



# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission  
FROM: City Manager Jorge M. Gonzalez  
DATE: November 3, 2010

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for November 3, 2010, at 3:30 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

### OLD BUSINESS

- 1. Discussion regarding an amendment to a resolution regarding assignment of a police officer to the Police Athletic League (PAL)**

Carlos Noriega – Police Chief

- 2. Discussion regarding parity for future sidewalk café fee increases**

Fred Beckmann – Public Works Director

### NEW BUSINESS

- 3. Discussion regarding a proposed lease agreement with Syanna, LLC, involving approximately 2,216 square feet of City-Owned Property located at 22 Washington Avenue, Miami Beach, Florida, for the purpose of accommodating an outdoor café associated with a restaurant operation located at 816 Commerce Street, which is directly adjacent to and west of the subject City property.**

Anna Parekh – Director of Real Estate Housing and Community Development

- 4. Discussion regarding request from Mystery Parks Arts Company, Inc. for an amendment to its lease agreement**

Anna Parekh – Director of Real Estate Housing and Community Development

- 5. Discussion regarding \$94,000 – Sleepless Night**

Max Sklar – Cultural Arts & Tourism Development Director

**6. Discussion regarding the Miami Beach Visitors and Convention Authority (VCA) FY 2010/11 Budget**

Max Sklar – Cultural Arts & Tourism Development Director

**7. Amend Ameresco agreement to include lighting improvements to three additional parking garages.**

Fred Beckmann – Public Works Director

**Finance and Citywide Projects Committee Meetings for 2010:  
December 16, 2010**

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission  
Management Team

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Finance & Citywide Projects Committee Members

FROM: *Hilda M. Fernandez for*  
Jorge M. Gonzalez, City Manager

DATE: November 3, 2010

SUBJECT: **DISCUSSION REGARDING A PROPOSED AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY AND MYSTERY PARK ARTS COMPANY D/B/A SO BE MUSIC COMPANY, INC., DATED JANUARY 13, 2010, FOR USE OF THE TWO CITY-OWNED BUILDINGS, COMMONLY KNOWN AS THE CARL FISHER CLUBHOUSE AND LITTLE STAGE THEATER, LOCATED AT 2100 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, SAID AMENDMENT PROVIDING FOR AN ABATEMENT OF MONTHLY RENT FOR A PERIOD OF FIVE (5) MONTHS, COMMENCING ON DECEMBER 1, 2010, AND ENDING ON APRIL 30, 2011.**

### **BACKGROUND**

On January 13, 2010, the City Commission approved a Lease Agreement with Mystery Parks Arts Company d/b/a SoBe Music Institute (SoBe Arts) for use of an approximately 3,080 square foot facility known as the Carl Fisher Clubhouse, located within the 21<sup>st</sup> Street Community Center Complex, 2100 Washington Avenue, and the approximately 2,295 square foot building known as the "Little Stage Theater" located in the same complex. The Lease Agreement entitles SoBe to a five-year lease term with renewal options (two additional option terms of two years each) at the City's sole discretion. The Base Rent is \$1.20 per year and the Additional Rent to cover SoBe Arts' proportionate operating expenses is \$10,464 per year, payable in monthly installments of \$872 per month (calculated based on \$500 for the Clubhouse and \$372 for the Little Stage Theater). Pursuant to the Lease Agreement, the City also receives fifteen percent (15%) of any gross revenues derived from third party rentals of the facility.

### **ANALYSIS**

Prior to entering into the current Lease, SoBe Arts occupied the premises under a previous lease which expired on August 31, 2009, but was extended on a month-to-month basis, pending negotiation of the current Lease. Under the previous lease, the Tenant was only paying rent for use of the Carl Fisher Club House, at a rate of \$500 per month. On May 31<sup>st</sup>, 2009, the City Commission approved a letter agreement with SoBe Arts allowing it to utilize the Little Stage Theater to further its educational and programming needs, for an additional \$372 per month in rent to offset its proportionate share of operating expenses. It should be noted that SoBe Arts assisted the City in identifying certain repairs and improvements that were necessary in order to make the space usable, and worked closely with our Property Management Division as those repairs and improvements were made.

Since the repairs extended into its initial lease of the space, SoBe Arts couldn't use the space for approximately five months, but continued to remit the required rent during this period.

SoBe Arts has requested a credit of rent paid for the Little Stage Theater during the renovation of the facility, which resulted in its inability to operate in the leased space during that time and generate the necessary revenue to cover their expenses. A rent abatement or credit would require an amendment to the Lease Agreement.

**RECOMMENDATION**

The Administration has reviewed SoBe Arts' request and is recommending a five (5) month abatement of the Additional Rent due in connection with the Little Stage Theater, whereby, if approved by the Mayor and Commission at the November 17, 2010 City Commission meeting, SoBe Arts will be allowed to reduce its monthly Rent payment by \$372 per month for the months of December 1, 2010 through April 30, 2011. Upon expiration of the five-month rent abatement period, and commencing on May 1, 2011, SoBe Arts will resume its full payment of the required additional rent of \$372 per month, as delineated in the Lease Agreement. SoBe Arts will continue to pay the required rent for use of the Clubhouse; no abatement is recommended as this area has remained in full use.

JMG\HMF\AP\KOB  
Attachments

Cc: Hilda M. Fernandez, Assistant City Manager  
Anna Parekh, Director RHCD

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# LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 13<sup>th</sup> day of JANUARY, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **MYSTERY PARKS ARTS COMPANY, INC.** (d/b/a SoBe Music Institute and/or SoBe Institute of the Arts), a not-for-profit corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises, further referenced in Exhibits 1-A and 1-B, attached hereto, hereinafter referred to as (the "Demised Premises"), located in the City of Miami Beach, at 2100 Washington Avenue, Miami Beach, Florida, 33139, and more fully described as follows:

1-A The approximately 3,080 square foot building within the 21<sup>st</sup> Street Community Center Complex, located at 2100 Washington Avenue, and also known as the "Carl Fisher Clubhouse", as more specifically delineated in Exhibit 1-A, attached hereto and incorporated herein; and

1-B The approximately 2,295 square foot building also within the 21<sup>st</sup> Street Community Center Complex, located at 2100 Washington Avenue, and also known as the "Little Stage Theater", as more specifically delineated in Exhibit 1-B, attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of five (5) years, commencing on the 13 day of JANUARY, 2010 (the "Commencement Date"), and ending on the 12 day of JANUARY, 2015.

2.2 At the expiration of the initial term herein, provided the Tenant is in good standing and free from default hereunder, the City may, at its sole discretion, renew and extend this Agreement for two (2) additional option terms of two (2) years each, under all of the terms and conditions contained herein. In the event the City determines not to extend the Agreement, it shall notify the Tenant of same, in writing, no less than sixty (60) days prior to the end of the initial term, or the first option term, as the case may be.

2.3 **NOTWITHSTANDING SUBSECTIONS 2.1 OR ANY OTHER TERM IN THIS AGREEMENT, THIS AGREEMENT MAY BE TERMINATED BY EITHER PARTY, WITHOUT CAUSE AND FOR CONVENIENCE AT ANY TIME DURING THE TERM (OR ANY RENEWAL TERM, AS THE CASE MAY BE), UPON FURNISHING THIRTY (30) DAYS WRITTEN NOTICE TO THE OTHER PARTY.**

2.4 Upon the Commencement Date of this Agreement, that certain Lease Agreement between the parties, dated September 10, 2008, shall automatically terminate and be without further force or legal effect, without the need of any further action by the parties thereto.

