARTS TRUST, INC. D/B/A O CINEMA
FOR THE MANAGEMENT AND OPERATION OF A PORTION OF THE
BYRON-CARLYLE THEATER

THIS AGREEMENT, is made and executed as of this 24 day of October, 2014 (Effective Date), by and between the CITY OF MIAMI BEACH, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and the **LIVING ARTS TRUST, INC. D/B/A O CINEMA**, a Florida not-for-profit corporation, whose principal address is 2401 Swanson Ave, Miami, Florida 33133 (O Cinema).

BACKGROUND

City is the owner of the Byron Carlyle Theater (the "Theater"), located at 500 71st Street, Miami Beach, Florida 33141, including that portion of the Theater that is subject to the Agreement (the "Facility"). The proportionate use of the Theater between the City and O Cinema is more particularly described and depicted in **Exhibit "A"** attached hereto and made a part hereof. The use of the Facility under this Agreement shall not include the use of the Common Area, as also depicted in Exhibit "A" hereto.

O Cinema is a Florida not-for-profit 501(c)(3) corporation that showcases first-run independent, foreign, art, and family films with locations in Miami's Wynwood Arts District and the Village of Miami Shores.

At its regular meeting on July 23, 2014, the Mayor and City Commission directed the City Administration to negotiate an agreement with O Cinema for the principal purpose of operating and maintaining the Facility as a Motion Picture Theater, as such term is defined herein and in the City's Land Development Regulations, as same may be amended from time to time.

On September 10, 2014, the City Commission adopted Resolution No. 2014-28729, waiving, by 5/7th vote, the competitive bidding requirement, and authorizing the Mayor and City Clerk to execute a final agreement upon conclusion of successful negotiations with O Cinema.

NOW THEREFORE, recognizing the aforesated recitals as true and correct and incorporating herein, and in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

SECTION 1. DEFINITIONS.

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"City" -- as defined in the first paragraph of this Agreement.

"City Commission" -- the governing and legislative body of the City.

"City Manager" -- the chief executive officer of the City or such person (the City Manager's designee) as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement. The City Manager's designee shall be the Director of Tourism, Culture, and Economic Development.

"Commencement Date" -- as defined in Section 2.

"Contract Year" -- each one year period during the Term of the Agreement, beginning October 1st and ending on September 30th, except that the last year of the Initial Term and any Renewal Term, if granted by the City, at its sole discretion, shall be extended by one month, ending on October 31.

"Effective Date" -- the date as defined in the first paragraph of this Agreement.

"Event" -- a single screening of a film or motion picture at the Facility, involving a scheduled beginning and ending time, typically all within the same day (or, for an evening Event, typically commencing in the evening and concluding no later than 3:00 a.m. of the succeeding day, unless otherwise approved in writing by the City Manager). With respect to a "Run" (as such term is hereafter defined), each screening of a film or motion picture within the Run shall constitute an Event.

"Event Expenses" -- any and all expenses incurred or payments made by O Cinema in connection with the occurrence of an Event at the Facility, including, but not limited to, costs for staffing (including ushers, ticket takers, security, and clean-ups).

"Expiration Date" -- as defined in Section 2.

"Facility" -- the portion of the Theater, as defined in the Background Section of this Agreement, which is depicted in Exhibit "A" hereto, and which constitutes approximately 72% of

the Theater space. The Facility shall not include the area marked as Common Area (as also depicted in Exhibit "A" hereto).

"Fiscal Year" -- each City fiscal year during the Term of this Agreement, beginning on October 1st and ending on September 30th.

"Governmental Requirements" -- all laws, ordinances, rules, regulations, statutes, policies and procedures (including administrative guidelines), and other legal requirements of any governmental body or authority or any agency thereof (including, without limitation, federal, State, County, and City).

Motion Picture Theater -- shall have the meaning prescribed in Section 114-1 of the City's Land Development Regulations, as same may be amended from time to time.

"Net Concession Revenues" -- shall mean all Concession Revenues, as defined in the "Operating Revenues" herein, less the costs of the concession goods.

"Net Operating Loss/Profit" -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

"Net Ticket Revenues" -- shall mean the total Ticket Revenues, as defined in the "Operating Revenues" herein, less the costs of the film distributor fees.

"O Cinema" -- as defined in the first paragraph of this Agreement.

"Operating Expenses" -- any and all expenses and expenditures of whatever kind or nature incurred, by O Cinema in promoting, operating, maintaining, insuring and managing the Facility, including, but not limited to: distributor fees, costs of concession goods, employee compensation; employee benefits, if any; supplies, materials and parts costs; costs of any interns and independent contractors; advertising costs; ~~all costs of maintaining the Facility as required by this Agreement;~~ marketing and public relations costs and commissions; janitorial and cleaning expenses; dues and membership costs; amounts expended to procure and maintain permits and licenses; sales taxes imposed upon ticket sales; professional fees directly relating to the operation of the Facility; printing costs; Event Expenses; postage and freight costs; equipment rental costs; computer equipment leases and line charges; telephone and telecommunications services; artist and talent fees, costs, and expenses, show settlement charges; security expenses; the cost of employee uniforms, safety and medical expenses;

exterminator and waste disposal costs; costs relating to the maintenance of signage; the costs associated with compliance with Governmental Requirements; Shared Utilities (to be split based on the Proportionate Use of the Facility between O Cinema and the City, as set forth in Section 20.1); and all premiums for insurance carried by O Cinema pursuant to Section 14. Operating Expenses shall not, however, include any costs of litigation between City and O Cinema, or any other costs that are specified in this Agreement as costs to be paid by City. All Operating Expenses shall be determined in accordance with generally accepted accounting principles consistently applied and recognized on a full accrual basis.

"Operating Revenues" -- 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"); provided however, that if such revenues are collected in the first instance by, and retained by, the concessionaire, only the amount of such revenues paid by the concessionaire to O Cinema shall be included as Concession Revenues); all box office revenues, inclusive of ticket sales (collectively "Ticket Revenues"); commissions or other revenues from decoration and set-up, security, and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to O Cinema shall be included as Operating Revenues); miscellaneous operating revenues; revenues generated from separate agreements with O Cinema pertaining to the Facility; sponsorship revenues; interest revenues; rentals, and advertising sales; all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; Operating Revenues shall not, however, include any revenue from valet parking or any other parking charges with respect to the Facility or Events and shall not include any revenues from name-in-title rights (i.e., the right to name the exterior or interior of the Facility or any portion thereof, except as set forth in subsection 8.3.1 hereof), and any signage related thereto), all of which are specifically reserved to the City.

"Proportionate Use" -- The Proportionate Use of the Theater by the City or O Cinema, as more particularly delineated in the attached Exhibit "A", with the City using 28% of the Theater and O Cinema using 72% of the Theater.

"Run" -- A sequence of screenings, on consecutive days, of the same film or motion picture (i.e. of the same Event).

"Term" -- as defined in Section 2; provided, however, if this Agreement is extended for a

Renewal Term, all references to "Term" contained herein shall also include the Renewal Term.

SECTION 2. TERM.

2.1 Initial Term. This Agreement shall be for an initial term of five (5) years and one month, commencing retroactively on October 1, 2014 (Commencement Date), and ending on October 31, 2019 (Expiration Date), unless earlier terminated pursuant to the provisions of this Agreement.

2.2 Renewal Term(s). At its sole option and discretion, the City may extend this Agreement for up to five (5) additional one (1) year terms, and/or multi-year terms, but in no event to exceed five (5) years in total (each such one year term, or multi-year term, as the case may be, a Renewal Term), by providing O Cinema with not less than 365 days prior written notice prior to the Expiration Date, or not less than ninety (90) days written notice prior to the expiration date of a Renewal Term, as the case may be.

2.2.1 Notwithstanding anything in this Section 2, in the event O Cinema decides not to renew the Agreement, it shall provide the City Manager with written notice of its intent not to renew at least 365 days prior to the Expiration Date, or ninety (90) days written notice prior to the expiration date of the then current Renewal Term, as the case may be.

SECTION 3. BYRON CARLYLE THEATER FACILITY.

The Facility subject to this Agreement shall be those facilities and spaces more specifically defined herein and described in the attached Exhibit "A". Subject to the terms of this Agreement, O Cinema shall have the primary use and sole occupation of the Facility and shall be responsible for its management, operation, promotion, and maintenance, as further set forth herein.

SECTION 4. OPERATION AND MANAGEMENT OF THE BYRON CARLYLE.

4.1 General Scope. City hereby engages O Cinema to operate, manage, maintain, promote and market the Facility during the Term, as a Motion Picture Theater, as defined herein, showcasing first-run independent, foreign, art, and family films, upon the terms and conditions hereinafter set forth.

4.2 Manager of the Facility. O Cinema accepts the engagement and agrees to operate, manage, maintain, promote and market the Facility as a Motion Picture Theater, in a

manner consistent with other comparable first class Motion Picture Theaters in Miami-Dade County. For purposes of this Agreement, the term "comparable first-class Motion Picture Theaters" shall include the Coral Gables Art Cinema, located at 260 Aragon Avenue, Coral Gables, Florida; the Bill Cosford Cinema, located at 5030 Brunson Drive, Memorial Building, Coral Gables, Florida; and the other O Cinema theaters, located in Wynwood, at 90 NW 29th Street, Miami, Florida, and Miami Shores, at 9806 NE 2nd Avenue (hereinafter the "Comparable Facilities").

Subject to the terms of this Agreement, O Cinema shall be, as agent for the City, the sole and exclusive manager of the City to operate, manage, maintain, promote and market the Facility during the Term. In such capacity, except as otherwise expressly reserved under this Agreement to the City, and/or except for such matters as are subject to the approval of the City or City Manager, and further subject to Subsections 4.2.1, 4.2.2, and 4.2.3 hereof, O Cinema shall have exclusive authority and responsibility over the management and operation of the Facility and all activities therein.

4.2.1 Permitted Uses. O Cinema shall use the Facility solely and exclusively for the following purposes:

a) Primary Use as a Motion Picture Theater. The Facility shall be used primarily as venue for O Cinema's not for profit motion picture presentation company and showcase independent, foreign, art, family films, or such other films as keeping with those typically shown at O Cinema's other locations.

b) Secondary (Ancillary) Uses. In addition to the Primary Use as a Motion Picture Theater, O Cinema may also use the Facility, from time to time, as/for:

i) live theatrical entertainment venue; provided that the Facility, or any part thereof, will not be used as an adult entertainment establishment (as defined in Section 142-1271 of the City's Land Development Regulations, as same may be amended); as a dance hall; or as an entertainment establishment (as defined in Section 114-5 of the City's Land Development Regulations, as same may be amended);

ii) private rentals for individual and group events and receptions; and

iii) corporate events and receptions.

c) Food and Beverage Concession. O Cinema shall have the right to operate or, subject to the City Manager's prior written approval, have a third party concessionaire operate: a fully stocked beverage concession with a concession menu offering regular

movie theater fare with an "art house twist," including reasonably priced beer and wine, artisan cookies, cupcakes and chocolate ganache goodies. Pursuant to Resolution No. 2014-28790, the aforementioned permission to sell beer and wine for consumption within the Facility ("Beer and Wine Privileges") is limited and hereby granted only for O Cinema, for so long as O Cinema (under its current ownership) shall continue to manage and operate the Facility during the Term of this Agreement, and shall not extend to any other operator (including any successors and/or assigns of O Cinema). Any change in ownership including, without limitation, a successor or assign of O Cinema, 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. O Cinema's Beer and Wine Privileges are further subject to O Cinema securing the requisite authorization to sell the 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 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 Facility must have designated alcohol beverage consumption areas;
- iv. no "Happy Hour" type of reduced price alcohol beverage promotion shall be allowed;
- v. O Cinema shall obtain the requisite state licenses;
- vi. O Cinema shall collect and remit resort taxes to the City, as required pursuant to Section 102-306 of the City Code; and
- vii. O Cinema shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m.

d) "Film-Centric" Merchandising Shop. O Cinema shall have the right to operate or, subject to the City Manager's prior written approval, have a third party operate, a "film-centric" merchandise shop offering for sale film related T-shirts and other film memorabilia.

Failure to comply with the provisions of Section 4.2.1 shall be deemed to be a default under this Agreement.

