



# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: May 5, 2009

SUBJECT: **DISCUSSION REGARDING A TEMPORARY REVOCABLE AGREEMENT BETWEEN THE CITY AND MYSTERY PARKS ARTS COMPANY INC. (d/b/a SOBE MUSIC INSTITUTE) FOR THE USE OF THE LITTLE STAGE THEATER (LETTER AGREEMENT).**

### ISSUE

Shall the Finance and Citywide Projects Committee recommend in favor of authorizing a Letter Agreement with SoBe Music Institute for use of the Little Stage Theater for a period of three months?

### ANALYSIS

The Little Stage Theater is part of the 21<sup>st</sup> Street Community Center. It is located west of Washington Avenue, east of Convention Center Drive, north of the Miami Beach Convention Center, south of Dade Boulevard on a tract of land along the Collins Canal. On the southeastern portion of the site, along Washington Avenue, is the Parks and Recreation Center, which houses the main offices of the Parks and Recreation Department. The Community Center site is zoned "CCC"- Convention Center District, and is part of the City Center Neighborhood. The Carl Fisher Clubhouse, designed by August (Gus) Geiger, is one of the oldest buildings still standing in the City. It was built in 1916 / 1917, as part of Carl Fisher's private executive golf course. In 1937, the Little Acorn Theater designed by Robert A. Taylor, was added to the site (often referred to as the "Little Stage Theater"). The bandshell was later added to the site in the 1950s. As per Resolution No. 83-17323, adopted on April 20, 1983, and City of Miami Beach Ordinance No. 84-2402, the 21<sup>st</sup> Street Community Center became a designated historic preservation site. The 21<sup>st</sup> Street Community Center includes all the above facilities.

The Little Stage Theater is a 2,295 square foot performing arts facility that includes an assembly area, performing area and restrooms. The facility has been closed and in disrepair, leaving it unusable for the past several years. Improvements to the Little Stage Theater have been discussed as part of the overall master plan for the "campus" that includes the Carl Fisher Clubhouse, old "bandshell" area and plaza area. On December 10, 2008, the Finance and Citywide Projects Committee approved short term improvements to the Little Stage Theater to make the space usable during the pendency of the master plan process. A total of up to \$25,000 was identified for these limited improvements. The improvements were incorporated as a maintenance project with funds from the A&E portion of the comprehensive master plan of the Little Stage Theater. The improvements have been completed and consist of the following: removal of the chairs and stage, addition of a new air conditioning unit, leveling of the floor to concrete, painting of the interior, repair of the windows, replacement of the doors, repair of the building lighting, and repair and retrofitting of the restrooms.

The City had been approached by SMI for the management and use of the adjacent Little Stage Theater for the purpose of conducting education programs (i.e. film workshops, theater/dance programs and arts/acting/music classes & lessons) professional performances (i.e. music concerts, lecture/demonstrations, multidisciplinary & theatrical productions), general events (i.e. community collaborations, fundraising events and student performances), and for such other related use(s) necessary to operate and maintain the program. At its December meeting, the Committee requested SMI's assistance in identifying the repairs to the theater that would make the space usable at this time. SMI has indicated that they would like to use the space as part of their summer programming (as well as regular programming). Additionally, they have planned a fundraiser for the site later this month. Based on these timing issues, the item was placed on the Committee agenda for discussion and direction.

On October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 03-07/08 for use of the Carl Fisher Clubhouse to provide cultural programming for the residents of the City of Miami Beach. The RFP did not include the adjacent Little Stage Theater. On June 25, 2008, the Mayor and City Commission adopted Resolution No. 2008-26835, accepting the recommendation of the City Manager and authorizing the Administration to enter into negotiations with the top ranked proposer. The Administration negotiated a Lease Agreement with SoBe Music Institute (herein after SMI), for an initial term of one (1) year commencing retroactively on September 1, 2008, and ending on August 31, 2009, with an additional one (1) year renewal term, at the City's sole discretion. The SMI currently pays five hundred (\$500.00) dollars as monthly payment to the City for use only of the Carl Fisher Clubhouse. SMI retains all revenue charged to participants, but uses a sliding-scale fee structure.