3. Rent.

3.1 Base Rent:

Base Rent for the Demised Premises shall begin to accrue on the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be One Dollar and 20/100 (\$1.20) per year, payable on the Commencement Date and, thereafter, on each first day of every subsequent lease year thereafter.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay to Landlord Additional Rent as provided below:

3.2.1 Operating Expenses:

Tenant shall pay Ten Thousand Four Hundred Sixty Four Dollars and 00/100 (\$10,464.00) per year, payable in **monthly** installments of Eight Hundred Seventy Two Dollars and 00/100 (\$872.00) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, costs of electric, water, and sewer service, costs incurred for gardening and landscaping, painting, janitorial services, (excluding areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the buildings, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees

and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Demised Premises, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all areas, spaces, equipment, as well as certain services within the Demised Premises, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2

Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein.

3.2.3

Insurance:

Intentionally Omitted.

3.3

Sales Taxes:

Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax (es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required here by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4

Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after same shall become due, the City may exercise any and all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4.

Location for Payments.

All rents or other payments due hereunder shall be paid to the Lessor at the following address:

City of Miami Beach  
Finance Department  
Attn: Revenue Manager  
1700 Convention Center Drive, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

Or at such other address as the City may, from time to time, designate in writing.

5. Parking.

Tenant shall be entitled to the use of four (4) designated parking spaces in the north loading dock area of the Convention Center, except during major events in the Convention Center as determined by Global Spectrum (the City's managing agent for the Convention Center), including, but not limited to, the Miami Beach Boat Show, the Auto Show and Art Basel, plus any other day(s) the City Manager or his authorized representative may designate, with no less than thirty (30) days written notice.

In the event Tenant elects to have valet parking for events at the Demised Premises, it shall be coordinated exclusively through the City's valet parking provider.

6. Security Deposit.

Intentionally Omitted.

7. Use and Possession of Demised Premises

7.1 The Demised Premises shall only be used by the Tenant solely for the purpose(s) of conducting educational programs, film workshops, theater/dance programs, and arts/acting/music classes and lessons; such as professional performances, music concerts, arts lectures/demonstrations and multidisciplinary and theatrical productions; arts-related general events such as community collaborations, fundraising events, and student performances.

7.2 Tenant shall make the Demised Premises available for a period equal to at least twenty percent (20%) of Tenant's available use days per lease year, for rental to third party users for programming substantially similar and consistent with Tenant's approved uses, as set forth in the preceding paragraph. Within ninety (90) days of the Commencement Date, the Tenant shall provide to the City Manager or his designee, for review and approval, rental rates and policies and procedures for third party users of the Premises; which, upon approval by the City Manager or his designee, shall be incorporated as Exhibit 7.1 to this Agreement. Tenant further agrees that any and all third party users shall be required to provide proof of Comprehensive General Liability insurance in the minimum amount of One Million Dollars (\$1,000,000), per occurrence, for bodily injury and property damage, which insurance shall name Tenant and the City of Miami Beach, Florida, as additional insureds. Copies of certificates of insurance shall be furnished to the City's Risk Manager prior to any third party use and shall be

kept in force at all times during the period of use. Tenant shall also require that all third party users of the Demised Premises agree (whether through the terms of the rental agreement between Tenant and third party users, or by execution of a separate written instrument) to indemnify, defend, and hold the City of Miami Beach harmless.

In addition to the Base Rent and Additional Rent, as defined in Section 3 herein, Tenant agrees to submit to the City fifteen (15%) percent of any monthly gross revenues derived from third party rentals of the Demised Premises. Said payment, along with a monthly report of gross receipts, shall 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 Demised Premises shall be open for operation seven (7) days a week, with normal hours of operation being from Monday through Sunday, from 10 A.M. to 7:00 P.M. Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.3 It is understood and agreed that the Demised Premises shall be used by the Tenant only for the purpose(s)/use(s) set forth in Section 7.1, and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

7.4 Tenant shall also maintain its not-for-profit status in full force and effect, and in good standing, throughout the Term herein.

7.5 Tenant's Performance Measures/Benchmarks and Public Benefits.  
The following delineates Tenant's performance measures/benchmarks and public benefits, that reflect its goals and ensures effective use of the Demised Premises:

- 1) Arts education for youth group classes will be subsidized on a sliding scale using poverty measures. Measures include:

- a) a minimum benchmark of providing partial or full scholarships to at least 30% of youth participants, with an annual objective of providing partial or full scholarships to 50% of youth participants;
  - b) Miami Beach residents shall be given the opportunity to pre-register one day before open enrollment classes;
  - c) If enrollment reaches capacity, Miami Beach resident applicants shall be wait-listed for preferential placement, in the event of any openings;
  - d) Tenant shall provide free quarterly programming for the Parks and Recreation Department's Teen Club;
  - e) annual funding application(s) to the Miami-Dade County Youth Enrichment Program and/or comparable funding source, and solicitation of private donations for purposes of youth arts education.
- 2) A variety of arts performances/events will be offered free of charge or with heavily subsidized general admission tickets (substantially lower than reserved seating). Measures include:
- a) a goal of providing at least 10 free concerts or other performance events annually, including, but not limited to, an "Open Fridays" event, providing free weekly music events to the public;
  - b) a goal of providing at least 25% of tickets at substantially reduced costs, on average, for paid events;
  - c) Miami Beach residents shall have first choice of discounted seating through exclusive pre-sale offerings;
  - d) annual funding application(s) to the Miami-Dade County, City of Miami Beach, State of Florida, and/or NEA cultural arts programs, and solicitation of private donations for purposes of arts performance events.
- 3) Within ninety (90) days following the Commencement Date, Tenant shall submit an operational and capital fundraising report, defining its fundraising goals for the Lease Year, to include potential private and grant-funded opportunities. Tenant shall update the report annually, within ninety (90) days of the end of the previous Lease Year, to reflect grant monies received during the previous Lease Year and goals for the upcoming year.

- 4) Upon no less than fifteen (15) days prior written notice to Tenant, the City shall have the right to use the Demised Premises, or any part thereof, no less than eight (8) times per year, for the purpose of providing City-approved or sponsored public, recreational, cultural, and/or other programs and/or events, as may be deemed appropriate by the City Manager, in his/her sole and reasonable discretion, and without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City.

## 8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.
- 8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.
- 8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

- 9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.
- 9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.
- 9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

- 10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:
- 10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.
- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- 10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including

without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). 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.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1<sup>st</sup> of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Commission, which consent, if given at all, shall be at the City's sole and absolute discretion.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Demised Premises, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises). The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 Tenant Responsibilities for Utilities.

Tenant is solely 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 any other utility services provided to the Demised Premises (excluding electric, water, sewer, and garbage removal costs which shall be the responsibility of the City and which pursuant to Section 3.2.1, shall be

paid for by the Tenant as Operating Expenses). In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services when due, City may elect to pay same, whereby Tenant agrees to promptly reimburse the City upon demand. In no event, however, shall the City be liable, whether to Tenant and/or third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.

Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of

the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

- 17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

- 18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement (including without limitation, the City's percentage of gross revenues from third party rentals as set forth in Section 7.1), or any installment thereof, is not paid promptly when and where due, within fifteen (15) days of the due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; (or such longer period of time as may be acceptable and approved in writing by the City Manager, at his/her sole discretion);
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his/her sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more

than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;

- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.
- 18.1.10 Tenant fails to maintain its not-for-profit status in current and good standing, as required pursuant to Section 7.3 herein.