4.2.2 Prohibited Uses. It is understood and agreed that the Facility shall be used by O Cinema during the Term only for the Permitted Uses in subsection 4.2.1, and for no other purposes or uses whatsoever. Notwithstanding anything contained in subsection 4.2.1, or any other term or condition of this Agreement: (1) O Cinema will not make or permit any use of the Facility that, directly or indirectly, is forbidden by any Governmental Requirement, or that may be dangerous to life, limb or property; (2) O Cinema 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"); provided, however, that O Cinema shall be permitted to show films of an adult nature with strong sexual content provided that such films are reasonably considered of the type of film that are shown in independent art cinemas in Comparable Facilities; (3) O Cinema 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) O Cinema may not commit waste on the Facility, use the Facility for any illegal purpose, commit a nuisance on the Facility, or allow any toxic, hazardous or dangerous substance to be brought into the Facility 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 O Cinema uses the Facility for any purposes not expressly permitted herein, then the City through its City Manager may declare this 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 O Cinema.

4.2.3 Cessation/Suspension of Approved Use(s) and/or Business Activity(ies). Notwithstanding anything contained in this Agreement, and except for the Permitted Uses expressly set forth in subsection 4.2.1, in the event that another particular use(s) and/or business activity(ies) has been approved by the City Manager, and the City Manager thereafter, upon reasonable inquiry, determines that the continuation of such use(s) and/or activity(ies) is, or may be, inconsistent, contrary to, and/or detrimental to the Permitted Uses set forth in this Agreement, and/or to the health, safety and/or

welfare of the residents of and visitors to the City of Miami Beach, then the City Manager, upon thirty (30) days prior written notice to O Cinema of same, may revoke, suspend, and/or otherwise disallow the objectionable uses(s) and/or business activity(ies), and O Cinema shall immediately cease and desist in providing, and/or continuing with, said use(s) and/or business activity(ies) within the time period and in the manner prescribed in the City's notice. In the alternative, the City Manager and/or his designee may allow O Cinema to continue with the subject use(s), or business activity(ies), subject to such additional guidelines, as may be determined and established by the City Manager, in his/her sole and reasonable discretion and judgment.

4.2.4 Annual Benchmarks. Every year, throughout the Term of the Agreement, O Cinema shall achieve the following benchmarks:

- operate a minimum of 5-days a week, 48 weeks a year schedule;
- present no less than 500 Events throughout the year;
- serve an anticipated ^{15,000-25,000} ~~10,000~~ visitors per year;
- ~~increase attendance by 5% annually over prior years;~~
- highlight and market O Cinema Miami Beach as part of O Cinema's annual marketing budget, ~~which budget shall not be less than \$50K;~~
- provide Miami Beach residents with discounted-quality cinematic offerings (10% discount) at least 12 times per year, for a minimum of one film screening per month.

SECTION 5. SCOPE OF SERVICES.

5.1 General. O Cinema shall perform and furnish management services, personnel, and systems and materials, as are appropriate or necessary to operate, manage, maintain, and promote the Facility in a manner consistent with the operations, management, maintenance and promotion of Comparable Facilities.

5.2 Required Number of Events; Continuous Operation; Conclusion of Events. In order to ensure the continuous operation of the Facility for its Primary Use as a Motion Picture Theater, O Cinema shall cause at least 500 Events to be held at the Facility for each Contract

Year (and proportionately for any partial Contract Year) during the Term. The aforesaid 500 Events shall be calculated by counting each separate Event in a Run.

Notwithstanding the preceding paragraph, O Cinema shall cause the Facility to be open continuously on a year round basis, provided, however, that all Events and all other uses shall conclude no later than 3:00 a.m. unless otherwise approved by the City Manager.

Booking Policies. The City and O Cinema agree and acknowledge that the Facility must primarily be used by O Cinema as a Motion Picture Theater, but that O Cinema may also, from time to time, as a Secondary/Ancillary Use, as provided in subsection 4.2.1, rent the Facility to third party presenters consistent with the terms of this Agreement; and consistent with similar uses at Comparable Facilities (including, without limitation the Wynwood and Miami Shores O Cinemas). Notwithstanding the preceding, or any other term or condition of this Agreement, the City Manager shall have the right to prohibit such Secondary/Ancillary Uses from occurring at the Facility, upon the City Manager's reasonable determination that such use might present unreasonable safety concerns, or violate (or otherwise not comply with) Governmental Requirements. Notice of any such determination shall be sent by written notice to O Cinema within thirty (30) days after the City Manager has received the ~~quarterly~~ booking report from O Cinema that specifies the potential Event. ^ annual

5.3 Specific Services. Without limiting the generality of the foregoing, O Cinema shall perform all of the following services, in a manner consistent with the management and operation of the other Comparable Facilities:

5.3.1 employ, supervise, and direct all employees and personnel consistent with the provisions of this Agreement. All employees shall be employees of O Cinema, and not of City. O Cinema shall be solely responsible for assuring that the Facility is adequately staffed with competent, qualified personnel to fulfill its responsibilities under this Agreement;

5.3.2 administer relationships with all third parties for the use, maintenance, operation and promotion of the Facility, and enforce contractual agreements concerning any such third party relationships;

5.3.3 negotiate, execute in its name as agent for the City, deliver, and administer any and all contracts in connection with the management, ~~maintenance~~, promotion and operation of the Facility; provided that if any such contract has a term that extends beyond the remaining Term, such contract shall provide that it is automatically

(The City shall be in charge of maintenance)

assigned to City as of the expiration or termination date of this Agreement and that the City Manager may terminate any such agreement at any time, without cause and/or liability to the City, upon not less than ten (10) days written notice.

5.3.4 Except as otherwise provided in this Agreement, O Cinema shall have the sole authority to approve the scheduling of any Event and other uses (i.e. the Secondary/Ancillary Uses) to be held at the Facility, subject to the limitations and requirements of this Agreement;

5.3.5 ^{Notify the City of required maintenance of the Facility,} ~~maintain the Facility~~ (including, without limitation, all structural components thereof and all electrical, HVAC, life safety, mechanical, plumbing and other systems and equipment), ^{so that the City may keep the Facility} in a good and clean condition consistent with the Comparable Facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted. Maintenance responsibility shall include, without limitation, preventative and any and all other maintenance and as required in Exhibit "B" to this Agreement (entitled "City of Miami Beach Minimum Specifications for Maintenance of the Miami Beach Byron Carlyle Theater"). ^{The City} ~~O Cinema~~ shall maintain in full force and effect service contracts with qualified and licensed service providers with respect to HVAC, roof and elevator systems ~~unless O Cinema warrants and represents to City Manager, in writing, that O Cinema has sufficient trained and qualified employees (in each case with not less than one year's experience) to maintain such systems and that any warranties will not be voided as a result thereof.~~

~~O Cinema shall keep on-site maintenance manuals and records reflecting all of O Cinema's maintenance activities, all of which shall be available for inspection by the City Manager upon request. O Cinema shall submit to the City Manager or his authorized designee periodic (not less than quarterly) reports specifying all maintenance work performed during such period, which reports shall be used by the City's Property Management Division (or its consultant) as part of an annual City maintenance inspection and review.~~ ^{City will respond to O Cinema facility maintenance requests within 4 days for non-urgent issues. In the case of required emergency maintenance that may}

O Cinema warrants and represents to City that, prior to the Effective Date, O Cinema inspected the Facility, and O Cinema hereby accepts the Facility "as-is, where-is and with all faults". The aforementioned notwithstanding, the City has identified a variety of repairs needed to the Facility which it has agreed to address prior to and within 6 months of the Commencement Date of this Agreement. Those repairs are listed in Exhibit "E". In addition, the City shall ensure that all equipment, bathroom, plumbing,

^{add duress to operations, response time shall be within 24 hours.}

HVAC, fire extinguishers, fire alarms, and smoke detectors are in working order and that the Theater is up to applicable codes before Commencement Date of this Agreement;

5.3.6 rent, lease, or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility;

5.3.7 establish and adjust prices, rates and rate schedules for the aforesaid contracts, and any other commitments relating to the Facility, to be negotiated by O Cinema in the course of its management, operation, maintenance and promotion of the Facility, ~~subject to written approval by the City Manager.~~ The initial prices and rates and rate schedules for the rental of the Facility, set forth in the attached Exhibit "F" have been approved by the City Manager. ~~Any subsequent change to the rates and rate schedule, shall be submitted to the City Manager for his/her review and approval (which review/approval shall not be unreasonably withheld, conditioned or delayed) prior to O Cinema's implementation of same;~~

5.3.8 pay when due, on behalf of the City, all Operating Expenses from O Cinema's own funds; (not to include Maintenance Expenses)

5.3.9 after consultation with the City Manager and the City Attorney, and subject to approval by the City Attorney or his designee, institute as agent for the City, the costs of which shall be included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility (using legal counsel approved by the City Attorney), including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility; institute on O Cinema's own behalf (and not as agent for City) without consultation or approval of the City, the costs of which shall be included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City or O Cinema or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

5.3.10 maintain a master set of all Event and other uses (including, without limitation, the Secondary/Ancillary Uses) records, booking records and schedules for the Facility (which shall be available for inspection by the City Manager upon request);

5.3.11 provide day-to-day administrative services in support of its management activities to ensure that the Facility shall be operated, managed, and maintained and promoted in a first class manner consistent with the Comparable Facilities including, but not limited to, acquisition of services, equipment, supplies and facilities; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

5.3.12 engage in advertising, solicitation, and promotional activities necessary to effectively market and promote the Facility. In connection with its activities under the terms of this Agreement, O Cinema will be permitted to use the logo and brand identity of the City of Miami Beach, and of the Facility, as approved by the City Manager;

5.3.13 act as a collection agent for the City on sales taxes from operation of the Facility and remit to the State of Florida such sales taxes;

5.3.14 Except as otherwise approved by the City Manager, O Cinema shall not license or allow the use of any portion of the Facility, except as permitted for the Secondary/Ancillary Uses and, in such cases, only for short-term users (i.e., less than thirty (30) consecutive days). O Cinema shall require that all users of the Facility provide certificates of insurance evidencing appropriate insurance and any other insurance required by the applicable license, use or occupancy agreement. Copies of these certificates shall be ^{kept on record by O Cinema and available to the City Manager upon request.} ~~furnished to the City Manager prior to any Event or other use.~~ Such insurance shall be kept in force at all times by all licensees, users, lessees and concessionaires. All liability policies shall name the City and O Cinema as additional insureds. O Cinema shall also require all users of the Facility to execute (among the terms of the license or occupancy agreement) an agreement to indemnify, defend and hold harmless the City. The City has approved O Cinema's proposed standard license or occupancy agreement, as attached as **Exhibit "C"** hereto;

5.3.15 Resident Ticket Program. O Cinema shall operate a discount ticket program available only to City of Miami Beach residents (meaning individuals who permanently reside in the City of Miami Beach), by which a ten percent (10%) discount off of the full face value pricing shall be made available to such City of Miami Beach residents ("Resident Tickets") for a minimum of one film screening per month. O Cinema reserves the right to require proof of City residency including, but not limited to, government photo ID, utility bill, school ID or other similarly credible indicia of residency. For these purposes, the foregoing Resident Tickets shall be subject to the following

rules: 1) All tickets shall be sold on a first come, first served basis and shall be available at the Facility box office; 2) The type and location of seating for all tickets shall be determined by O Cinema, in its sole discretion, but shall include a full range of all ticket prices; and 3) O Cinema shall have the right to promulgate additional reasonable rules concerning such sales so long as same are consistent with the terms hereof to assure the efficient operation of the program and compliance with these terms and conditions;

5.3.16 O Cinema shall participate, at minimum once per month, in the Golden Ticket and Culture Shock programs offered by Miami-Dade County.

SECTION 6. COMPENSATION TO THE CITY FOR USE OF THE FACILITY (USE FEE).