### **PROPOSED USE TERMS**

The attached proposed Letter Agreement is submitted for the Committee's consideration. This Letter Agreement will allow SMI to utilize and manage the space for a period of three months to provide sufficient time for further Commission discussion on the long term management and use of the facility (for example, whether to issue an RFP). SMI proposes to allow outside entities to rent the space for rehearsals and/or performances based on a rent schedule to be submitted by SMI and approved by the City in writing. Should a Letter Agreement be considered, staff recommends that the City retain a percent of any gross revenues derived from the rentals. SMI will comply with all insurance requirements of the City. It is agreed by the parties that SMI shall not occupy the Premises until proof of insurance coverage(s) has been furnished to and approved by the City's Risk Manager. SMI will pay the City a monthly use fee of three hundred seventy two (\$372.00) dollars in order to offset the City's operating expenses (i.e. electric, water, sewer and garbage removal costs). This cost is commensurate with what SMI is currently paying in operating expenses at the Carl Fisher Clubhouse.

Additionally, the City's Parks Department would retain a priority use of the space over any outside rental. This is essential as the 21<sup>st</sup> Street Recreation Center has been renovated as the Teen Club, creating space use issues with other programs that use the Center, especially on weekends. At present, the Parks Department's year-long dance program and the summer dance camp have been relocated to Nautilus Middle School. There was discussion between SMI and the dance instructor about the use of the space, which SMI indicated would require the program to become part of SMI. SMI indicated that the dance program would have a comparable fee schedule to the current dance program should it be absorbed by SMI. The co-location of the popular dance program to the Theater, whether or not as part of SMI, merits further discussion. It is also recommended that SMI be required to meet with the Parks Department prior to the beginning of each quarter to review scheduling and availability to the Parks Department for City programming, as may be needed.

**CONCLUSION**

In light of the completion of the temporary repairs approved for the Little Stage Theater, the administration is asking for direction on whether to proceed with a temporary revocable Agreement with SMI, to allow SMI to utilize the space pending further discussion on the longer term management of the facility. Should a temporary revocable agreement with SMI be recommended by the Committee, the Administration recommends that the Finance and Citywide Projects Committee approve the attached Letter Agreement with SMI for the use of the Little Stage Theater for a period of three months. This agreement would extend the sliding-scale fees for participants, and require SMI to submit a proposed fee structure for any third-party rentals.

JMG/HMF/AP/ACV



REAL ESTATE, HOUSING & COMMUNITY DEVELOPMENT  
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May 5, 2009

Dr. Carson Kievman, PhD  
Executive Artistic Director,  
Mystery Park Arts Company, Inc.  
751 Euclid Avenue, #2  
Miami Beach, Florida 33139

**Re: Temporary Revocable Agreement between the City of Miami Beach, Florida (City) and Mystery Park Arts Company, Inc. for Use of the Little Stage Theater (Letter Agreement)**

Dear Dr. Kievman:

The foregoing Letter Agreement shall confirm the understanding between the City and Mystery Park Arts Company, Inc., a not-for-profit Florida corporation, d/b/a SoBe Music Institute (hereinafter SMI).

The City herein grants SMI a temporary revocable license to use a portion of the City-owned building, located at 2100 Washington Avenue and referred to as the Little Stage Theater; said area encompassing approximately two thousand two hundred ninety five (2,295) square feet (as more specifically delineated in Exhibit A and hereinafter referred to as the Premises).

The term of this Agreement shall be for a period of three (3) months, commencing on May 6, 2009, and ending on August 5, 2009.

SMI agrees to use the Premises solely for the purpose of conducting education programs (i.e. film workshops, theater/dance programs, and arts/acting/music classes & lessons); professional performances (i.e. music concerts, lecture/demonstrations, multidisciplinary & theatrical productions); general events (i.e. community collaborations, fundraising events, and student performances); and for such other related use(s) necessary to operate and maintain SMI's programs (as set forth herein). The City acknowledges that, as one of the permitted uses, SMI shall have the right to allow other individuals and/or entities to use the Premises pursuant to the terms and rates specifically delineated in Exhibit B (and hereinafter referred to as the Rental Agreement). Additionally, in the event that SMI allows third parties use of the Premises pursuant to the Rental Agreement, it shall require any and all such users to provide proof of insurance (Comprehensive General Liability in the



minimum amount of \$1,000,000 per occurrence for bodily injury and property damage), which shall name the City of Miami Beach, Florida, as additional insured. Copies of certificates of insurance shall be furnished to the City's Asset Manager prior to such third party use and shall be kept in force at all times during the period of use. SMI shall also require that all third party users of the Premises execute (among the terms of the Rental Agreement) an agreement to indemnify, defend and hold harmless the City.