19. Rights on Default.

19.1 Rights on Default:

In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

- 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
- 19.1.2 Declare the entire amount of the Base Rent, Additional Rent and any other amounts which would become due and payable during the remainder of the Term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days from the due date. In addition, there will be a late charge of Fifty Dollars (\$50.00) for any payments submitted after the grace period.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.
- 19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2

Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3

Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies at law, including the right to sue for and collect damages, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1

Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2

If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any officer, employee, agent, contractor, invitee, guest, assignee, sub-tenant (which may include, but not be limited to, third party leases), or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any officer, employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any officer, employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of the Tenant.

22. Termination for Convenience.

Tenant acknowledges that the City may develop a schedule of capital improvements for the Demised Premises. In the event that the City is required to close the Demised Premises for the purpose of undertaking such improvements, then the parties agree that that the Lease Agreement shall be terminated for convenience, without cause and without penalty to either party. Such termination shall become effective upon one hundred and twenty (120) days prior written notice to Tenant.

22.1 In the event of termination by City of the Agreement pursuant to this Subsection, Tenant herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business, or damages for interruption of services or relocation costs).

22.2 In the event of termination by City of the Agreement pursuant to this Subsection, Tenant further acknowledges and agrees that the City shall have no duty or other obligation to Tenant to transfer, relocate and/or find an alternate premises for the Tenant.

23. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

24. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

25. Damage to the Demised Premises.

25.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenable, and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

25.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the

tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

25.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

26. Quiet Enjoyment.

Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

27. Waiver.

27.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

27.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

27.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

28. Notices.

The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:

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

With copy to:

Director  
City of Miami Beach  
Office of Real Estate, Housing & Community Development  
1700 Convention Center Drive  
Miami Beach, Florida 33139

TENANT:

**Mystery Parks Arts Company, Inc.**  
**751 Euclid Avenue, Suite 2**  
**Miami Beach, Florida 33139**

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

29. Entire and Binding Agreement.

This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

30. Provisions Severable.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

31. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

32. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

33. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's 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 Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum

amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 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 Section 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 Florida Statutes, Section 768.28.

34. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

35. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

36. Venue:

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH**

**RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

38. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

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

ATTEST:

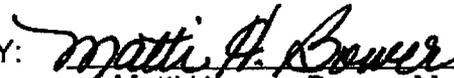
CITY OF MIAMI BEACH

BY:



Robert Parcher, City Clerk

BY:



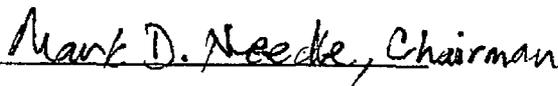
Matti Herrera Bower, Mayor

ATTEST:

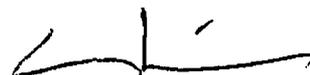
MYSTERY PARK ARTS  
COMPANY, INC.

BY:

  
Signature/Secretary

  
Mark D. Needle, Chairman

BY:



Carson Kievman, President

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
CITY ATTORNEY

1-8-10  
DATE



# MIAMIBEACH

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

2009-27069  
C7H-5/13/09

REAL ESTATE, HOUSING & COMMUNITY DEVELOPMENT  
Tel: 305.673.7193, Fax: 305.673.7033

May 13, 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 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 and seventeen (17) days, commencing on May 14, 2009, and ending on August 31, 2009.

SMI agrees to use the Premises solely for the purpose of conducting educational programs, film workshops, theater/dance programs, and arts/acting/music classes & lessons; such as professional performances, music concerts, arts lectures/demonstrations and multidisciplinary & theatrical productions; arts-related general events such as community collaborations, fundraising events, and student performances; and for such other arts-related use(s) as necessary to operate and maintain SMI's programs (as previously set forth).

The City acknowledges that, as one of the permitted uses, SMI shall have the right to allow third parties to use the Premises, which shall be pursuant to the terms and rates

specifically delineated in "Exhibit B" (and hereinafter referred to as the Rental Agreement). In the event that SMI allows third parties use of the Premises, and as part of or in addition to the Rental Agreement, it shall require any and all such users to provide proof of Comprehensive General Liability insurance in the minimum amount of \$1,000,000, per occurrence, for bodily injury and property damage, which insurance shall name SMI and the City of Miami Beach, Florida, as additional insureds. Copies of certificates of insurance shall be furnished to the City's Asset Manager prior to any 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 agree (whether through the terms of the Rental Agreement or by execution of a separate agreement) to indemnify, defend, and hold the City of Miami Beach harmless.

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

SMI hereby understands, agrees and acknowledges that the Premises are a public facility which primary use is for cultural programming purposes, specifically art-related education programs and performances. Accordingly, SMI 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. SMI shall meet with the City's Parks Department prior to the beginning of each calendar quarter to review scheduling availability for City use(s).

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 monthly gross revenues derived from the use of the Premises under the Rental Agreement. Said payment, along with a monthly report of gross receipts, shall 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.

As separate and additional consideration for the City's agreement to allow SMI to utilize the Premises for the above stated purpose(s), and in addition to any insurance and/or indemnification requirements set forth herein for third party users of the Premises, 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 (and in addition to any insurance and/or indemnification requirements set forth herein for third party users of the Premises), SMI agrees to 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 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 (This coverage shall be in addition to any insurance coverage required herein of third party users of the Premises).

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 the event of failure of SMI to pay for such utility services when due, the City may elect (but not be obligated) 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; provided further, however, that in the event of a termination by the City, the City shall have no further liability to SMI including, without limitation, any liability to SMI for any direct and/or indirect costs that may have been incurred by SMI as a result of this Letter Agreement and/or SMI's use of the Premises (and including, without limitation, direct and/or indirect costs, start-up costs, costs for capital improvements, furnishings, fixtures, equipment, labor costs, lost profits, and/or loss in future and/or potential revenues). 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 aforesaid 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,



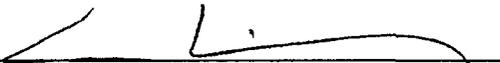
Anna Parekh  
Director

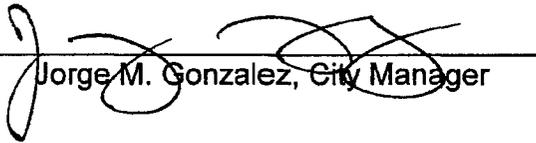
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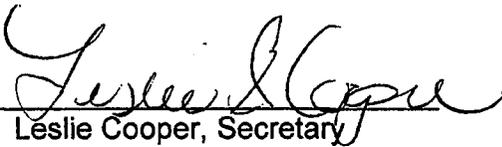
I have read this Letter Agreement and, fully understanding same, agree to be bound by the terms and conditions contained herein. I further warrant and represent to the City that I am authorized to execute this Letter Agreement on behalf of SMI which shall bind SMI to the terms and conditions set forth herein. **Facsimile copies of this Letter Agreement shall be deemed originals.**