6.1 Base Use Fee/Percentage Base Use Fee/Minimum Guaranteed Base Use Fee.
~~For the Term of the Agreement, O Cinema shall pay City an annual Base Use Fee/Percentage Base Use Fee/Minimum Guaranteed Base Use Fee for the right to use the Facility as follows:~~

a) During the first three (3) Contract Years, in consideration for O Cinema's investments of equipment, staffing, marketing and improvement, O Cinema shall pay the City a Base Use Fee, in the amount of \$2,500.00 per year;

b) ~~Commencing with the fourth (4th) Contract Year, O Cinema shall pay the City a Base Use Fee in the amount of 10% of all Net Ticket Revenues and Net Concession Revenues (both as defined herein), generated from the Facility ("Percentage Base Use Fee"); however said Percentage Base Use Fee shall not be less than \$5,000.00 per year (Minimum Guaranteed Base Use Fee); and~~

c) ~~During the remainder of the Initial Term, commencing with the fifth (5th) Contract Year and every Contract Year thereafter (including any Renewals Term, if granted at the City's sole discretion), the Percentage Base Use Fee shall be increased by 1% per year, but not to exceed 20% of total Net Ticket Revenues and Net Concession Revenues over the total Term of the Agreement. The Percentage Base Use Fee paid under this Subsection 6.1(c) shall not be less than the Minimum Guaranteed Base Use Fee.~~

~~All payments are payable quarterly, as of the first day of the months of January, April, July and October of each Contract Year, without demand, commencing on the Commencement Date. The Base Use Fee shall be paid on a quarterly basis, except with respect to the payment for the first quarter, which will be due upon execution of the Agreement. The~~

~~Percentage Base Use Fee shall be payable quarterly, within thirty days from the end of each quarter. Commencing during the fourth (4th) Contract Year, if the total amount of the Percentage Base Use Fee paid during a particular Contract Year is less than the Minimum Guaranteed Base Use Fee, O Cinema shall pay said shortage to the City within sixty days from the end of each Contract Year. The Base Use Fee, Percentage Base Use Fee, Minimum Guaranteed Base Use Fee (and all other amounts due hereunder) shall be paid to City in legal tender of the United States of America at the following address: Tourism, Culture, and Economic Development Department, 1700 Convention Center Drive, Miami Beach, Florida 33139, or at such other place that City may from time to time designate by notice in writing.~~

6.2 Additional Fees and Charge. ~~In addition to the Base Use Fee, Percentage Base Use fee and Minimum Guaranteed Base Use Fee as set forth in subsection 6.1, O Cinema shall also be responsible for payment of the following Additional Fees and Charges:~~

6.2.2 Taxes; Imposition. O Cinema shall ^{not} be responsible for ^{any} ~~all~~ property tax payments, taxes and impositions. The parties anticipate that the Byron Carlyle Theater is tax exempt; however, in the event that any property tax payment (or any other tax and/or imposition) is required in connection with the Facility, or in connection with O Cinema's use of the Facility, ~~O Cinema has the right to terminate this agreement without penalty by providing 90 days notice to the city at which point the city shall be solely responsible for such payment(s).~~

6.2.3 Operating Expenses. O Cinema shall pay all costs and expenses related to Operating Expenses. O Cinema hereby irrevocably and unconditionally guarantees to the City that Operating Revenues shall at all times be sufficient to pay as and when due all Operating Expenses and any and all other amounts that O Cinema is obligated to pay pursuant to this Agreement, and further covenants and agrees that if at any time there are insufficient Operating Revenues to pay all of the foregoing amounts, as and when required, O Cinema shall immediately pay the difference from O Cinema's own funds. This obligation is absolute and unconditional and shall even apply if Operating Revenues are reduced or limited by facts or circumstances not contemplated by the parties or for reasons beyond the parties' control. The provisions of this Section 6.2.3 shall survive any termination or expiration of this Agreement.

6.2.4 Establishment and Use of Capital Fund; Contributions. The City shall be responsible for all major repairs and all capital improvements. ~~To help defray the cost of certain major capital repairs and replacements to the Facility (including, without~~

limitation, all structural components thereof, and all HVAC, life safety, mechanical or other systems, plumbing and sewer lines, roof, etc.), ~~beginning with the fourth year of the Agreement, O Cinema shall make annual contributions to a fund (the "Capital Fund") to be held and disbursed by City, at the sole and reasonable discretion of the City Manager and his/her designee.~~

~~The annual contribution shall be Two Thousand Five Hundred Dollars (\$2,500.00) for each Contract Year commencing with the fourth Contract Year throughout the Term. Contributions to the Capital Fund shall be made in equal monthly installments, in the amount of \$208.33 with the 12th installment being \$208.37, commencing on the Commencement Date, and shall be due on or before the first day of each calendar month thereafter throughout the Term.~~

Nothing in this Section 6.2.4 shall limit O Cinema's obligation to maintain the Facility as required by this Agreement. ~~The Capital Fund is intended only to address specific major capital repairs and improvements and such items are not all inclusive. Additional work and additional funds will be required.~~

~~Notwithstanding the preceding paragraph, or this subsection 6.2.4, O Cinema shall not be responsible for paying for major capital improvements or infrastructure within the Facility.~~

6.2.5 Sales Tax. O Cinema shall pay and include any and all additional sums for applicable sales and use tax, now or hereafter prescribed by State, federal or local law, concurrent with and to the extent any sales tax is imposed in connection with any payment due hereunder by O Cinema.

SECTION 7 – INTENTIONALLY OMITTED

SECTION 8 - RIGHTS RESERVED TO CITY

8.1 Rights of Entry. Representatives, contractors and employees of the City shall have the right to enter all portions of the Facility to inspect same, to observe the performance of O Cinema of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the Facility, or to do any act or thing which the City may be obligated or have the right to do under this Agreement. Nothing contained in this subparagraph is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not unreasonably interfere with

any other rights of the City under this Agreement. The City shall not unreasonably interfere with the activities of O Cinema hereunder, and the City's actions shall be conducted such that disruption of O Cinema's work shall be kept to a minimum and there shall be no disruption of any Event by City (the City's actions in its proprietary capacity of the foregoing, shall not diminish any rights of City in its governmental capacity). ~~Nothing in this subsection shall be construed to impose upon the City any independent obligation to make repairs, replacements, alterations, additions or improvements or perform any maintenance or create any independent liability for any failure to do so.~~

8.2 Valet Parking. City reserves to itself and its contractors and designees (i) all rights to provide valet parking to the Facility, and (ii) all proceeds from the valet parking operations. City and its contractors and designees shall have the right to use the driveway entrance and areas located outside the entrance to the Facility for the valet parking operations, and O Cinema shall not interfere with valet parking operations. O Cinema may pre-purchase parking controlled by the City or pre-purchase valet parking. The City Manager shall have the authority to negotiate and enter into such agreements with respect thereto, as the City Manager deems acceptable.

If the City exercises its right to provide valet parking to the Facility, then O Cinema shall have no right to provide valet parking or to contract with other parties for valet parking with respect to the Facility. However, if the City chooses not to offer valet parking services at the Facility, then O Cinema shall have first right of refusal to provide valet parking or to contract with a third party for valet parking at the Facility, at O Cinema's sole cost and expense. The City will have six (6) months of the Commencement Date to exercise this right.

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

O Cinema shall own and retain all ownership rights to the name "O Cinema Miami Beach;" provided, however, that, throughout the Term (or other duration) of this Agreement, O Cinema does hereby grant, permit, and consent to the City's right to use (and/or reproduce) the "O Cinema Miami Beach" name, at no charge, for purposes consistent with the intent and stated uses of the Agreement including, without limitation, for the purpose of identifying and promoting the Facility, and/or for such other public purposes as the City Manager, in his sole

and reasonable discretion, may deem necessary. In the event that this Agreement is terminated and/or otherwise expires, then the City shall discontinue the use of the name "O Cinema Miami Beach" for the Facility, effective contemporaneous with the date that O Cinema ceases to manage and operate the Facility.

8.3.1 Interior Naming Rights; Interior Signage. O Cinema shall be entitled to all non-permanent interior signage (i.e. signage having a total duration not to exceed twelve consecutive (12) months), including, without limitation, temporary banners (and all proceeds derived therefrom shall be Operating Revenue); provided, however, that the names affixed thereon (including, without limitation, any sponsorship names) are subject to the City Manager's prior written approval, which shall not unreasonably be withheld, conditioned or delayed. In no event may any such signage include the names of any company selling the following types of products ("Prohibited Names"): guns, tobacco or sexual products. **All other naming rights, including, without limitation, any revenues derived therefrom, shall be owned and controlled exclusively by the City.**

8.3.2 General Requirements. All signage (whether interior, exterior, permanent and/or temporary) shall comply with all applicable Governmental Requirements, and shall be maintained by O Cinema in good condition.

SECTION 9. ~~NON-FUNDING BY CITY.~~

9.1 ~~City shall have no obligation to provide funds for the payment of Operating Expenses.~~ City shall provide O Cinema with an Annual Operating Subsidy of not less than \$78,000 per year.

9.2 City will have no funding or other payment obligations with respect to the Facility or its Operating Expenses or its operations other than the costs which the City has specifically agreed to pay under the terms of this Agreement. Additionally, O Cinema and City have entered into this Agreement with the expectation and belief that, as of the Effective Date, no governmental body will impose any ad valorem taxes upon the Facility nor any sales, income, excise or other taxes. Notwithstanding the preceding sentence, the City makes no representation to O Cinema – either express or implied – that any or all of such taxes may or may not be imposed at any time during the Term of this Agreement.

SECTION 10. RECEIPTS AND DISBURSEMENTS.

10.1 O Cinema shall establish and maintain in one or more depositories, one or more operating, payroll and other bank accounts for the operation and management of the Facility, as O Cinema shall determine. All Operating Revenues collected by O Cinema from the operation

of the Facility shall be deposited into the accounts and all Operating Expenses shall be paid by O Cinema as agent for the City from the accounts. Any amounts remaining in the operating accounts upon expiration or termination of this Agreement for any reason, after payment of all other amounts that O Cinema is required to pay under this Agreement through the date of expiration or termination, shall be promptly paid to O Cinema.

SECTION 11. ALTERATIONS, MAINTENANCE, AND REPAIRS.

11.1 O Cinema shall not make any additions, improvements, or alterations (collectively "Alterations") to the Facility without the City Manager's prior written consent. The costs of all Alterations made by O Cinema shall be borne solely by O Cinema from its own funds and shall not constitute Operating Expenses. The City Manager shall not unreasonably withhold, condition or delay his/her consent to any Alterations except that the City Manager may withhold consent, in his/her sole and absolute discretion, with respect to any Alterations that change the structural elements or life-saving systems or that affect the exterior of the Facility; Notwithstanding anything to the contrary, however, O Cinema shall not under any circumstances be permitted to make any Alterations that: (i) adversely affect the structural portions of the Facility, or (ii) fail to comply with any applicable Governmental Requirements; or (iii) interfere in any material manner with the proper functioning of any mechanical, electrical, plumbing, HVAC, life safety or other systems, facilities or equipment of the Facility.

~~Except as required pursuant to Section 5.3.4,~~ it is understood by the parties hereto that the O Cinema shall not be responsible, nor required to pay for, any other costs related to capital improvements or infrastructure (i.e. including, but not limited to, plumbing and sewer lines, major electrical, structural, HVAC, roof, etc.) with regard to the Facility.

11.2 O Cinema shall obtain all required permits for Alterations performed by, through or under O Cinema and shall perform or cause to be performed such Alterations in compliance with all Governmental Requirements. Under no circumstances shall O Cinema make any Alterations which incorporate any Hazardous Substances including, without limitation, asbestos-containing construction materials, into the Facility. Any request for City Manager's consent to any proposed Alterations by, through or under O Cinema shall be made in writing and shall contain plans or other written materials describing the work in detail reasonably satisfactory to City Manager, provided that architectural plans shall not be required unless required for the issuance of a building permit. City Manager shall provide or deny consent within twenty (20) business days following receipt of O Cinema's written request, the failure to provide or deny

consent within such twenty (20) business day period shall be deemed a consent. Should the work proposed by O Cinema and consented to by City Manager modify the basic floor plan of the Facility and the building permit therefor require architectural plans, then O Cinema shall, at its expense, furnish City with as-built drawings and CAD disks for such work. Unless City Manager otherwise agrees in writing, all Alterations made or affixed to the Facility (excluding moveable trade fixtures, equipment, personal property and furniture) (including without limitation, all upgrades constructed pursuant to subparagraph (b)), shall become the property of City and shall be surrendered with the Facility at the expiration or termination of this Agreement. With respect to Alterations costing in excess of \$200,000 City Manager may require O Cinema to obtain a payment bond for the work.