The Premises shall open daily, from 9:00 AM to Midnight, Monday through Sunday.

SMI hereby understands, agrees and acknowledges that the Premises are a public facility which primary use is for recreational purposes. Therefore, SMI further understands, agrees and acknowledges that notwithstanding the hours and use(s) delineated herein, the City's Parks and Recreation Department shall have priority use of the Premises over third party users.

During the term of this Agreement, SMI shall pay the City a monthly use fee of three hundred seventy two (\$372.00) dollars, in order to offset the City's estimated operating expenses (i.e. electric, water, sewer, and garbage removal costs). The first payment shall be due concurrent with SMI's execution of this Letter Agreement, but in no event later than May 6, 2009. Additionally, SMI agrees to submit to the City fifteen (15%) percent of any gross revenues derived from the use of the Premises. Said payment and a monthly report of gross receipts must be submitted to the Finance Department's Revenue Manager, and received within thirty (30) calendar days from the end of each month during the term herein. The City requires that SMI have a goal that thirty (30%) percent of all participants must be income eligible and a majority must be City residents. Fees shall either be waived or reduced for students who are income eligible.

As further consideration for the City's agreement to allow SMI to utilize the Premises for the above stated purpose, SMI agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, whether at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of SMI, its officials, directors, employees, agents, contractors, third party users, guests, invitees, or person(s) or entity(ies) acting under SMI's direction, control and/or consent, in connection with this Letter Agreement and with SMI's use of the Premises; and, to that extent, the SMI shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

In addition to SMI's obligation to indemnify and hold harmless the City, as set forth in the preceding paragraph, SMI further acknowledges and agrees that it shall be solely responsible for providing any and all measures to secure and safeguard any and all personal property and equipment to be stored on the Premises, as well as provide any and all measures to secure and safeguard any and all City personal items and/or property on the Premises. SMI further acknowledges and agrees that under no circumstances shall the City be in any way responsible or liable, whether to SMI or to any third party(ies), for any stolen, damaged, or destroyed equipment, furniture, records, or other personal property stored within the

Premises.

SMI shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that the SMI shall not occupy the Premises until proof of the following insurance coverage(s) have been furnished to and approved by the City's Risk Manager:

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

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

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

Proof of insurance coverage(s) must be provided by submitting original certificate(s) of insurance. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager at 1700 Convention Center Drive, Miami Beach, Florida, 33139. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

SMI is responsible for and shall promptly pay when due all charges (including, without limitation, all hook-up fees) and impact fees for cable, gas, telephone and other utility services (excluding electric, water, sewer, and garbage removal costs) provided to the Premises. In addition to other rights and remedies hereinafter reserved to the City, upon the failure of SMI to pay for such utility services when due, City may elect to pay same whereby SMI agrees to promptly reimburse the City upon demand. In no event, however, shall the City be liable for an interruption or failure in the supply of any utilities or services to the Premises.

This Letter Agreement may be terminated by either the City or SMI, without cause, upon seven (7) days written notice. 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.

~~This Letter Agreement embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City of Miami Beach.~~

This Letter Agreement shall be enforceable in Miami-Dade County, Florida, and if legal

action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. 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 SMI 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. If the aforestated terms and conditions meet your approval, please acknowledge by executing same in the space provided below. Upon execution by the City, we will forward a fully executed copy to your office for your records.