**MYSTERY PARK ARTS COMPANY, INC.**

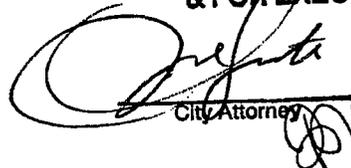
**CITY OF MIAMI BEACH, FLORIDA**

  
Carson Kievman, President

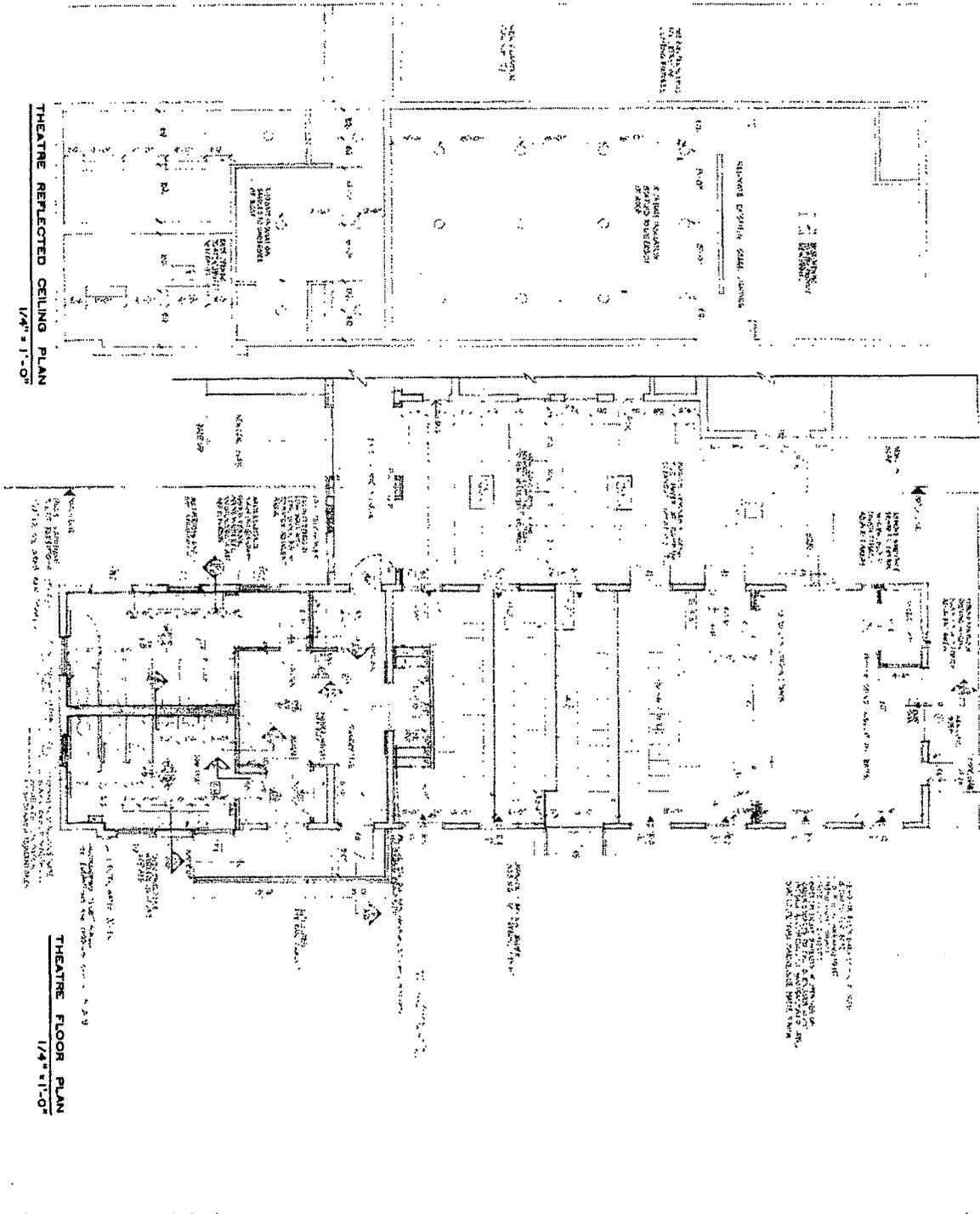
  
Jorge M. Gonzalez, City Manager

  
Leslie Cooper, Secretary

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
City Attorney  5/6/09  
Date

# EXHIBIT A (the Premises)



SHEET <b>A-4</b>	DATE DEC. 22, 1954	<b>21ST STREET COMMUNITY CENTER</b> 1700 CONVENT CENTER DRIVE, MIAMI BEACH, FLORIDA 33128	<b>ZYSCOVICH &amp; GRAFTON ARCHITECTS</b> 55 S.W. 11TH ST. MIAMI, FL. 305-256-3828 <b>WOLPERT ALVAREZ TARACIO &amp; ASSOC.</b> ENGINEERING CONSULTANTS 300-488-8474 <b>WALLACE ROBERTS &amp; TODD</b> LANDSCAPE CONSULTANTS 305-871-4808
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**EXHIBIT B**  
**(Rental Agreement)**

**TO BE SUBMITTED BY SMI**

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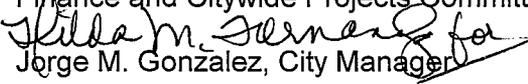


# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM:   
Jorge M. Gonzalez, City Manager

DATE: November 3, 2010

SUBJECT: **A DISCUSSION REGARDING THE CULTURAL ARTS COUNCIL (CAC)  
FUNDING OF \$94,000 IN MARKETING FUNDS FOR SLEEPLESS NIGHT.**

### BACKGROUND

Last year the City presented the second edition of Sleepless Night, the all-night, free, citywide celebration of the arts, presented by the Department of Tourism and Cultural Development (TCD) and Cultural Arts Council (CAC.) The event was produced in-house by TCD staff in response to the 2005 and 2007 Community Satisfaction Surveys in which residents expressed their desire for more free cultural activities. The third edition of Sleepless Night is scheduled for November 5, 2011.

The idea for Sleepless Night grew from our desire to offset any impact from the opening of the Arsht Center in downtown Miami. Prior to the Center's opening, our Jackie Gleason Theater of the Performing Arts was the county's venue of choice for Broadway road shows, opera, ballet, and major classical music concerts. Most of those bookings and their accompanying economic impact were lost with the opening of the Arsht Center, which resulted in the City pursuing other options for the facility. As you know, Live Nation was competitively selected to manage the Gleason.

Sleepless Night was created by the CAC (which counts cultural marketing as one of its primary concerns) to restore confidence in the city's commitment to the arts and to strengthen our reputation as the region's prime cultural tourism destination. The highly successful international *Nuit Blanche* model (which first appeared in Paris in 2002) was chosen because it offered the opportunity to reach all of the diverse populations of South Florida, and to create community by removing the barriers that often disenfranchise some segments of the population. Additionally, *Nuit Blanche* had been triumphant at addressing the ultimate issue facing the arts today, audience-building, by engaging the public with a wide range of cultural presentations woven into the fabric of a social event. Similar events are held in other major international cities, including Madrid, Rome, Paris and Montreal, to name a few.

### Sleepless Night 2007

Sleepless Night 2007 provided guaranteed audiences for artists and arts institutions (many of them local), allowing them to expand their reach and capacities; introduced tens of thousands of people to new artists and art forms; and, very

importantly, provided over 100,000 customers to Miami Beach businesses. The event created a tremendous amount of civic pride, a shared sense of community, and positive, constructive opportunities for youth. It also created a dream destination for the cultural tourist, who for the price of airfare and a hotel room, could choose from over 100 free, first-class performances and exhibitions. Businesses reported increased activity. The Sleepless Night 2007 event was funded by a combination of grants (Miami Beach VCA); CAC funds; City marketing funds; Greater Miami Convention and Visitors Bureau funds; and corporate sponsors (Bustelo, Springbac Drink, etc.). The total event budget was \$396,000, and a priority was placed on marketing the event to attract visitors (local, national and international).