11.3 Maintenance. The ~~O Cinema~~^{City} shall, at its sole cost and expense, have sole responsibility for basic maintenance to be performed on a regular basis on all facilities, improvements, and facilities and utilities infrastructure equipment at the Facility. Any and all repairs or replacement of the same (not covered by a service contract as set forth in Subsection 5.3.4) is the responsibility of the City. O Cinema shall, ~~at its sole cost and expense, and to the satisfaction of the City,~~^{^ with support from the City} keep and maintain the Facility, and all improvements thereon, in good, clean, and sanitary order. ~~O Cinema shall, at its sole cost and expense, have the sole responsibility for maintaining the grounds of the Byron Carlyle Theater.~~^{The City} To that end, the parties herein acknowledge, and O Cinema herein agrees to be bound by, the minimum maintenance standards set forth in Exhibit "B" to this Agreement, entitled "City of Miami Beach Minimum Specifications for Maintenance of the Miami Beach Byron Carlyle Theater." It is further understood that O Cinema shall provide the City with a quarterly maintenance report, in a format ~~to be approved by the City Manager.~~^{^ immediate notice when repair maintenance is required at the Facility. City shall address regular maintenance requests within 4 days, or 24 hours for emergencies that cause duress to operations.}

11.4 Personal Property. A list of City owned personal property included in the Agreement for use by O Cinema during the Term hereof is attached and incorporated herein as **Exhibit "D"**. O Cinema hereby accepts such equipment in its "as-is" condition, and without any warranty(ies), whether express or implied, by the City. O Cinema shall maintain all City owned equipment and, ~~at its sole cost and expense,~~ acquire and maintain all replacement and such other equipment as may be necessary to maintain the Facility in a condition which satisfies those maintenance standards set forth in Exhibit "B", but shall not have an obligation to improve the condition of the personal property beyond the "as-is" condition in which it was accepted, all of which shall be noted on the inventory. O Cinema shall have the right, at the initial inventory and at any point thereafter, to decline the use and responsibility for any personal property not

useful for its operation of the Facility, and may turn such personal property over to the City in the condition in which it was accepted. The City shall have the right to periodically take an inventory of any or all City-owned equipment at the Facility.

SECTION 12. RECORDS, AUDITS AND REPORTS

12.1 Records and Audits.

12.1.1 O Cinema shall keep full and accurate accounting books and records relating to all Operating Revenues and Operating Expenses, all in accordance with generally accepted accounting principles. O Cinema shall give the City's authorized representatives access to such books and records during reasonable business hours and upon reasonable advance notice. All books and records shall be made available on-site at the Facility or electronically. O Cinema shall keep and preserve for at least three (3) years following each Fiscal Year, or for as long as such records are required to be retained pursuant to Florida Public Records Law (whichever is longer), all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, ~~on or before 120 days following each Fiscal Year,~~ ^{by June 1 each year, along with the Management Plan,} O Cinema shall furnish to the City a line item (i.e., by categories) statement of Operating Costs and Operating Revenues (and profit or loss) for the Facility for the preceding Fiscal Year, and including the number of tickets sold and Events and other uses held, prepared in accordance with generally accepted accounting principles certified as accurate by O Cinema's Chief Accounting Officer or Chief Financial Officer

12.1.2 The City Manager shall have the right at any time, and from time to time, to cause independent auditors or the City's own accountants or auditors to audit all of the books of O Cinema relating to Operating Revenues, Operating Expenses, tickets and Events and other uses including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense.

12.1.3 Annual Plan Commencing upon October 1, 2015, O Cinema shall provide to the City on or before June 1st of each year, an annual management plan, which shall include the annual operating budget for the then current Fiscal Year also. The annual plan shall include information regarding O Cinema's anticipated operations for such Fiscal Year, including planned operating ~~and maintenance activities, anticipated~~

~~capital improvements and capital equipment purchases~~ and an anticipated budget therefore, anticipated Events and other uses at the Facility (to the extent known at such time), and planned equipment and furnishings purchases. O Cinema shall have the right from time to time to make any changes it deems necessary or appropriate to any such annual plan so long as the annual plan is consistent with O Cinema's fulfillment of its obligations hereunder. ~~Upon the request of the City Manager or his designee, O Cinema shall provide such additional documentation and information as the City deems necessary, in order to substantiate compliance with the Benchmarks set forth in Subsection 4.2.4.~~

12.1.4 Programmatic Plan.

Accompanying the O Cinema's proposed annual plan above shall be the Facility Programmatic Plan for the next fiscal year, detailing the then-known activities (events and other uses) planned, and the number of residents and visitors anticipated to be impacted.

12.2 Major Capital Repairs.

Accompanying O Cinema's proposed annual plan shall be a detailed list of then-known major capital repairs ~~anticipated for the Facility.~~ ^{^ any}

^{^ the Facility requires, that O Cinema is aware of, that the City is responsible for executing.}

SECTION 13. INDEMNIFICATION.

13.1 Indemnification O Cinema shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City, its officers, agents, servants and employees from and against any and all claims, liabilities, demands, causes of action, costs and expenses (including reasonable attorneys' fees at trial and all levels of appeal) of whatsoever kind or nature ("Claims") arising out of (i) error, omission or negligent act or willful misconduct of O Cinema, its agents, servants, contractors, or employees; (ii) any default by O Cinema under this Agreement; or (iii) any other claim arising, directly or indirectly, from the operation or management of the Facility or any Event held therein or rental or use of the Facility; provided that there is expressly excluded from the foregoing obligations any Claims to the extent resulting from the gross negligence or willful misconduct of the City, its officers, agents (excluding O Cinema), contractors (excluding O Cinema) and employees or the use of the Facility by the City, its officers, agents (excluding O Cinema), and employees, pursuant to Section 16 hereof.

13.2 In addition, O Cinema shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of

action of whatever kind or nature arising out of any misconduct of O Cinema not included in the paragraph in the subsection above and for which the City, its officers agents, servants or employees, are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the gross negligence or willful misconduct of the City, its officers, agents, servants or employees.

13.3 The provisions of this Section 13 shall survive expiration or termination of this Agreement.

SECTION 14. INSURANCE REQUIREMENTS.

O Cinema shall maintain, at O Cinema's sole cost and expense, the following types of insurance coverage at all times throughout the Term of this Agreement:

14.1. General liability insurance with not less than the following limits:

General aggregate	\$2,000,000
Products (completed operation aggregate)	\$2,000,000
Personal and advertising (injury) (Per occurrence)	\$1,000,000 \$1,000,000
Fire damage	\$ 100,000
Medical Expense	\$ 5,000
Liquor Liability (aggregate) (Per occurrence)	\$2,000,000 \$1,000,000

14.2 Workers Compensation Insurance shall be required under the Laws of the State of Florida.

14.3 Fire Insurance for the Theater shall be the responsibility of the City.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to City and then subject to the prior written approval of the City's Risk Manager. O Cinema shall provide the City with a Certificate of Insurance for each such policy, which shall name the City 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 O Cinema 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 City in obtaining said insurance, shall be repaid by O Cinema to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If O Cinema does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

14.4 O Cinema shall be the named insured under all such policies. The City shall be an additional insured under the insurance policies described in subsections 14.1 and 14.5, hereof, as its interests may appear, and all such insurance policies shall contain a provision covering the indemnification liabilities hereunder.

14.5 Builder's Risk. O Cinema shall also carry Builder's Risk Insurance during any period of construction of Alterations or any other period of construction by, through or under O Cinema.

14.6 The terms of insurance policies referred to in Section 14 shall preclude subrogation claims against O Cinema, the City and their respective officers, employees and agents.

SECTION 15. OWNERSHIP OF ASSETS.

15.1 Ownership. The ownership of the Facility and all buildings and real estate, all existing (and replacements thereof) technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility at the time of the commencement of this Agreement shall remain with the City. Any and all technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property purchased by O Cinema for use at the Facility shall remain property of O Cinema. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by O Cinema shall remain with O Cinema. O Cinema shall not take or use, for its own purposes, customer lists or similar materials developed by the City for the use of the Facility, unless prior written consent is granted by the City Manager. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property purchased by O Cinema

with Operating Revenues for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition, except for those items which by the terms of this Agreement shall remain the property of O Cinema. The assets of the City, as described herein, shall not be pledged, liened, encumbered or otherwise alienated or assigned. Notwithstanding anything to the contrary contained in this Agreement, any personalty, furnishings, and movable equipment that is not a fixture and is not integral to the operation of the Facility purchased by O Cinema and used at the Facility shall be the sole property of O Cinema.

SECTION 16. USE BY THE CITY

The City shall have the right to use the Facility, or any part thereof, year round, subject to availability, and so long as the City's use does not interfere with any previously scheduled Event or other use, for the benefit of the community for such purposes including, but not limited to, public meetings, community meetings, workshops, City-sponsored special events, and any other purposes, as deemed necessary by the City Manager, in his sole and absolute discretion, without the payment of any rental or use fee, except the direct out-of-pocket expenses incurred in connection with such use shall be paid by the City. City use of the Facility shall not be competitive with, nor conflict with, Events or other uses booked by O Cinema, and shall be booked in advance with a minimum of 30 days' notice.

SECTION 17. ASSIGNMENT/SUBLET.

O Cinema may not voluntarily or by operation of law, assign, encumber, pledge or otherwise transfer all or any part of O Cinema's interest in this Agreement or subcontract its management duties hereunder without the City's prior written consent, which may be granted or withheld in City's sole and absolute discretion. Any attempt by O Cinema to assign all or any part of its interest and any attempt to subcontract its management duties hereunder without first having obtained City's prior written approval shall be void and of no force or effect. In the event of any assignment, transfer, encumbrance or subcontract, O Cinema shall nevertheless remain liable for all obligations hereunder and the transferee shall be jointly and severally liable for all obligations thereafter arising under this Agreement. O Cinema specifically recognizes that City selected O Cinema to be the manager of the Facility as a result of the City's evaluation of O Cinema's specific qualifications and experience in operating similar first class facilities.

17.1 The provisions of subsection 17.1 above shall not prevent O Cinema in the performance of its management duties hereunder to grant concessions and rental agreements

for Events and entering into a concessions agreement for the concession operations at the Facility.

SECTION 18. SECURITY.

O Cinema shall provide reasonable security to protect the Facility and its equipment, materials and facilities, including any City equipment, furnishings, and fixtures used by O Cinema, and shall be solely responsible to the City for any loss or damage to any City equipment, furnishings, and fixtures so used by O Cinema.

SECTION 19. PERMITS; LICENSES; TAXES; APPLICABLE LAWS.

O Cinema agrees to obtain and pay for all permits and licenses necessary for the conduct of its business and agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by O Cinema. O Cinema shall also be solely responsible for payment of any and all taxes levied on the Facility and its operations. In addition, O Cinema shall comply with all rules, regulations and laws of the City; Miami-Dade County; the State of Florida; and the U.S. Government now in force or hereafter to be adopted.

SECTION 20. UTILITIES; RESPONSIBILITY FOR TAXES AND ASSESSMENTS.

20.1 Utilities. ~~O Cinema~~ ^{The City} shall be solely responsible for and shall pay (whether to the City or directly to the utility) before delinquency, of all charges for utilities used at the Facility. ~~O Cinema shall pay its share of the utility bills for the Theater, based upon its Proportionate Use (72%) of the Theater, including without limitation, water, electricity, gas, heating, cooling, and sewer, charges (Shared Utilities).~~

20.2 Procedure If Taxes Assessed.

O Cinema agrees to, and shall pay before delinquency, all taxes and assessments of any kind assessed or levied, whether upon O Cinema or the Facility, by reason of this Agreement or by reason of any use(s) and/or activity(ies) of O Cinema upon or in connection with the Facility. The parties acknowledge that O Cinema's operation and use of the Facility is for public purposes, and therefore anticipate that, as of the Effective Date, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, taxes are assessed by the Property Tax Appraiser, O Cinema has the right to terminate this agreement without penalty by providing 90 days notice to the city at which point he city shall be solely responsible for such payment(s).

SECTION 21 FORCE MAJEURE.

21.1 No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, epidemics, landslides, lightening storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

21.2 Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Governmental Requirements.

21.3 In the event of substantial damage to or destruction of the Facility by reason of fire, storm or other casualty or any eminent domain action or other regulatory action that, in either case, shall render a substantial part of the Facility inoperable for a period of at least ninety (90) days or in O Cinema's or the City's reasonable opinion the Facility can no longer be operated in a reasonably profitable manner as a result of the damages or action for a period of at least ninety (90) days from the happening of the fire, other casualty or regulatory action, either party may terminate this Agreement upon written notice to the other. Upon any such termination, the provisions of Section 31 shall apply; and provided City shall receive the entire amount of all insurance proceeds or eminent domain award as applicable.

SECTION 22. INSPECTION.

O Cinema agrees that the Facility may be inspected at any time upon reasonable notice by authorized representatives of the City, or by any other State, County, Federal or municipal officer or agency having responsibilities for inspections of such operations and/or Facility. O Cinema agrees to undertake immediately the correction of any deficiency cited by such

inspectors on the Facility, which is properly the responsibility of O Cinema pursuant to this Agreement.

SECTION 23. WAIVER OF INTERFERENCE.

O Cinema hereby waives all claims for compensation for loss or damage sustained by reasons of any interference with its operation and management of the Facility by any public agency or official as a result of their enforcement of any laws or ordinances or of any of the rights reserved to the City herein. Any such interference shall not relieve O Cinema from any obligation hereunder.

SECTION 24. NO LIENS.