Sincerely,

Anna Parekh  
Director

AP:rlr

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I have read this Letter Agreement and, fully understanding same, agree to be bound by the terms and conditions contained herein. **Facsimile copies of this Letter Agreement shall be deemed originals.**

**MYSTERY PARK ARTS COMPANY, INC.**

**CITY OF MIAMI BEACH, FLORIDA**

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Carson Kievman, President

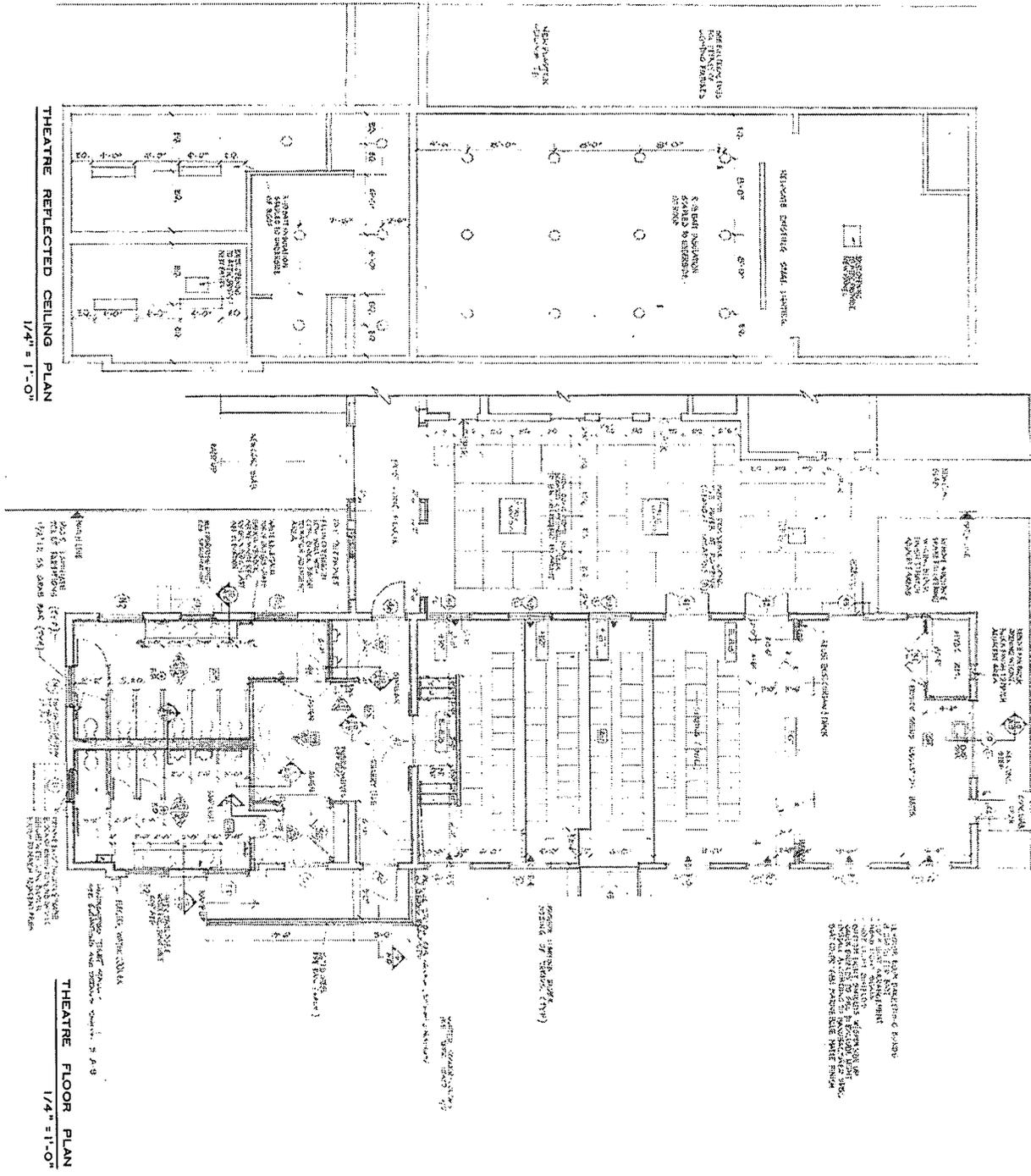
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Jorge M. Gonzalez, City Manager

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Leslie Cooper, Secretary

# EXHIBIT A (the Premises)



**EXHIBIT B**  
(Rental Agreement)

**TO BE SUBMITTED BY SMI**