### **Sleepless Night 2009**

The 2009 event once again exceeded expectations. Approximately 130,000 residents and visitors (30,000 more than we had in 2007, according to City estimates) enjoyed 150 free cultural offerings at 80 locations spread throughout the city and the 13-hour night. The event provided direct employment to 400 artists and technicians. All of the city's cultural institutions, theaters, galleries and arts organizations, along with many restaurants, hotels, shops and clubs, collaborated with us to present outstanding local, national and international artists. An increased number of free shuttle buses with onboard arts programming once again connected the four main zones of activity (North Beach, Collins Park, Lincoln Road/City Center and Ocean Drive) and remote parking locations for the duration of the event. Included were free museum admissions, indoor and outdoor art and sound installations and performances, architectural tours, theater, dance, music, slam poetry, film, video, fashion, circus acts, comedy and more. All of the indoor events, which included children's shows, full-length plays in Spanish and in English, music and dance concerts and comedy, played to capacity crowds and received standing ovations. An increased number of outdoor events assured availability of quality arts experiences for all. The programming was designed to appeal to every audience, from pre-schoolers to seniors; because it covered the entire spectrum of arts and entertainment, it appealed to all ages, ethnicities, and socioeconomic and education levels.

The 2009 event had a budget of \$685,000. Funding was provided through grants (from the National Endowment for the Arts, the Knight Foundation, the State of Florida, and the Miami-Dade tourist Development Council); the GMCVB; the Miami Beach VCA; City marketing funds and corporate sponsors (Audi, Red Bull, Classical South Florida Radio, Bustelo and Ocean Drive Association). Once again, funds were budgeted to market the event locally, nationally and internationally. In addition to the 30% increase in total attendance, Sleepless Night 2009 garnered nearly a billion positive media impressions for Miami Beach and enabled many Miami Beach businesses to achieve record-breaking sales figures for the night.

### **EVENT IMPACT**

Sleepless Night was intended to provide an economic impact to the City in the normally slow first week of November. According to the study "Arts & Economic

Prosperity: The Economic Impact of Nonprofit Arts Organizations and Their Audiences in the City of Miami Beach," commissioned by the Miami-Dade Department of Cultural Affairs and the City's Cultural Affairs Program and conducted by Americans for the Arts, "All nonprofit arts attendees" ["all" referring to residents and non-residents]" spend an average of \$46.96 per person (not including the cost of admission.)" Thus, roughly \$6,104,000 in dollars spent can be directly attributed to the 130,000 Sleepless Night attendees.

Further, the first Sleepless Night (2007) fueled a 12.4% increase in hotel occupancy over the same day in the previous year, as well as a 4% increase in Average Daily Rate and a 16.9% increase in Revenue per Available Room. In 2009 our host hotel, the Catalina Hotel and Beach Club, and its sister properties in the South Beach Hotel Group, were completely sold out; the Catalina alone counted 1,053 room nights for the event. Occupancy rates citywide were down 1.7% Friday, November 6 and 2% Saturday, November 7 (compared to the same weekend in 2008). However, the previous weekend (October 30 and 31) occupancy was down 12.7% Friday and 9.9% Saturday, and the weekend following Sleepless Night (November 13 and 14) occupancy was down 4.9% Friday and 11.4% Saturday. These lower occupancy rates, attributable to the sluggish economy as well as to the huge increase in numbers of available rooms, nevertheless show measurable improvement - as much as 9.4% - due to Sleepless Night.

The event's strong publicity value is also measureable. Even using the lowest national industry valuation of 23 cents per impression, Sleepless Night's 919,153,810 media impressions garnered the city \$211,405,376 in marketing value to promote Miami Beach as a cultural destination. The \$123,611 actually spent on marketing the event bought \$1,369,424 in dollar value advertising, including \$989,075 in 30-second television spots on Comcast and Atlantic Broadband channels.

### **FUNDING**

As previously noted, the vast majority of funding for Sleepless Night is from outside sources. The 2009 event was one of only 31 projects (out of more than a thousand applications) funded in the Knight Foundation's highly competitive and prestigious Knight Arts Challenge. Knight, looking for arts projects "with the transformative power to create community," awarded Sleepless Night 2009 a \$150,000 matching grant. Audi of America quickly jumped on board as title sponsor, and was joined by the National Endowment for the Arts, the State of Florida, Department of State, Division of Cultural Affairs and the Florida Arts Council, Miami-Dade County Cultural Affairs Division, the Ocean Drive Association, Classical South Florida radio, the Miami Beach VCA, the GMCVB, Red Bull, Comcast, Whole Foods Market, Café Bustelo and others. Sleepless Night 2011 is one of forty finalists (again, out of more than a thousand applications) in the current Knight Arts Challenge, whose winners will be announced later this month.

The state of the economy in 2008 and 2010 resulted in a decision to present the event every other year. As the event continues to be coordinated by City staff, this

also provides additional time for planning.

The CAC's 2010/2011 budget, approved by the Mayor and Commission at the September 20, 2010 budget meeting, contains \$94,000 to be used towards the marketing budget for Sleepless Night 2011. This figure is less than 12% of the total working project budget of \$792,625. Staff continues its efforts to identify grants and sponsors, and the event budget will be adjusted according to available funds. However, marketing the event remains a necessity to be able to attract sponsors who rely on the media impressions in addition to actual on-site participants, to justify their sponsorship investment. An implementable marketing plan is also required by various grant funding sources.

JMG/HMF/MAS/gf

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM:

*Hilda M. Hernandez for*  
Jorge M. Gonzalez, City Manager

DATE: November 3, 2010

SUBJECT: **A DISCUSSION REGARDING THE MIAMI BEACH VISITOR AND CONVENTION AUTHORITY (VCA).**

### BACKGROUND

The Miami Beach Visitor and Convention Authority (MBVCA) was created and exists pursuant to Chapter 67-930 of the Laws of Florida and Sections 102-246 through, and including 102-254 of the Code of the City of Miami Beach. According to Sec. 102-251, the MBVCA is to take "all necessary and proper action to promote the tourist industry for the city, including but not restricted to causing expert studies to be made, promotional programs, the recommendations and development of tourist attractions and facilities within the city, and to carry out programs of information, special events, convention sales and marketing, advertising designed to attract tourists, visitors and other interested persons." The MBVCA also has the duty of making all necessary rules and regulations for the efficient operations of the authority.

The MBVCA is a seven-member authority. Each member is appointed by the City of Miami Beach Commission, with the goal of encouraging, developing and promoting the image of Miami Beach locally, nationally and internationally as a vibrant community and tourist destination. To this end, the MBVCA strategically focuses its funding investments in a balanced manner, fostering outstanding existing programs, stimulating new activities, and encouraging partnerships. The MBVCA is committed to a careful, long-term plan for allocation of resources to build the uniqueness of Miami Beach as one of the world's greatest communities and tourism destinations.

A budget revenue projection is provided to the MBVCA by the City of Miami Beach Budget Office annually based on 5% of the 2% Resort Tax, calculated on 96% of the collections. On an annual basis the MBVCA must provide the City with a budget, on City forms, based on this projection as outlined in Sec. 102-252, before October 1<sup>st</sup>.

The MBVCA usually budgets funding below the City's projection, as the collection of funds can differ substantially from projection, such as the result of unanticipated problems like an airline strike, terrorism, economic issues or storms. In 2008, revenue collections came in \$48,000 under estimated projection, and in 2001 the revenue collection was down approximately \$300,000 from projection. When and if there are unallocated funds remaining at the end of the budget year, those funds are either rolled over and allocated in the next budget year, or retained in MBVCA's accounts for future reserves, endowment funding or to address any funding reductions in future years. By statute, the MBVCA can only allocate funds one year at a time.

The MBVCA is required by law to maintain reserve bank accounts in approved public depositories, with sufficient reserves to cover two years of funding, which it does. Reserves are maintained to pay grant recipients (contracted) for the previous program funding cycle, and to ensure that sufficient funds can be invested to stimulate tourism in the future.

The MBVCA submits an annual Program of Work as required by Sec. 102-281, and is audited annually by the City of Miami Beach as required in Sec. 102-281. MBVCA audits have been positive for the past 10 years.

