

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING, IN PART, THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE, AT ITS JULY 13, 2018 MEETING, AND APPROVING, IN SUBSTANTIAL FORM, AMENDMENT NO. 1 TO THE MANAGEMENT AGREEMENT WITH LIVING ARTS TRUST, INC. (D/B/A O CINEMA); SAID AMENDMENT BECOMING EFFECTIVE, RETROACTIVELY, AS OF OCTOBER 1, 2018 AND PROVIDING FOR THE EXERCISE OF THE FIRST TWO (2) ONE-YEAR RENEWAL OPTIONS, COMMENCING NOVEMBER 1, 2019 AND ENDING OCTOBER 31, 2021; AND MODIFYING OTHER VARIOUS TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE FINAL AMENDMENT.

WHEREAS, on October 24, 2014, pursuant to City Commission Resolution No. 2014-28729, the City and O Cinema entered into a Management Agreement (the Agreement), for the management and operation of a portion of the City-owned Byron Carlyle Theater (Facility), located at 500 71st Street, Miami Beach, Florida 33141; and

WHEREAS, the Initial Term of the Agreement ends October 31, 2019. The City has the option to renew with single or multi-year terms, which Renewal Term(s) are not to exceed a total of five (5) years, by providing O Cinema with not less than 365 days written notice prior to the expiration date of the Initial Term, such date being October 31, 2018; and

WHEREAS, pursuant to the Agreement, O Cinema is responsible for all maintenance, minor repairs, janitorial expenses, and 72% of the costs of utilities at the Theater (representing O Cinema's proportionate share of the building), while the City is responsible for all major repairs, capital improvements, and 28% of the charges for utilities at the Theater; and

WHEREAS, as compensation for use of the Facility, the Agreement requires O Cinema to pay minimum annual rent of \$5,000, or 10% of certain revenues, whichever is greater (Use Fee) and, in addition to rent, O Cinema contributes \$2,500 annually to defray the City's cost for major repairs and capital improvements to the Facility (Capital Contribution); and

WHEREAS, O Cinema has requested that the City modify several terms in the Agreement, including: an extension of the term of the Agreement by two years; an annual City subsidy to O Cinema of \$100,000 (to be reduced by the cost for utilities); the assumption by the City of responsibility for utility costs, and maintenance and repairs of HVAC, Septic, Sewer, safety systems, roof, and elevator systems at the Facility; waiver of the Use Fee and the Capital Contribution; and modification of certain performance benchmarks; and

WHEREAS, on July 13, 2018, the Finance and Citywide Projects Committee (FCWPC) recommended that the City fund the additional amounts necessary to accommodate O Cinema's requests related to its Agreement, provided that O Cinema expand its programming for seniors, family, and children and add a City board representative; and

WHEREAS, on July 20, 2018, the FCWPC recommended the City Commission appropriate \$150,000 from the FY 18/19 general fund in order to fulfill O Cinema's request for a subsidy and to cover the cost of the City assuming maintenance and repairs. This was approved by the City Commission on September 26th as an enhancement in the FY 2018/19 budget; and

WHEREAS, O Cinema proposed incorporating certain public benefits into an amendment of the Agreement: "Celebrate Miami Beach," an annual event highlighting Miami Beach's culture and history, offered at no charge to the community; 200 free tickets for senior citizens offered no less than once per quarter and/or four times per year; 200 free tickets for youth offered no less than once per quarter and/or four times per year; 100 free and/or discounted tickets offered annually through the Miami-Dade County Golden Ticket program for seniors ages 62 and over, and the Miami-Dade County Culture Shock \$5 ticket program for youth ages 13-22 to select films and events; and increased discount for 'Miami Beach Resident Day' from 10% to 20% at least 12 times per year, for a minimum of one film screening per month; and

WHEREAS, in addition to the enhanced public benefits, O Cinema has requested that the amendment eliminate the existing requirement for a marketing expenditure of \$50,000 annually, and in return, O Cinema has proposed an annual benchmark of 20,000 attendees, and the submission by O Cinema of an annual report of marketing efforts completed and proposed for that year; and

WHEREAS, at the September 14, 2018 FCWPC meeting, the Committee discussed the planned public solicitation for redevelopment of the Byron Carlyle Theater and the condition of the facility; and

WHEREAS, the City's Property Management Department indicated it was in the process of obtaining costs of required repairs to render the facility code compliant and to conduct an indoor air quality test, as the FCWPC stated this was a priority for the well-being of the visitors to the facility and O Cinema staff; and

WHEREAS, subsequent to the September 14, 2018 FCWPC meeting, the Building Director reviewed the Electrical and Structural 50 Year Re-certification reports and determined that the deficiencies identified must begin to be remedied right away in order to maintain compliance if the building is to remain occupied; and

WHEREAS, the costs associated with the remedial work are estimated at approximately \$2.44 million; and

WHEREAS, Amendment No. 1 to the Agreement, incorporated herein by reference and attached to the City Commission Memorandum accompanying this Resolution in substantial form, provides, in material part, for: 1) the exercise of the first two (2) one-year renewal options; 2) the payment to O Cinema of an annual subsidy, in the gross amount of \$100,000, less a minimum utility payment (estimated to be \$22,000 per year), resulting in a net annual subsidy of \$78,000, payable quarterly, in the amount of \$19,500, subject to an annual true up payment to the City for utility usage exceeding O Cinema's proportionate share (72%) of the utility expenses for each Contract Year, and contingent upon funding approval during the City's budgetary process for each fiscal year; 3) the assumption, by the City, of the responsibility for maintenance and repairs of the facility, at an estimated cost of approximately \$50,000 annually, contingent upon funding approval during the City's budgetary process for each fiscal year; 4) the waiver of the use fee, having a value of approximately \$12,000 per year; 5) the waiver of the annual capital contribution of \$2,500; and 6) the modification of the annual benchmark requirements, incorporating a requirement to provide programming for youth and seniors.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept, in part, the recommendation of the Finance and Citywide Projects Committee, at its July 13, 2018 meeting, and approve, in substantial form, Amendment No. 1 to the Management Agreement with Living Arts Trust, Inc. (d/b/a O Cinema); said Amendment becoming effective, retroactively, as of October 1, 2018 and providing for the exercise of the first two (2) one-year renewal options, commencing November 1, 2019 and ending October 31, 2021; and modifying other various terms and conditions contained in the Agreement; and further authorize the City Manager and City Clerk to execute the final amendment.

PASSED and ADOPTED THIS ___ day of _____ 2018.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 12-5-18

City Attorney *[Signature]* Date