O Cinema agrees that it will not suffer, or through its actions or anyone under its control or supervision, cause to be filed upon the Facility any lien or encumbrance of any kind. In the event any lien is filed, the O Cinema agrees to cause such lien to be discharged within ten (10) days therefrom, and in accordance with the applicable law and policy. If this is not accomplished, the City may automatically terminate this Agreement, without further notice to O Cinema.

SECTION 25. O CINEMA EMPLOYEES.

25.1 The City and O Cinema recognize that in the performance of this Agreement, it shall be necessary for O Cinema to retain qualified individuals to effectuate and optimize O Cinema's management and operation of the Facility. O Cinema shall select, train, and employ at the Facility such number of employees as is necessary or appropriate for O Cinema to satisfy its responsibilities hereunder. O Cinema shall recruit employees consistent with standards employed at the Comparable Facilities, and O Cinema shall have authority to hire, terminate and discipline any and all personnel employed by O Cinema working at the Facility. Any such personnel, whether employees, agents, independent contractors, volunteers, and/or other, employed, retained, or otherwise engaged by O Cinema for such purpose(s), shall not be deemed to be agents, employees, partners, joint ventures, or associates of the City, and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City; further they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, O Cinema, and/or its employees shall never have been convicted of any offense involving moral turpitude or felony. Failure to comply with this subsection shall constitute cause

for termination of this Agreement.

25.2 O Cinema shall assign to the Facility a competent full-time staff member experienced in the operations of similar facilities, who will be located full time on-site during the Term. The full-time staff member will be supervised by a general manager who is experienced in operating and managing similar facilities. From time to time the staff member may provide assistance in connection with consulting and/or management services provided by O Cinema at other facilities managed, owned or leased by O Cinema so long as such assistance does not affect in any material respect the responsibilities and duties of the staff member to the Facility. Prior to O Cinema's appointment of the staff member, O Cinema shall consult with the City Manager with respect to the qualifications of the staff member proposed by O Cinema. The staff member shall be accessible to the City Manager at all reasonable times to discuss the management, operation, and maintenance of the Facility. "Accessible" shall mean available either in person, by telephone, and/or e-mail during business and/or operation hours and within a reasonable time frame during non-business hours in the event of emergency. The City Manager may also request that the staff member be replaced and O Cinema shall duly consider all such requests but shall not be obligated to replace the staff member.

SECTION 26. NO IMPROPER USE.

O Cinema will not use, nor suffer or permit any person to use in any manner whatsoever, the Facility 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. O Cinema shall not use the Facility for any unlawful purpose and shall comply with all laws, permitting, and licensing requirements now in force or hereafter adopted, applicable to the Facility or the activities, uses, and/or business(es) conducted on the Facility. O Cinema agrees not to knowingly use the Facility for, or to permit operation of any offensive or dangerous activity, nuisance or anything against public policy. **Any criminal activity in the Facility knowingly caused by or knowingly permitted by O Cinema shall result in automatic termination of this Agreement.** Except as may result from acts of force majeure, O Cinema agrees that it will not allow the Facility to become unoccupied or vacant. O Cinema shall take appropriate precautions to prevent fire on the Facility, maintaining existing fire detection devices and extinguishing equipment at all times. Fire detection devices and extinguishing equipment to be provided and maintained by the City.

SECTION 27. NO DANGEROUS MATERIALS.

O Cinema agrees not to use or permit in the Facility the storage of illuminating oils, oil lamps, turpentine, gasoline (except for small containers [5 gallons or less] for machinery), benzine, naphtha, or other similar substances, or explosives or any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida.

SECTION 28. NO CLAIM AGAINST CITY OFFICERS, EMPLOYEES, INDIVIDUALS.

It is expressly understood and agreed by and between the parties hereto that all individuals, employees, officers, and agents of the City are acting in a representative capacity and not for their own benefit; and that neither O Cinema nor any occupant shall have any claim against them or any of them as individuals in any event whatsoever in conjunction with any acts or duties which are reasonably related to the performance of their duties.

SECTION 29. DEFAULT AND TERMINATION.

O Cinema's Defaults. The occurrence of any one or more of the following events shall constitute an Event of Default by O Cinema: (or set up a payment plan, which will be considered an allowable alternative, if the amount due is unexpected or larger than is reasonable for O Cinema to currently have at hand)

29.1.2.1 the failure by O Cinema to make any payment required to be made by O Cinema as and when due, which continues for more than ten (10) days after written notice from City;

29.1.2.2 the failure or inability by O Cinema to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by O Cinema, which continues for more than thirty (30) days after written notice from City Manager; provided, however, if the nature of the failure is such that more than such period is reasonably required for its cure, then O Cinema shall not be deemed to have committed an Event of Default if O Cinema commences the cure within such period and thereafter diligently pursues the cure to completion and actually completes the cure within an additional sixty (60) day period;

29.1.2.3 the assignment, encumbrance, pledge, or transfer of this Agreement, whether voluntarily or by operation of law, or any subcontract of O Cinema's duties hereunder, which continues for more than fifteen (15) business days after written notice thereof from City Manager;

29.1.2.4 (i) the making by O Cinema of any general assignment for the benefit of creditors; (ii) the filing by or against O Cinema of a petition to have O Cinema adjudged a Chapter 7 debtor under the Bankruptcy Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against O Cinema, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of O Cinema's assets located at the Facility or of O Cinema's interest in this Agreement, if possession is not restored to O Cinema within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of O Cinema's assets located at the Facility or of O Cinema's interest in this Agreement, where the seizure is not discharged within sixty (60) days.

29.2 City's Remedies.

29.2.1 If an Event of Default by O Cinema occurs, then in addition to any other remedies available to City, City may exercise any or all of the following remedies:

- a) terminate this Agreement by written notice to O Cinema, in which case this Agreement shall terminate and O Cinema shall immediately surrender possession of the Facility to City. Upon termination, City shall be entitled to recover from O Cinema: (i) Operating Expenses that remain unpaid through the date of termination; (ii) all other amounts that O Cinema is required to pay under this Agreement through the date of termination;
- b) seek specific performance of any of O Cinema's obligations hereunder or seek injunctive relief; and/or
- c) exercise any other remedies available at law or in equity.

29.2.2 The various rights and remedies reserved to City in this Agreement or otherwise shall be cumulative and, except as otherwise provided by Florida law, City may pursue any or all of its rights and remedies at the same time.

29.3 O Cinema's Remedies. If an Event of Default by City occurs, then O Cinema may exercise either of the following remedies:

29.3.1 O Cinema may terminate this Agreement by written notice to City, in which case this Agreement shall terminate and O Cinema shall immediately surrender possession of the Facility to City. Upon termination, O Cinema shall be entitled to

recover from City all amounts owed by City to O Cinema as of the termination date and the provisions of Section 31 shall apply; or

~~29.4 Late Payments. Any payment owed to City or O Cinema under this Agreement including, without limitation, any other payment owed to City or O Cinema under this Agreement that is not received by City or O Cinema within ten (10) days following notice of such amount being due shall bear interest at the rate of eighteen percent (18%) per annum ("Default Rate") or the highest allowable rate under Florida Law, whichever is less from the date due until fully paid.~~

29.5 IN THE EVENT THAT O CINEMA CEASES TO BE A NOT-FOR-PROFIT CORPORATION, THIS AGREEMENT SHALL BE AUTOMATICALLY TERMINATED.

29.6 Termination for Convenience by City. Notwithstanding the City's rights to terminate the Agreement for cause, the City also reserves and retains the right, at its sole option and discretion, to terminate this Agreement, without cause and without penalty, with regard to O Cinema's rights and responsibilities with respect to the operation, management, maintenance, promotion and marketing of the Facility, upon three hundred sixty-five (365) days prior written notice to O Cinema.

29.7 Effect of Termination. In the event this Agreement expires or is terminated for any reason: (1) All Operating Expenses and all other obligations for the period up to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in subsection 10.1 and to the extent such funds are not sufficient, O Cinema shall pay all such amounts from its own funds; (2) After all amounts referenced in subparagraph (1) have been paid, O Cinema may retain all remaining Operating Revenues (if any). Upon the expiration of this Agreement or a termination for any reason, all further obligations of the parties hereunder shall terminate except for the obligations which for all periods up to the date of expiration or termination and such other obligations as are stated to survive or be performed after such expiration or termination. All of the foregoing reimbursement and the payment obligations are to be made within thirty (30) days after the termination date. The provisions of this Subsection 29.7 regarding the above reimbursement and payment obligations of the City shall survive the termination of this Agreement.

29.8 Surrender of Facility. Upon termination or expiration of this Agreement O Cinema shall surrender and vacate the Facility upon the effective date of such termination (or expiration). The Facility and all equipment and furnishings shall be returned to the City in a

good and clean condition consistent with other similar first class facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted.

SECTIONS 30 AND 31. INTENTIONALLY DELETED.

SECTION 32. NOTICES.

All notices from the City to O Cinema shall be deemed duly served if mailed by registered or certified mail to O Cinema at the following address: [and emailed to: kareem@o-cinema.org](mailto:kareem@o-cinema.org)
[AND vivian@o-cinema.org](mailto:vivian@o-cinema.org)

Living Arts Trust, Inc. d/b/a O Cinema	Living Arts Trust, Inc.
2401 Swanson Avenue	D/B/A O Cinema
Miami Florida 33133	Attn: Kareem Tabsch
Attention: Kareem Tabsch, Secretary	8230 NE 3rd Ave
	Miami, FL 33138 USA

All notices from O Cinema to the City shall be deemed duly served if mailed by registered or certified mail to the following addresses:

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

With copies to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Max Sklar,
Tourism, Culture, and Economic Development Director

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

SECTION 33. NO DISCRIMINATION.

The O Cinema agrees that there shall be no discrimination as to race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age or disability in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation of the Facility. All facilities

located on the Facility shall be made available to the public, subject to the right of O Cinema to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation and security of the facilities.

33.1 No Discrimination in Employment; Affirmative Action. In connection with the performance of work under this Agreement, O Cinema shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age or disability.

SECTION 35. Intentionally Omitted.

SECTION 36. LIMITATION OF LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on its 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 \$50,000. O Cinema hereby expresses his willingness to enter into this Agreement with O Cinema's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$50,000, less the amount of all funds actually paid by the City to O Cinema pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, O Cinema hereby agrees that the City shall not be liable to the O Cinema for damages in an amount in excess of \$50,000, which amount shall be reduced by the amount actually paid by the City to O Cinema pursuant to this Agreement, 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 paragraph 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 Section 768.28, Florida Statutes.

SECTION 37. NOT A LEASE.

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

conditions of this Agreement.

SECTION 38. MISCELLANEOUS

38.1 Governing Law/Venue/Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principals of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND O CINEMA EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

38.2 No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and O Cinema. None of the officers, agents or employees of O Cinema shall be or be deemed to be employees of the City for any purpose whatsoever.

38.3 Entire Agreement. This Agreement and all Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals or other expressions of intent with respect thereto. The Exhibits attached hereto are incorporated into and made a part of this Agreement. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

38.4 Written Amendments. This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto. The City Manager shall have authority, on behalf of the City, to execute any amendments to the Agreement.

38.5 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

38.5.1 This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective permitted successors and permitted assigns.

38.5.2 This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being

intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

38.6 Section Headings and Defined Terms. The headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

38.7 Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

38.8 Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

38.9 Certain Representations and Warranties.

38.9.1 The City represents, warrants, and covenants to O Cinema the following:

(i) City has full legal right, power and authority to enter into and perform its obligations hereunder; and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

38.9.2 O Cinema represents and warrants to the City the following: (i) O Cinema has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by O Cinema

and constitutes a valid and binding obligation of O Cinema, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

38.10 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to otherwise applicable principles of conflicts of law.

39. CINEMA'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

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

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of O CINEMA upon termination of this Agreement. Upon termination of this Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

For purposes of this Article, the term "public records" shall mean 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.

O CINEMA's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event O CINEMA does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

40. 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.

O Cinema agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Facility or in connection with this Agreement. O Cinema shall ensure that all vendors operating in the Facility abide by the restrictions contained in this Section 40. A violation of this section shall be deemed a default under the terms of this 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 O Cinema or its vendors.

41. COCA-COLA:The City has entered into an agreement with Coca-Cola Bottling, effective September 1, 2011 – September 1, 2021, to be the exclusive provider of non-alcoholic beverages and coffee products. O Cinema shall only sell Coca-Cola beverages as listed in the attached Exhibit “G” and as may be updated from time to time.