### **FY 2010/2011 TOURISM ADVANCEMENT PROGRAM (TAP)**

The MBVCA strategically focuses its funding opportunities to maximize tourism and brand impact for the CMB by primarily focusing on events and projects that generate significant publicity, brand building and generate resort taxes for Miami Beach. The Board pays significant attention to marquee events.

The MBVCA implements a multi-level review process that includes a mandatory pre-proposal conference regarding MBVCA policies and procedures and it's TAP. During the interview, MBVCA administration advises the potential applicant as to the eligibility and appropriateness of the proposed project and defines the grant category best suited. If eligible, the applicant will meet with administration to discuss the process in further detail, including required attachments and meeting dates.

The MBVCA guidelines and application process place additional emphasis on defining and measuring the economic impact of the event and the added value of marketing, publicity and television origination. Questions concerning the economic impact of the program, including requiring an explanation of various aspects of the marketing plans, and how the numbers of hotel room nights were calculated, are also included. The events or organization's name, publicity plan, community and residential involvement and/or contribution are also included in the grant applications. Standardized recap sheets have been developed to give each applicant a score that rates potential success. Using this tool, the MBVCA can better evaluate the recipient's long-term commitment to the community, commitment to brand enhancement, value to tourism, and economic impact. The application requires contract confirmation for hotel room blocks, and letters of media confirmation to be attached to the completed application; that data must be confirmed before funding is awarded.

The MBVCA also has a policy in place to formally fund recurring projects on a declining scale. The declining scale encourages recurring events to recruit corporate and private sponsorship and, therefore, not solely rely on MBVCA funds as a means of sustaining the event. The awards establish funding caps for recurring events that are diminished based on the maximum request for the specific grant category.

Annually the MBVCA reviews and refines grant guidelines with respect to efficacy and effectiveness. In FY 2010/11, the MBVCA implemented several changes to the existing declining scale in the "Special Projects Recurring" and "Special Events Recurring" categories in order to better support and fund grant recipients, allowing for more competitive funding. After review, it was determined that room nights are generated equally by non-profit and for-profit organizations.

The following is the declining scale:

Year 1	Initial Grant Award
Year 2	No more than 90% of Eligible Request
Year 3	No more than 80% of Eligible Request
Year 4	No more than 70% of Eligible Request
Year 5	New Cycle Begins

Tourism Advancement Program funds are awarded in nine categories, including: Cultural Tourism, Development Opportunities, Film Incentive, Initiatives, Major One Time Special Event, Special Events Recurring, Special Projects, Special Projects Recurring and Tourism Partnerships.

The MBVCA has developed pre-eligibility criteria for grants for these categories. The criteria allows staff to internally determine eligibility and the appropriate grant category. Applicants must meet two of three of the criteria stated below:

Grant Category	Hotel Room Nights	Impressions	Viewership
Cultural Tourism	200	500,000	1,000,000
Development Opportunities	75	200,000	1,000,000
Film Incentive*	250	N/A	N/A
Initiatives**	N/A	N/A	N/A
Major One Time Special Event	250	500,000	1,000,000
Special Events Recurring	250	500,000	1,000,000
Special Projects	2,500	250,000,000	15,000,000
Special Projects Recurring	2,500	250,000,000	15,000,000
Tourism Partnerships	200	500,000	5,000 (visitors/attendees/participants)

\* Other specific eligibility criteria in place for this program

\*\* Initiatives are specifically targeted towards organizations chosen by the MBVCA to carry out the designated initiative

The MBVCA has budgeted **\$1,463,000** for FY 2010/2011 for its Tourism Advancement Program. This grant funding reflects an approximate **14% increase** or, a total of **\$202,400** from FY 2009/2010. The MBVCA rolls over funds from the previous fiscal year to cover the increase in fund allocation, due to a revised declining scale in the TAP program. This new scale has a smaller annual percentage decrease.

The Special Projects Recurring category is budgeted at **\$486,400**. Anticipated applicants include Art Basel Miami Beach, Orange Bowl Marketing Campaign and its team hotels, South Beach Comedy Festival, ING Miami Marathon and Half Marathon & Tropical 5k, the South Beach Wine and Food Festival, the Miami International Film Festival, and FUNKSHION Fashion Week Miami Beach.

These events, recruited and sustained by the MBMBVCA are all marquee events and annually fill the City's hotel rooms during these events

In FY 2009/2010, the Major One Time Special Event Category was budgeted at **\$215,000**. In FY 2010/2011 the category is funded at \$240,000, the result of an increase in the number of new events expected to apply for MBVCA funding. The MBVCA works tirelessly to stimulate and recruit new events and is willing and prepared to fund valuable tourism and brand related events. In fact, the MBVCA works with all partners, city leadership and media to solicit appropriate new projects.

New events include the 2010 National Minority Supplier Development Council Conference & Business Opportunity Fair, Design Miami, NASCAR Championship Drive, and the Taste of Peru: 1st Peruvian Gastronomic Fair, and the Miami Beach International Fashion Week.

The Special Events Recurring Category has been calculated at **\$456,000** for FY 2010/2011 based on the established declining scale and on the number of applicants anticipated to return.

The Tourism Partnerships Category is budgeted at **\$62,600**, for FY 2010/2011 currently including applicants at the maximum request cap of \$30,000. Three applications are anticipated.

- ***Miami Beach Guest Program:*** The Miami Beach Guest Program encompasses the **Miami Beach Visitors Center, MiamiBeachGuest.com, and the Miami Beach IN Card program.** The Visitors Center currently responds to thousands of inquiries each year regarding vacation planning, tours, complaint resolution and much more, and are now open Sundays through Saturday and operate from 10:00 am to 4:00 pm. Services currently offered by the Center include providing over 25 daily tours, creating and organizing customized group/convention tours, providing over 100 brochures, maps, guides, newspaper, and travel related publications, providing the MBVC On The Go Program to selected conferences at the Convention Center and Convention hotels, distributing of the Go Miami Card and the Miami Visitors Pass, assisting in public transportation information, assisting new Miami Beach residents, and mailing of tourist and relocation packages throughout the world. In addition to the physical location, the Miami Beach Guest website offers the same types of services as the Visitors Center, virtually. It also encompasses the Miami Beach IN Card and a destination weddings link to assist couples with planning their weddings in Miami Beach. In 2009/2010, the Visitors Center assisted with reserving **201 hotel room nights** in Miami Beach. Miami Beach Guest was expected to respond to **over 100,000 visitor inquiries** through a combination of walk-ins, telephone inquiries, emails, faxes, and website hits. The Miami Beach IN Card program has distributed **over 200,000 cards** in its first year. The Miami Beach Guest Program generated a total of **13,098,000 media impressions** as a result.
- ***The Miami Beach Rowing Center at Shane WATERSPORTS:*** The rowing series promotes North Beach to national and international universities as a desirable watersports destination. The Center attracted a combination of over **6,000 participants and spectators**, between October 1, 2009 and September 30, 2010. As a result, **4,290 hotel room nights** were generated in Miami Beach. The project included a major rowing race, winter and spring training camps, regattas, summer camps, and year-round programs for youth and adults in the community. They also offer the rental of their **400-person conference space**. Utilization of the rowing center reflects the commitment of the VCA to attract events that generate national and international acclaim. In addition, the Center generated **1,560,000 impressions** through a combination of promotional efforts and media coverage.
- ***Tourist Hospitality Center:*** The purpose of the Tourist Hospitality Center on Lincoln Road is to provide direct visitor assistance. A wide range of visitor information and assistance is offered. In 2010/2011, the Center's will revamp its website in order to become an effective online marketing tool that will attract visitors to Miami Beach. The Center, in its fifteenth year of operations, continues to address thousands of tourist inquiries while showcasing Miami Beach's highest ranking attractions and promoting hotels, restaurants other available services. 150,000 visitors are expected to frequent the Center each year.

The Development Opportunities category is budgeted at **\$48,000 for FY 2010/2011**. The maximum award for one applicant is \$30,000. Two applications are anticipated. Examples include Ability Explosion 2010 and the MiMo Conference.

### **DESTINATION MARKETING**

The Destination Marketing allocation reflects a **21% decrease** from FY 2009/2010. This allocation includes the MBVCA portion of production costs for the Miami Spice Restaurant Month Program banners. The banners add a festive atmosphere and help publicize the 8<sup>th</sup> Annual Miami Spice Restaurant Month and position the City of Miami Beach as a destination with excellent restaurants.

### **INITIATIVES**

The MBVCA expects to support new initiatives in FY 2010/2011 at the request of partners and community and industry leaders. Strategic plans, goals and initiatives are developed through consultation, the result of ongoing communications. Some of these initiatives include SHOP banners, Art Deco exhibit in MIA, 25/7 Marketing campaign, Architectural Essay contest for Miami Beach students and support staff for the Mayor's Blue Ribbon Task Force on Tourism.

The MBVCA is also taking a leadership role in encouraging events of mass appeal to take place in Miami Beach. Strategic goals and initiatives will be developed through consultation with partners and continued outreach.

### **PROJECTED CASH FLOW RESERVE**

The MBVCA has budgeted **\$2,000** in the cash flow reserve for FY 2010/2011. The **\$2,000** cash flow reserve reflects a **60% decrease** from FY 2009/2010. The City of Miami Beach allots resort tax payments to the MBVCA a month after its collection; therefore, the MBVCA has built in a **\$2,000** projected cash flow reserve to its budget to ensure that all grants awarded will have the necessary funds to be reimbursed upon proper request and documentation.

### **FY 2010/2011 ADMINISTRATION AND OVERHEAD**

The MBVCA's administrative and overhead costs are budgeted at **\$247,000** for the FY 2010/2011. The **\$247,000** administration and overhead allocation reflects an approximate **8% increase** from FY 2009/2010. The **8% increase** is attributed to completed office relocation, necessary equipment purchases and upgrades, web and internet, the hiring of a part-time intern from the Academy of Hospitality and Tourism from Miami Beach Senior High and staffing for the Mayor's Blue Ribbon Task Force on Tourism, increases in medical insurance and pension contribution. This figure is also inclusive of the maintenance of the office space and equipment. Staff salary is static for the past two years.

### **FY 2009/2010 ROLLOVER**

A total of **\$175,000** has been rolled over from FY 2009/2010 into the FY 2010/2011 MBVCA budget. This rollover of funds is primarily from the Destination Marketing and Research and Development categories where the total monies allocated were not used during the FY 2009/2010. These funds also include grants that were either not awarded and/or were rescinded for noncompliance.

# Grant by Category

	Recipient	Event/Project	Grant Request	Actual Funding
Cultural Tourism	Inffinito Art & Cultural Foundation	14 <sup>th</sup> Brazilian Film Festival of Miami	\$30,000	\$26,000
	Miami Gay & Lesbian Film Festival	12 <sup>th</sup> Annual Miami Gay & Lesbian Film Festival	\$30,000	\$22,500
	Miami Hispanic Ballet	XV International Ballet Festival of Miami	\$30,000	\$24,000
	Women's International Film & Arts Festival, Inc.	5 <sup>th</sup> Annual Women's International Film & Arts Festival	\$30,000	\$ - 0 -
Development Opportunities	Miami Beach Community Development Corp. c/o Market Company	Collins Park Green and Monthly Art Walk	\$30,000	\$15,000
	Exclusive Sports Marketing	Miami Beach Halloween Half Marathon	\$30,000	\$ - 0 -
	City of Miami Beach c/o the Bass Museum	Egyptian Gallery at the Bass Museum of Art	\$30,000	\$30,000
	Vinamericas, Inc.	Florida International Wine Challenge	\$22,750	\$10,000
Major One Time Event	Audi AG c/o SiINC Agency	Audi Art Pavilion Miami Beach	\$50,000	\$35,000
	City of Miami Beach	Sleepless Night 2009	\$50,000	\$50,000
	Dade Community Foundation c/o Miami Beach Gay Pride	Miami Beach Gay Pride	\$50,000	\$45,000
Special Events Recurring	Aqua Foundation for Women	Aqua Girl 2010	\$35,000	\$30,000
	arteamericas, Inc.	arteamericas	\$27,500	\$ - 0 -
	Community AIDS Resource/ Care Resource	25 <sup>th</sup> Anniversary White Party – Muscle Beach	\$30,000	\$24,300
	Exclusive Sports Marketing		\$42,500	\$35,000
	Film Life, Inc.	Miami Beach September Sports Series	\$37,500	\$37,000
		Film Life's 14 <sup>th</sup> Annual American Black Film Festival	\$37,500	\$35,000
	Michael Epstein Sports Productions, Inc.	Nautica South Beach Triathlon	\$40,000	\$40,000
	National Gay and Lesbian Task Force Foundation	Winter Party Festival	\$45,000	\$40,000
	National Marine Manufacturers Association	Miami International Boat Show & Strictly Sail	\$27,500	\$27,000
	Salsa Enterprises, Inc. d/b/a Salsa Lovers	Miami Salsa Congress	\$45,000	\$42,000
	Swimwear Association of Florida	SwimShow 2011	\$17,500	\$15,000
	The Polo Life LLC	Miami Beach Polo World Cup	\$42,500	\$40,000
	US Road Sports of Florida, LLC	13.1 Marathon Miami Beach	\$37,500	\$35,000
		25 <sup>th</sup> Annual Winter Music Conference		
Special Projects Recurring	Winter Music Conference			
	3B Productions	Funkshion-Fashion Week Miami Beach	\$75,000	\$45,000
	Comedy Festival Productions, LLC	The South Beach Comedy Festival	\$55,000	\$45,000
	Florida International University	2010 Food Network South Beach Wine & Food Festival	\$80,000	\$70,000
	MCH Swiss Exhibition, Ltd	Art Basel Miami Beach	\$55,000	\$55,000
	Miami Dade College Foundation	2010 Miami International Film Festival	\$80,000	\$25,000
	Orange Bowl Committee	FedEx Orange Bowl and Ancillary Events	\$70,000	\$50,000
US Road Sports of Florida 2009-2010, LLC.	ING Miami Marathon and Half Marathon and Tropical 5K	\$55,000	\$50,000	
Tourism Partnerships	Miami Beach Chamber of Commerce	Miami Beach Guest Services	\$30,000	\$30,000
	Miami Beach Latin Chamber of Commerce	Tourist Hospitality Center	\$18,250	\$ - 0 -
	Miami Beach Watersports Center	Miami Beach Watersports Center	\$30,000	\$30,000
Destination Marketing	Miami Beach Visitor and Convention Authority	Mayor's Blue Ribbon Task Force on Tourism	\$20,000	\$20,000
	Miami Beach Chamber of Commerce	Miami Beach Guest Program Website Redevelopment	\$34,000	\$34,000
	Greater Miami Convention & Visitors Bureau	Miami Spice Banners	\$15,000	\$15,000
Initiatives	UNIDAD of Miami Beach	The Customer and You – Certificate Program in Service	\$30,000	\$24,000