[^] In the case that there are non-alcoholic beverage products that Coca-Cola does not produce or offer, O Cinema is permitted to source and sell alternative brands and products, as long as there is not a Coca-Cola option of that product type available.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

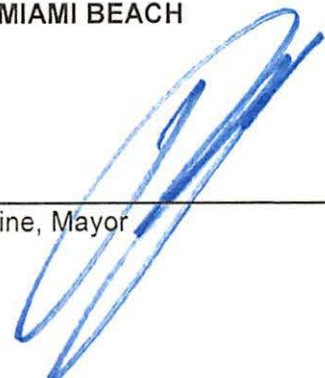
Attest:

CITY OF MIAMI BEACH



Rafael E. Granado, City Clerk





Philip Levine, Mayor


STATE OF FLORIDA)

) SS:

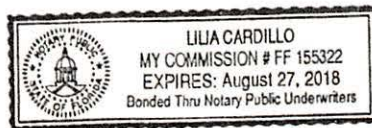
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 24 day of October, 2014, by Philip Levine, Mayor, and Rafael E. Granado, City Clerk, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.


WITNESS my hand and official seal, this 24 day of October, 2014.



Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



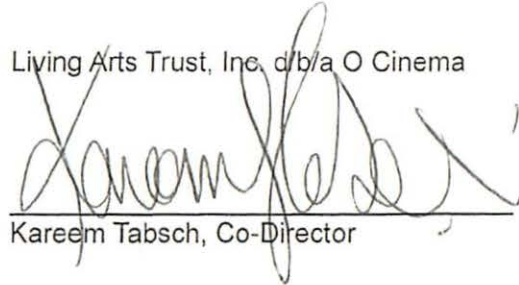
City Attorney

10/21/14

Date

Attest:

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


Kareem Tabsch, Co-Director

Print Name: _____

Print Name: _____

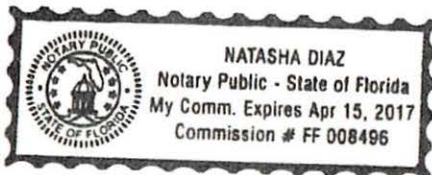
STATE OF FLORIDA)

SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 21 day of October, 2014, by Kareem Tabsch, as Co-Director on behalf of **Living Arts Trust, Inc. d/b/a O Cinema**, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 21 day of October, 2014.



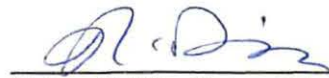

Notary Public, State of Florida at Large
Commission No.: FF 008496
My Commission Expires: Apr 15, 2017

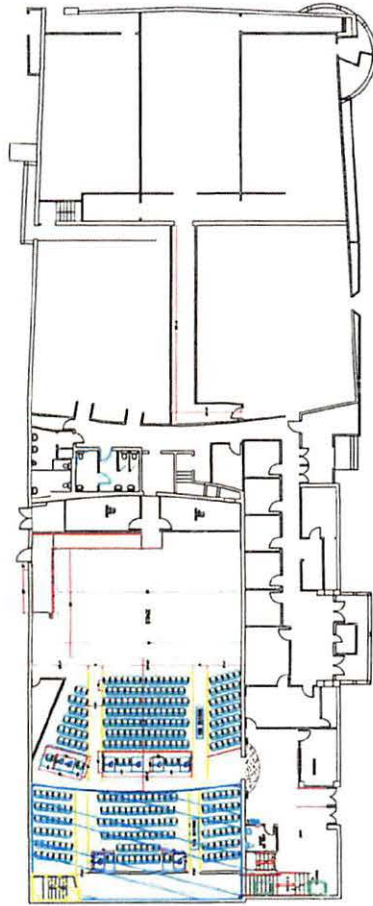
EXHIBIT "A"
LEGAL DESCRIPTION OF THE FACILITY
Site Plan for Facility

LEGAL DESCRIPTION

A portion of the land occupied by Byron Carlyle Theater, more particularly described as follows:

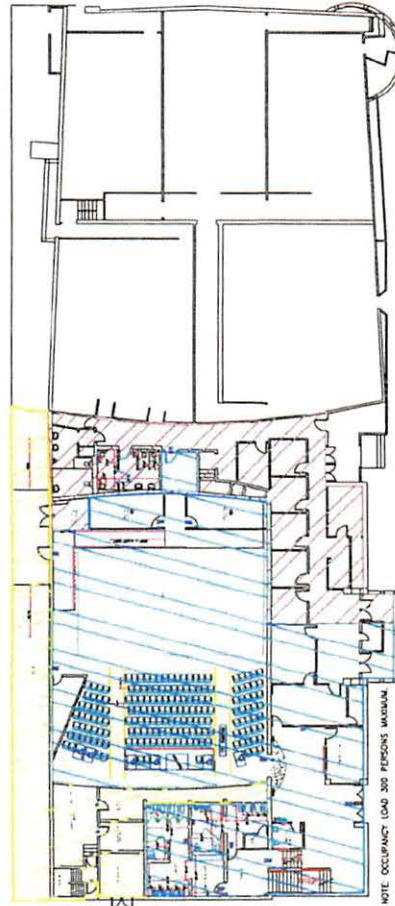
Lots 11, and 12, TOGETHER WITH: the east 15 feet of lots 1 and 2, all in Block 14, NORMANDY BEACH SOUTH, recorded in Plat Book 21, at Page 54, Public Records of Miami-Dade County, Florida, containing 14,092 square feet more or less.

As more particularly delineated as the portion of the Theater being managed and operated by "O Cinema" under this Agreement, in the attached site plan.



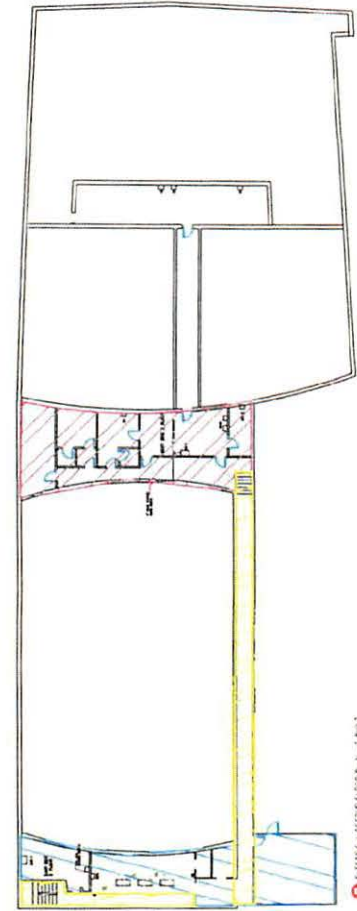
Seating Area Mezzanine and Ground flr
SCALE 3/8" = 1'-0"

AS-BUILT NOTES
NOT TO SCALE



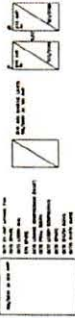
Ground floor and Subfloor
SCALE 3/8" = 1'-0"

NOTE OCCUPANCY LOAD 300 PERSONS MAXIMUM



MEZZANINE AND GROUND FLOOR
SCALE 3/8" = 1'-0"

NOT TO SCALE



AS-BUILT NOTES
NOT TO SCALE

City of Miami Beach	3,995.6 SQFT	28.3%
O Cinema	10,647.4 SQFT	72.7%
Common Area	3,345.0 SQFT	.
	17,988.0 SQFT	.



2014 Product List



20oz Bottles/24 per case
Coca-Cola Classic
Coke Zero
Vanilla Coke
Cherry Coke
Cherry Coke Zero
Diet Coke
Caffeine Free Diet Coke
Diet Coke w/ Lime
Sprite
Sprite Zero
Mello Yellow
Barq's Root Beer
Pibb Xtra
Seagram's Ginger Ale
Fanta Orange
Fanta Orange Zero
Fanta Grape
Fanta Strawberry
Minute Maid Lemonade
Minute Maid Pink Lemonade
Minute Maid Fruit Punch
Fuze Sweet Tea
Fuze Lemon Tea
Fuze Diet Tea
Fuze Strawberry Tea

DASANI
20oz Bottle 24/case
330 ml 24/case
16.9oz (.5 Liter) Bottles 24/case
12oz Bottles/24 case
1L 12 per case

Dasani Flavors
20oz 24 bottle/case
Lemon
Strawberry

Dasani Drops
1.9oz 5pk
Strawberry Kiwi
Mixed Berry
Pineapple Coconut
Pink Lemonade
Grape
Cherry Pomegranate

SMART WATER
20oz Bottles 24/case
750 ML Sportscap 24/case
1.0 L 12/case
1.5 L 12/case

Zico Coconut Water
14oz PET Ntl, Choc, Pineapple 12/case
11.2oz Tetra Ntl 12/case
1.0 L Ntl, Choc 12/case

Minute Maid
16.9oz/450ML Plastic 24/case
100% Orange Juice
100% Apple Juice
100% Cranberry Apple Raspberry
100% Cranberry Grape
100% Ruby Red Grapefruit
100% Strawberry Passionfruit
Tropical Blend
Berry Blend

Corn Power 11.5oz 12pk
Lila Platform
Chocolate
Strawberry Banana
Corn Platform
Chocolate
Vanilla
Banana

Glacéau Fruitwater 16.9oz 12pk
Black Raspberry
Orange Mango
Strawberry Kiwi
Lemon-Lime
Watermelon Punch



20oz Bottles 24/case (also available in 32oz & 17oz)
Mountain Blast
Fruit Punch
Lemon Lime
Orange
Strawberry Lemonade
Grape
POWERADE ZERO
Fruit Punch (Red)
Grape(purple)
Mixed Berry (Blue)



16.9oz/12 per Case
Strawberry Melon
Peach Mango
Tropical Punch
Cranberry Raspberry
Blue Raspberry
Acai Berry Pomegranate
Banana Colada



16oz 12 per case
Full Throttle
Black(original)
Blue Agave
16oz 12 per case
Red Berry



16oz Cans 24/case
Original (Orange Mango)
Grape
16oz Cans 12/case
Charged Citrus
Sugar Free
Loaded Cherry



16oz Cans 24/case
Original-Green
Lo Carb-Blue
Assault-Red
Khao-orange
Absolute Zero-Blue/Purple
Absolute Ultra-White
15.2oz Cans 24/case
Rehab - Half Tea Half Lemonade
Rehab - Orangeade
Rehab - Green Tea
Rehab - Mojo Red Tea

Monster Java
16oz Cans 12/case
Mean Bean
Loca Mocha
Vanilla Light
Tofee
Kona Blend
Irish Blend

Monster Muscle
16oz Cans 12/case
Chocolate
Coffee
Vanilla

Powerade Zero Drops
Mountain Berry
Fruit Punch
Orange

Honest Tea 16.9oz 12/case
Zero Cal Lemonade
Honey Green Tea
Peach White Tea
Half n Half Tea

Honest Aid 16.9oz 12/case
Pomegranate Blue Berry
Orange Mango
Superfruit



20 oz Bottles 24/case
XXX (Blueberry Pomegranate)
Power C. (Dragon Fruit)
Focus (Kiwi Strawberry)
Essential (Orange)
Energy (Tropical Citrus)
Multi-V (Lemonade)
Revive (Fruit Punch)
Defense (Raspberry Apple)
Attention
VW Zero-ZERO Calories per serving
20 oz Bottles 24/case
Squeezed (Lemonade)
XXX (Blueberry Pomegranate)
Go Go (Mixed Berry)
Glow
Mega-C (GrapeRaspberry)
Rise (Orange)
16.9oz 5pk 12/case
XXX
Power C.
Revive
XXX Zero
Squeezed Zero
Rise Zero



24 per Case
Coca-Cola Classic
Diet Coke
Sprite



12 per case
Cappuccino
Latte Macchiato
Mochaccino
Café



12oz Cans 24/case
Coca-Cola Classic
Coke Zero
Caffeine Free Classic
Vanilla Coke
Cherry Coke
Cherry Coke Zero
Diet Coke
Diet Coke w/ Splenda
Caffeine Free diet Coke
Diet Coke w/ Lime
Tab
Sprite
Sprite Zero(Diet)
Fresca
Fresca w/ Peach



Peace Tea 23oz Cans 12/case
Caddy Shack (half & half)
Texas Tea (sweet tea)
Pink Lemonade
Razzleberry (raspberry)
Snowberry (white berry)
Georgia Peach
Green Tea
Sweet Lemon

Gold Peak Tea 16.9oz Bottle 12/case
Sweet
Lemon
Diet
Green
Unsweet

Turn-E-Your-Tea
10.1oz 12/case
Fruit Punch
Green Apple
Orange
Sour Raspberry
Very Berry

Mexican Coke 355mL 24pk
Coke de Mexico
Fanta Orange de Mexico
Sprite de Mexico

EXHIBIT "B"
CITY OF MIAMI BEACH
MINIMUM MAINTENANCE SPECIFICATIONS
FOR MAINTENANCE OF THE MIAMI BEACH
BYRON CARLYLE THEATER

These minimum operating and maintenance standards are intended to be considered as a whole and intended to provide an overall standard for the Facility. Individual discrepancies, as well as deviations, from any individual standard shall not be considered a default of the Agreement; it is the intention of the parties that this Exhibit is merely a guide and that O' Cinema is only expected to use good faith efforts to endeavor to meet the standards set forth herein. In the event of a conflict between the terms or conditions of the Agreement and the terms or conditions of this Exhibit, the terms and conditions of the Agreement shall control.