# Impact - Overall

Category	Recipient	Event/Project	Viewership	Impressions	Hotel Room Nights
Cultural Tourism	Inffinito Art & Cultural Foundation	14 <sup>th</sup> Brazilian Film Festival of Miami	N/A	253,518,936	317
	Miami Gay & Lesbian Film Festival	12 <sup>th</sup> Annual Miami Gay & Lesbian Film Festival	2,100,000	7,671,600	42
	Miami Hispanic Ballet	XV International Ballet Festival of Miami	N/A	7,800,000	300
Development Opportunities	Miami Beach Community Development Corp. c/o The Market Company	Collins Park Green Market and Monthly Art Walk	264	371,084	N/A
	City of Miami Beach c/o the Bass Museum	Egyptian Gallery at the Bass Museum of Art	N/A	6,500,000	315
	Vinamericas, Inc	Florida International Wine Challenge	N/A	19,588,387	79
Major One Time Event	Audi AG c/o SiINC Agency	Audi Art Pavilion Miami Beach	N/A	422,000,000	2,052
	City of Miami Beach	Sleepless Night 2009	N/A	919,153,810	1,053
	Dade Community Foundation c/o Miami Beach Gay Pride	Miami Beach Gay Pride	N/A	26,136,448	271
Special Events Recurring	Aqua Foundation for Women	Aqua Girl 2010	N/A	1,171,000	509
	Community AIDS Resource, Inc. d/b/a Care Resource	25 <sup>th</sup> Anniversary White Party - Muscle Beach	N/A	75,994,800	1,160
	Exclusive Sports Marketing	Miami Beach September Sports Series	6,200,000,000	951,040,000	415
	Film Life, Inc.	Film Life's 14 <sup>th</sup> Annual American Black Film Festival	N/A	328,116,916	302
	Michael Epstein Sports Production, Inc.	Nautica South Beach Triathlon	83,000,000	230,000,000	178
	National Gay and Lesbian Task Force	Winter Party Festival	N/A	34,982,195	724
	National Marine Manufacturers Association	Miami International Boat Show & Strictly Sail	N/A	265,782,606	674
	Salsa Enterprises, Inc. d/b/a Salsa Lovers	Miami Salsa Congress	N/A	2,174,900	800
	Swimwear Association of Florida	SwimShow 2011	N/A	51,968,595	2,571
	The Polo Life, LLC	Miami Beach Polo World Cup	N/A	92,058,770	329
US Road Sports of Florida, LLC	13.1 Marathon Miami Beach	N/A	18,304,540	336	
Winter Music Conference, Inc.	25 <sup>th</sup> Annual Winter Music Conference	N/A	17,000,000,000	1,696	
Special Projects Recurring	3B Productions	Funkshion: Fashion Week Miami Beach	400,000,000	49,886,700	248
	Comedy Festival Productions LLC	The South Beach Comedy Festival	437,760,000	1,316,530,267	266
	Florida International University	2010 Network South Beach Wine and Food Festival	96,000,000	2,709,409,119	1,656
	Miami Dade College	2010 Miami International Film Festival	147,000,000	1,241,875,395	1,990
	MCH Swiss Exhibition LTD	Art Basel Miami Beach 2009	N/A	506,096,723	4,328
	Orange Bowl Committee	2009-2010 FedEx Orange Bowl and Ancillary Events	45,148	398,081,284	4,053
US Road Sports of Florida, LLC	ING Miami Marathon and Half Marathon and Tropical 5K	17,400,000	864,088,110	7,606	
Tourism Partnerships	Miami Beach Chamber of Commerce	Miami Beach Guest Program Website Redevelopment	N/A	13,098,000	201
	Miami Beach Watersports Center Inc	Miami Beach Watersports Center	N/A	1,560,000	4,290

	BUDGET FY 07/08	BUDGET FY 08/09	BUDGET FY 09/10	BUDGET FY 10/11	VARIANCE Budget FY 09/10 - Budget FY 10/11
<b>REVENUES</b>					
Rollover from prior year	\$ 150,000.00	\$ 90,000.00	\$ 100,000.00	\$ 175,000.00	\$ 75,000.00
Resort Tax Revenue	\$ 1,450,416.00	\$ 1,527,216.00	\$ 1,496,640.00	\$ 1,599,511.00	\$ 102,871.00
<b>Total Revenues</b>	<b>\$ 1,600,416.00</b>	<b>\$ 1,617,216.00</b>	<b>\$ 1,596,640.00</b>	<b>\$ 1,774,511.00</b>	<b>\$ 177,871.00</b>
<b>EXPENDITURES</b>					
<b>ADMINISTRATION</b>					
Administration & Benefits	\$ 179,500.00	\$ 186,680.00	\$ 186,680.00	\$ 200,000.00	\$ 13,320.00
Operating Expenses	\$ 57,000.00	\$ 39,900.00	\$ 40,000.00	\$ 45,000.00	\$ 5,000.00
Capital	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00	\$ 2,000.00	\$ -
<b>Total Administration</b>	<b>\$ 241,500.00</b>	<b>\$ 231,580.00</b>	<b>\$ 228,680.00</b>	<b>\$ 247,000.00</b>	<b>\$ 18,320.00</b>
<b>GRANTS PROGRAM</b>					
<b>Tourism Advancement Program</b>					
Tourism Partnerships	\$ 85,000.00	\$ 72,250.00	\$ 70,550.00	\$ 62,600.00	\$ (7,950.00)
Cultural Tourism	\$ 45,000.00	\$ 60,000.00	\$ 42,500.00	\$ 30,000.00	\$ (12,500.00)
Major Events	\$ 85,000.00	\$ 90,000.00	\$ 215,000.00	\$ 240,000.00	\$ 25,000.00
Special Events Recurring	\$ 320,000.00	\$ 307,800.00	\$ 444,850.00	\$ 456,000.00	\$ 11,150.00
Development Opportunities	\$ 50,000.00	\$ 36,000.00	\$ 25,500.00	\$ 48,000.00	\$ 22,500.00
Special Projects	\$ 135,000.00	\$ 184,000.00	\$ 85,000.00	\$ 80,000.00	\$ (5,000.00)
Special Projects Recurring	\$ 458,916.00	\$ 457,200.00	\$ 377,200.00	\$ 486,400.00	\$ 109,200.00
Festival Season/Film Incentive	\$ 50,000.00	\$ 48,386.00	\$ -	\$ 60,000.00	\$ 60,000.00
<b>Total Tourism Adv. Program</b>	<b>\$ 1,228,916.00</b>	<b>\$ 1,255,636.00</b>	<b>\$ 1,260,600.00</b>	<b>\$ 1,463,000.00</b>	<b>\$ 202,400.00</b>
<b>Other</b>					
Destination Marketing	\$ 50,000.00	\$ 50,000.00	\$ 42,360.00	\$ 33,511.00	\$ (8,849.00)
R & D	\$ 10,000.00	\$ 10,000.00	\$ 60,000.00	\$ 5,000.00	\$ (55,000.00)
Initiatives	\$ 60,000.00	\$ 60,000.00	\$ -	\$ 24,000.00	\$ 24,000.00
Projected Cash Flow Reserve	\$ 10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 2,000.00	\$ (3,000.00)
<b>Total Other</b>	<b>\$ 130,000.00</b>	<b>\$ 130,000.00</b>	<b>\$ 107,360.00</b>	<b>\$ 64,511.00</b>	<b>\$ (42,849.00)</b>
<b>TOTAL</b>	<b>\$ 1,600,416.00</b>	<b>\$ 1,617,216.00</b>	<b>\$ 1,596,640.00</b>	<b>\$ 1,774,511.00</b>	<b>\$ 177,871.00</b>

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