PERSONNEL

1. O' Cinema shall have the sole responsibility to recruit and employ a full-time general manager and any necessary administrative and accounting personnel that are responsible for the overall management and operation of the Facility.
2. O' Cinema shall have the sole responsibility to recruit and employ sufficient personnel to maintain the following functions: general security; janitorial, housekeeping and cleaning for both event and non-event cleanup; ~~maintenance for electrical systems, plumbing, and air conditioner operation; painting and general overall maintenance of the Facility to ensure that the Facility is being maintained consistent with other similar first class facilities operated by O' Cinema.~~ The City shall be responsible for maintenance of electrical systems, plumbing, air conditioning, and painting.
3. O' Cinema shall have the sole responsibility to recruit and employ personnel as it deems necessary for the staging and coordinating of Events and productions.
4. O' Cinema shall maintain personnel policies that assure employment practices do not discriminate on the basis of race, color, religion, military status, marital status, physical or mental disability, national origin, age, gender, or sexual preference.

GENERAL SECURITY

1. O' Cinema shall provide for the overall security of the Facility, including during non-event hours.

EMERGENCY PROCEDURES

1. O' Cinema shall assign an employee and a backup employee to act as an Emergency Liaison to the City. This individual will be required to use good faith efforts to attend any and all meetings, held by the City, that deal with emergency situations, such as extreme weather events, terrorist acts, etc. The Liaison will serve as the point of contact during any emergency crisis.
2. O' Cinema shall develop and implement a Hurricane Preparedness Procedure, a copy of which shall be provided to the City.

JANITORIAL, CLEANING AND HOUSEKEEPING

1. The Facility shall be reasonably clean at all times. This includes general cleaning during non-event times, as well as during Events.
2. Restrooms are to be cleaned during Events and on a periodic basis during non-event times to assure that they are in a functional and reasonably sanitary condition.
3. Garbage and trash shall be removed on an as-needed basis. Trash receptacles shall be stationed throughout the Facility.
4. O' Cinema shall maintain compactor, garbage areas, waste areas, recycling areas, and dumpster areas reasonably clean and debris free in order to comply with applicable codes.
5. Carpets shall be vacuumed and cleaned on an as-needed basis.
6. Flooring shall be cleaned and polished on an as needed basis.
7. Windows shall be maintained in a reasonably clean condition and cleaned on an as needed basis.
8. Treatment for pests and rodents (except termites) shall occur on a quarterly basis as needed to prevent infestation or as required by applicable code. [Pest control shall be the responsibility of the City.](#)
9. Entrance doors and mirrors shall be maintained in a reasonably clean condition and cleaned on an as needed basis.

LANDSCAPING

1. Indoor landscaping shall be maintained in accordance with specifications of the type of plant and should be watered and fertilized as the type of plant demands.
2. Indoor landscaping should be reasonably insect-free.

EQUIPMENT MAINTENANCE AND GENERAL MAINTENANCE

1. Equipment shall be maintained in a good and workmanlike manner in order to maintain in full force and effect all dealer's and manufacturer's warranties. O' Cinema shall develop an annual schedule for equipment inspection and preventative maintenance.
2. Upon termination, cancellation, and/or expiration of the Agreement, O' Cinema shall provide all records maintained in accordance with Section 5.3.4. All existing warranties that are transferable will be transferred to the City.

3. O' Cinema shall post and maintain, as required by any applicable governmental code and/or regulation, any and all required professional licenses, certifications, and/or permits.
4. ~~O' Cinema~~ ^{The City} shall maintain and inspect all building safety systems including but not limited to: smoke, fire, and CO detector systems, backup generator operation, emergency battery backup functions, emergency lighting, emergency egress, special needs and blackout preparedness equipment. All building safety systems shall be tested on at least an annual basis or as required by federal, state or local codes and regulations, and maintained in operating condition at all times.
^{The City} O' Cinema shall notify the City if any known lack of functionality arises in any of these systems.
5. ~~O' Cinema~~ shall develop and implement a plan for inspection and maintenance for the Facility's HVAC systems. This shall include inspection of all HVAC controls on a quarterly basis to verify proper setting and operation as well as any adjustments and/or maintenance that may be appropriate, including, but not limited to filter replacement, blower and/or heat exchanger, proper operation of air intakes/vents, fan units, ducts, etc.
^{The City} O' Cinema shall notify the City if there is any known lack of functionality in any of these systems.
6. ~~O' Cinema~~ has the sole responsibility of maintaining the paint on the interior of the Facility.

EXHIBIT "C"
O CINEMA STANDARD AGREEMENT



CINEMA

VENUE RENTAL AGREEMENT

THIS RENTAL AGREEMENT made this ** ____ day of _____, 2014, ** by and between _____ hereinafter referred to as "RENTER" and Living Arts Trust, Inc. d/b/a O Cinema hereinafter referred to as "O Cinema". The Duration of this lease is for the specified show times and dates as follow:

EVENT DATE & TIME

O Cinema grants unto "RENTER" the use and occupancy of O Cinema (Venue), upon the following terms and conditions for the sole purpose of:

EVENT TYPE

1. Rent: "RENTER" shall pay rent to O Cinema without demand, together with any and all sales, use and state taxes arising or accruing during the term of the Leasehold, plus the percentages and other charges as set forth below on the following basis:

"RENTER" hereby covenants and agrees to pay the following minimum rentals:

TOTAL FEE

**50% deposit due no later than _____, ____th, 2014.
Balance due no later than 10 business days prior to start of event**

"RENTER" is subject to the terms and conditions of this *LEASE AGREEMENT*. These Rental Documents comprise "RENTER's" obligation to rent O Cinema and are in full force and effect during the rental period. "Renter" accepts sole responsibility for compliance with the terms set forth in this contract.

An executed Lease Agreement must be returned to both parties by _____ or contract will be automatically cancelled.

By signing this contract, "RENTER" takes full responsibility and obligation for all rental monies and additional charges incurred for film screening/event. "RENTER" is fully responsible for full rental of any cancellation for the above-mentioned date. This shall be presented by way of an addendum to this contract and must be signed by both parties.

In the event "RENTER" has not completely vacated the premises and returned said premises by the contracted termination time, O Cinema may assess additional rent at the prevailing daily rental rate for each day or portion thereof beyond the contracted evacuation time.

Renter acknowledges that no outside food or beverage may be brought in to the premise to be sold, distributed, given away, displayed or served.

2. Premises and Equipment:

- a) This Agreement grants unto "RENTER" the full use of the auditorium, all seats, lobby and entryways. "RENTER" shall take the premises as they are at the time of occupancy by O Cinema. In the event "RENTER" finds it necessary to remove or change the location of any stage rigging, settings, curtain or equipment, the changes shall be made by "RENTER" at "RENTER's" expense; provided, however, that no removals or changes shall be made without prior written consent of O Cinema. "RENTER" further agrees to replace and restore all said stage riggings, settings, curtains or equipment to the former location and condition in which "RENTER" found them. O Cinema furthermore agrees to provide use of the house video projection equipment and playback system (any playback other than Blu Ray, laptop or DCP is not available and alternatives must be provided by "RENTER") for "RENTER". These equipments will be permanently housed at The O Cinema for the duration of this lease.
- b) "RENTER" agrees to pay costs of repair and replacement and all damages of whatever origin or nature which may occur during the term of this agreement in order to restore the leased premises or other parts of the O Cinema's premises affected by the event to a condition equal to that at the time this agreement became effective.

"RENTER" shall not injure, mar, or in any manner deface the premises or any equipment contained therein and shall not cause or permit anything to be done whereby the said premises or equipment therein shall be in any manner injured, marred or defaced. "RENTER" further agrees it will not tape items, drive or permit to be driven nails, hooks, tracks, or screws into any part of said building or equipment contained therein and will not make or allow to be made any alterations of any kind to said building or equipment contained therein.

3. **Services:** The O Cinema shall furnish air conditioning during show hours only (to be turned on 1 hour prior to first film to allow proper time for cooling, house lights, public address system and water by means of the appliances installed for ordinary purposes, but for no other purposes. Interruptions, delays or failures in furnishing any of the same caused by anything beyond control of the O Cinema shall not be chargeable to O Cinema. O Cinema will provide one daily cleaning of all public spaces prior to "RENTER's" daily usage of the space. All personnel required by "RENTER" during their use of O Cinema, will be solely the responsibility of "RENTER".

4. **Indemnification Clause:** "RENTER" agrees that it will indemnify, hold and save O Cinema and The City of Miami Beach (the "City"), their officers, agents, contractors and employees whole and harmless and who at the City or O Cinema's option defend same, from and against all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments of any nature recovered from or asserted against the City or O Cinema on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act, omission, negligence or misconduct on the part of the City or O Cinema or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitee or of any other person entering upon the Premises leased hereunder with the express or implied invitation or permission of "RENTER", or when any such injury or damage is the result, proximate or remote, of the violation by "RENTER" or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitee of any law, ordinance or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the occupancy or use by "RENTER", its agents, servants, employees, contractors, patrons, guests, licensees or invitee of the Premises leased hereunder.

5. **Ordinances and Regulations:** "RENTER" will comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies; and by all facility rules and regulations as provided by O Cinema, and "RENTER" will require that its agents and employees likewise comply. "RENTER" agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and by O Cinema to assure such safety. The "RENTER" further agrees that all portions of sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the premises shall be kept unobstructed by "RENTER" and shall not be used for any purpose other than ingress or egress to and from the premises by "RENTER", its staff, and patron. "RENTER" also shall not use or store or permit to be used or stored in or on any part of the Leased premises any substances or thing prohibited by law, ordinance, or standard policies of fire insurance companies operating in the State of Florida, without the permission of O Cinema. Illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind shall not

be placed in or on the licensed premises. It is further agreed that no inflammable materials, such as bunting, tissue paper, crepe paper, etc., will be permitted to be used as decorations and decorative materials unless they are treated with flame-proofing and are approved by the O Cinema.

6. **Powers to Vacate Premises:** O Cinema shall retain the right to cause interruption of any performance in the interest of public safety, and to likewise cause the termination of such performance when in the judgment of O Cinema such action is necessary in the interest of public safety. Should it become necessary in the judgment of O Cinema to evacuate the premises because of a bomb threat or for other reasons of public safety, O Cinema will retain possession of the premises, for sufficient time to complete presentation of its activity without additional rental charge. If it is not possible to complete presentation of the activity, rental shall be forfeited, prorated, or adjusted.

O Cinema reserves the rights to make such announcements as are deemed necessary at any time in the interest of public safety. "RENTER" agrees that it will cooperate with the delivery of such announcements for public safety, including but not limited to, announcements to require patrons to leave their seats or to leave the premises. O Cinema reserves the right to eject or cause to be ejected from the premises any person or persons causing a disturbance, and neither O Cinema nor any of its officers, agents or employees shall be liable to the "RENTER" for any damages that may be sustained by "RENTER" through the exercise by O Cinema of such right.

7. **Default and O Cinema's Remedies:** Full compliance with all terms of this lease and failure to provide payment in the requested time frame shall constitute the immediate cancellation and nullification of this lease.

8. **Insurance:** As additional consideration over and above the rental payments made by "RENTER" herein, "RENTER" shall, at its own expense, comply with all of the following insurance requirements of the O Cinema. It is agreed by the parties that the "RENTER" shall not occupy the premises until proof of the following insurance coverage has been furnished to the O Cinema.

- a) Commercial general liability insurance, on an occurrence form, in the amount of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury, death, property damage, and personal injury. The policy must include coverage for premises operations, blanket contractual liability (to cover indemnification section), products, completed operations and independent contractors. If the user's activities involve the sale of alcohol, then liquor liability in the same amount is also required. These policies must name the O Cinema and City of Miami Beach, as additional insureds.
- d) It is understood and agreed that all coverage's provided by the "RENTER" are primary to any insurance or self-insurance program the O Cinema has for this Facility and the "RENTER" and their insurance shall have no right of recovery or subrogation against the O Cinema.
- e) All policies must be issued by companies assigned a rating of A:X or better, per Best's Key Rating Guide, latest edition.
- g) Evidence of the required insurance policies must be provided to O Cinema by submission of an original certificate of insurance (proof of additionally insured certificate) thirty (30) days prior to the commencement of the lease period.
- h) Alternate coverage to satisfy these requirements is subject to prior approval of the O Cinema.

9. **Administrative Charges:** In the event any check, bank draft or negotiable instrument given for any money payment hereunder shall be dishonored at any time, for any reason whatsoever not attributable to O Cinema, O Cinema shall be entitled, in addition to any other remedy that may be available to make an administrative charge of Twenty (\$20.00) Dollars for each such check.

10. **Miscellaneous:**

- (a) All legal proceedings arising from this lease shall be in the courts situated in Miami-Dade County, Florida.
- (b) If any section, subsection, clause or provision of this Lease is held invalid, the remainder shall not be affected by such invalidity.
- (c) This Lease may only be altered, changed or amended, by an instrument in writing signed by both parties hereto.
- (d) No waiver of any covenant or condition of this Lease by either party shall be deemed to imply or constitute a further waiver of the same covenant or condition or any other covenant or condition of this Lease.
- (e) This Lease contains and embodies the entire agreement of the parties hereto and no representations, inducements or agreements oral or otherwise, between the parties not contained and embodied herein shall be of any force and effect.
- (f) In any conflict between the Lease and other written provisions the lease shall prevail.
- (h) All federal, state, and local laws and/or regulations related to copyright, trademarks, etc. must be complied with by "RENTER". Further, "RENTER" agrees to save and completely hold harmless O Cinema, and to pay all costs related to any violation of the above.

14 Other Terms and Conditions: Any and all other terms of conditions shall be made by way of an addendum to this lease. Said addendum must be signed and executed by both parties in order to be valid.

Date:

By: _____
Signature
Co-Director, "O Cinema"

Date:

By: _____
Signature

Print Name - "RENTER"

Complete RENTER information:

Name: _____

Address: _____

Email: _____

City _____ State _____ Zip Code: _____

EXHIBIT "D"
CITY OF MIAMI BEACH OWNED PROPERTY INCLUDED IN THE AGREEMENT

GM Office

Deck and chair
1 File cabinet
1 tall cabinet with Box office safe, and Misc. office supplies
1 shelve unite with ADA Infrareds hearing units
1 Fax Machine (No City Labels, Purchased by Byron Theatre)
1 Dell Computer and Monitor and mouse # 31253 CMB
Telephone

Copy Room

1 HP Laser jet printer (No Labels, Purchased by Byron Theatre)
1 Canon Image Class D320 Printer (No Labels, Purchased by Byron Theatre)

Crew Room

1 Microwave
1 Coffee maker

TD Office

Desk and Chair
1 Small shelve unit
1 Dell Computer and Monitor and mouse # 31254 CMB
Misc. office supplies.
Telephone

Storage Room

Misc. Theatrical Hardware Tape, Lamps, Gel and so on.
1 Upright Piano
1 Piano Bench

Concession Area

1 Freezer unit
1 Price board

Stage

Floor: Wenger Versalite staging, black painted cover
Stage height: 2'- 8"
Front of Stage to 1st Row of Seats: 6'
Truss height: 18'- 8" (bottom)
Stage Depth: PL to BS Wall: 29' Total stage depth: 30'
Proscenium: 34' wide x 13'- 6" tall
Wings: Distance from on stage leg to off stage wall: 8'- 6"
Approx. 6' between legs
Soft goods: 1 grand curtain with valance
4 per side black velour legs (Legs: 6'- 3" width)
5 borders (5' height)
Upstage Black traveler
white seamless cyclorama.

Rigging:

Line Item @(DS Edge) Note

-
- 1 Grand teaser 1' - 4" Dark Blue colored
 - 2 Main Curtain 2' - 0" Dark Blue, manual SL pull
 - 3 Electric 1 3' - 9" Motorized (Trim 17'- 9")
 - 4 Black Border 7' - 0" Dead Hung (Trim 13'- 7")
 - 5 Electric 2 9' - 7" Motorized (Trim 17'- 9")
 - 6 Black Border 13' - 5" Dead Hung (Trim 13'- 7")
 - 7 Electric 3 16' - 3" Motorized (Trim 17'- 9")
 - 8 Black Border 19' - 6" Dead Hung (Trim 13'- 7")
 - 9 Electric 4 23' - 7" Motorized (Trim 17'- 9") DEAD HUNG AT THIS TIME
 - 10 Black Border 25' - 9" Dead Hung (Trim 13'- 7")
 - 11 Black Scrim 26' - 11" Dead Hung
 - 12 Electric 5 28' - 6" Motorized (Trim 17'- 9") DEAD HUNG AT THIS TIME
 - 13 Black traveler 28' - 6" control SL
 - 14 Cyclorama 30' - 0" Dead Hung

Lighting Inventory:

Altman 6X16	1K FEL 1KW 7.5 x 7.5	15	
Altman 6X12	EHG	750 7.5 x 7.5	19
Altman 6X9	EHG	750 7.5 x 7.5	22
ETC Source Four Parnel	HPL 575 7.50 x 7.50	20	
Altman Sky Cyc 3 cell	HTP 1000 16 x 15.5	6	

Accessories:

- 8 - 50lb boom bases
- 8 - 10' pipes for booms
- 18 - 25lb. Sandbags, saddle-style
- 40 - 25' SPG cable
- 40 - 10' SPG cable
- 12 - 5' SPG cable
- 24 - 12" side arms
- 40 - SPG Twofers
- 8 - Pattern holders

Control:

- 96 - 2.4k ETC SensorPlus dimmer/circuits
- ETC Express 250 (version 1.02) w/ color monitor

Sound inventory:**House Speakers:**

Left and Right mains (JBL MP215 15" 2 WAY SPEAKER)

Stage Monitors:

2 Community 12" Two Way Wedges

Control:

- Mackie SR24-4-2 VLZ Pro Mixing Console
- 1 DENON DNC 615 CD Player

Accessories:

Selection of microphones including SM 57 SM 58
24 channel snake (SR)
Porta-Com headset system, sound/light/ SL, SR

Cinema equipment

Screen dimensions

14 X 30

35mm equipment

Projector

(1)Kinton PK60D

Three lens turret for 1.66/1.85/2.35 Scope format.* ???

(1)Strong Highlight II Type 72000-01

Watts????

(1) Christie Autowind 3 three deck film platter & makeup table.

Audio rack

1 – Smart TCX624A Time-phase correction Electronic Crossover

1 Dolby CP65D Processor .

Speakers

3 – Stage speakers set up for 3 way reproduction; Low to mid range via Smart crossover and mid to high range via passive crossover (1.2KHZ).

Bass = Dual 15 inch woofer. Mid = 12 inch horn loaded.

High = horn loaded.

JBL 4639

Horn – JBL 125-3000-01

1 –Subwoofer,dual 15 inch. JBL 4642A.

(1) 35mm film splicer

Video Projectors

1 Proxima Desktop 9290

OTHER

4	Easels
18	Stanchions
11	Red Ropes
4	Curved Serving Tables
3	6ft. Tables
2	8ft. Tables
2	6ft. Ladders
2	10ft Ladders
1	10ft. Wooden Ladder
1	14ft. A Ladder with Extension

1	Geni Lift	S/N: 0900023421
1	Carpet Cleaner	
2	Vacuums	(934) (943)
3	Sets of pickups and brooms	
2	Dust Mops	
1	Cement Push Broom	
2	Push Brooms	
1	Mop bucket and ringer	
2	Mops	
1	Large Trash Bin on wheels	
82	Red Chairs	
12	Black Chairs	
2	Locker Units (3 each)	
1	Small Fridge	
1	Maintenance Cart	
	Assorted Cleaning supplies and paint.	

EXHIBIT "E"
BYRON CARLYLE THEATER
CITY OF MIAMI BEACH
FACILITY REPAIRS LIST

1. The building exterior pressure cleaned and water proofed.
2. Roof leaks were repaired.
3. The HVAC system inspected and serviced including the replacement of;
 - a. 23 grilles.
 - b. 46 collars
 - c. 150' of flex duct
 - d. 23 volume dampers.
4. All Electrical components tested and replacements are listed below:
 - e. 1. 32 emergency lights replaced
 - f. 2. 7 exit/emergency combos replaced
 - g. 3. 23 exit lights replaced
 - h. 4. 20 MR 15 lamps replaced
 - i. 5. 6 MR11 Lamps replaced
 - j. 6. 17 500W lamps replaced in the theater
 - k. 7. 4 new 1'x4' fluorescent fixtures in men's restroom
 - l. 8. 3 new floats and wiring to repair lift station
5. Plumbing inspection and repair of lift station and replaced:
 - m. 2 flush valves
 - n. 2 faucets
 - o. 4 float switches for the lift station.
6. The hallway painted as well as 10 different office spaces and three restrooms.
7. Replacement of ceiling tiles and ceiling grids.
8. All doors were inspected and adjusted for proper operation.
9. A comprehensive pest control system was completed.
10. Fire Alarm Systems Annual Test & Inspection
11. Fire Alarm Systems deficiencies were correction
12. Fire Sprinklers and Backflow Preventer Annual Test & Inspection
13. Fire Sprinkler and Backflow Preventer Deficiencies Correction
14. Pressure Washing, Housekeeping and Floor Care

EXHIBIT "F"
O CINEMA RATE SCHEDULE

O CINEMA MIAMI BEACH

Venue Rental Rates

RATES	Commercial	Non-Profit	Individual Artist
Three Hour Rental <i>(Mon thru Thurs)</i>	\$1,250.00	\$1,000.00	\$750.00
Three Hour Rental <i>(Fri, Sat or Sun)</i>	\$1,875.00	\$1,500.00	\$1,125.00
Weekly <i>(Fri thru Sun or Fri thru Thurs)</i>	\$8,000.00	\$6,000.00	Same as commercial

Additional Costs

O Cinema staff will be on hand to assist in general operation of the facility. However, should you need additional help with the execution of your event or require the use of 35mm projection the following fees will apply:

Additional Staff @ \$25.00 per hour per employee.

Use of 35mm projector & projectionist - \$250.00 per evening

Food & Beverage

O Cinema provides on-site concession items for purchase by your guests. Our concession will always remain open for guests at all events. However, in addition to our items available for purchase you may choose to bring in your own food or beverage to provide to your guests. If so, the cost for doing so is \$300.00 per three-hour period. O Cinema can also create custom concession packages for your guest.

Cleaning Fee

\$150.00 cleaning fee is required per rental/per night

Box Office

O Cinema staff can run the box office sales for your event during your rental for the following rate per three-hour period.

\$100.00

EXHIBIT "G"
COCA-COLA PRODUCT LIST

August 22, 2018

**Summary of notable adjustments to Management Agreement
Between O Cinema and City of Miami Beach**

- Specific benchmarks shall be adjusted to: (4.2.4)
 - Serve an anticipated 15,000-25,000 visitors per year
 - Eliminate increased attendance requirements year over year
 - Eliminate specific amount of marketing budget required to be spent.
- The City will be responsible for all maintenance, repair, and pest control of the Facility (5.3.5, Exhibit B, and throughout agreement) except day-to-day cleaning and general simple upkeep, which is the responsibility of O Cinema.
- The City will cover the expense of all utilities. (20.1)
- O Cinema will no longer be required to pay a Base Use Fee / Percentage Base Use Fee / Minimum Guaranteed Base Use Fee (6.1)
- O Cinema will no longer be required to pay Capital Fund Contributions. (6.2.4)
- Reporting by O Cinema to the City is limited to the following, all to be submitted by June 1 each year: (12.1.3)
 - Annual Management Plan
 - May include any pertinent updates on any changes to the status of alcohol licenses or permits
 - Programmatic Plan
 - Operating Budget for the current year
 - Operating Revenues and Operating Expenses of the previous year
 - Capital Repair issues and requests, made by O Cinema, to the City (may be included with annual report, and also can be submitted throughout the year)
 - Booking report shall be annual rather than quarterly. (5.2)
- City shall support O Cinema by providing an Annual Operating Subsidy of not less than \$78,000 per year. (9.1)
- City shall notify O Cinema two business days in advance, if equipment in building is going to be adjusted, moved, or removed. (11.4)
- O Cinema has an updated mailing address and also requests notifications by email to two co-directors. (32)

- In the case that there are non-alcoholic beverage products that Coca-Cola does not produce or offer, O Cinema is permitted to source and sell alternative brands and products, as long as there is not a Coca-Cola option of that product type available. (41)