

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2015-06**

A RESOLUTION AUTHORIZING ENTERING INTO A SECOND AMENDMENT TO AMENDED AND RESTATED AGREEMENT WITH ACTORS' PLAYHOUSE PRODUCTIONS, INC., WITH REGARD TO CITY OWNED PROPERTY LOCATED AT 280 MIRACLE MILE, CORAL GABLES, FLORIDA.

**WHEREAS**, per Ordinance No. 2011-215, the City and Actors' Playhouse Productions, Inc. (the "Tenant") entered into an Amended and Restated Agreement dated September 13, 2011, with regard to City property located at 280 Miracle Mile, Coral Gables, FL, which was amended on February 5, 2013 per Resolution 2013-18 (Collectively the "Agreement"); and pursuant to Section 6.2 of the Agreement, Tenant is solely responsible for the installation, operation and maintenance expenses of the Theater, including, without limitation, the cost of providing repairs for standard electric, plumbing and HVAC systems, chiller and air handler units; and

**WHEREAS**, the 67 year old theater is a City-owned asset that is designated a National Historic Landmark. Due to the age of the property it requires significant maintenance and repairs; and

**WHEREAS**, per Ordinance No. 2014-29, the City Commission approved the Fiscal Year 2014-2015 City Budget which included Fifty Thousand and 00/100 (\$50,000) per annum to be used toward maintenance and repairs expenses for standard electric, plumbing, HVAC systems, chiller and air handler units; and

**WHEREAS**, during the budget workshop on July 23, 2014, it was stated that an amendment to the Agreement would be presented to Commission for the City to take over responsibility for standard electric, plumbing, and the HVAC as an ongoing obligation of the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

**SECTION 2.** That the Second Amendment to the Amended and Restated Agreement (the "Amendment") is hereby approved in substantially the form attached hereto as Exhibit "A."

**SECTION 3.** That the City Commission does hereby authorize the City Manager to execute the Amendment with such modifications to the form attached hereto as Exhibit "A" as may be approved by the City Manager and City Attorney that are necessary to implement the intent of this resolution.

**SECTION 4.** That this resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-EIGHTH DAY OF JANUARY, A.D., 2015.

(Moved: Kerdyk / Seconded: Lago)  
(Yeas: Kerdyk, Lago, Quesada, Keon, Cason)  
(Unanimous; 5-0 Vote)  
(Agenda Item: C-1)

APPROVED:

  
JIM CASON  
MAYOR

ATTEST:

  
WALTER J. FOEMAN  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
CRAIG E. LEEN  
CITY ATTORNEY

**SECOND AMENDMENT**  
**TO**  
**AMENDED AND RESTATED AGREEMENT**

This Second Amendment (“Amendment”) to the Amended and Restated Agreement entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF CORAL GABLES, a Florida municipal corporation (“City” or “Landlord”) and ACTORS’ PLAYHOUSE PRODUCTIONS, INC., a Florida not-for-profit corporation (“Tenant”).

**WITNESSETH:**

WHEREAS, the Landlord and Tenant entered into an Amended and Restated Agreement executed as of September 13, 2011, as amended by an Amendment dated February 5, 2013 (collectively the “Lease”), concerning the real property known as the Miracle Theater located at 280 Miracle Mile, Coral Gables, FL and known (the “Property”); and

WHEREAS, pursuant to Section 6.2 of the Lease, Tenant shall be solely responsible for the installation, operation and maintenance expenses of the Theater, including, without limitation, the cost of providing repairs for standard electric, plumbing and HVAC systems, chiller and air handler units; and

WHEREAS, the Property is on the National Registry of Historic Places and requires significant maintenance and repairs expenses each year, making it difficult for a non-profit to cover operating and repairs and maintenance to this City asset within its budget; and

WHEREAS, on September 23, 2014, the City Commission approved Fifty Thousand and 00/100 Dollars (\$50,000.00), as part of the City’s 2014-2015 Budget, and discussed amending the Agreement to have the City assume the maintenance and repairs expenses for standard electric, plumbing and HVAC systems, chiller and air handler units; and

WHEREAS, the parties hereto wish to amend the Amended and Restated Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct, and are hereby incorporated by reference.
2. Any capitalized term not otherwise defined herein, shall have the meaning ascribed thereto in the Lease.

3. The City will provide the Tenant with repairs and maintenance coverage for standard electric, plumbing, HVAC systems, including repair and replacement of chiller and air handler units. The cost shall include labor, parts and replacement equipment. The City will not be responsible for stage lighting or equipment or elevators.

4. All other terms, covenants, and conditions of the Lease not otherwise amended by these presents are hereby confirmed and ratified.

5. This Second Amendment to the Amended and Restated Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

6.

**IN WHEREOF**, the parties have executed this Amendment as of the date and year first above written.

**ATTEST:**

**TENANT:**

ACTORS' PLAYHOUSE PRODUCTIONS,  
INC., a Florida not-for-profit corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Name:  
Title:

By authority of Ordinance No. \_\_\_\_\_  
duly passed and adopted by the Coral Gables  
City Commission on \_\_\_\_\_, 2015.

**ATTEST:**

**CITY:**

CITY OF CORAL GABLES, a  
Florida municipal corporation

By: \_\_\_\_\_  
Name: Walter J. Foeman  
Title: City Clerk

By: \_\_\_\_\_  
Name: Catherine B. Swanson  
Title: City Manager

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Name: Craig E. Leen  
Title: City Attorney

Vice Mayor Kerdyk: You know, I want to mention I know we talked about the \$100,000 for the museum. You are going to be hearing from Actor's Playhouse too, so just be aware because they didn't get their 25 (\$25,000), they were getting 25 last year and they are going to be coming asking for some too.

Commissioner Lago: And just to go off what the Vice Mayor says, I want to sit down with them.

Vice Mayor Kerdyk: You should.

Commissioner Lago: And I looked – you had requested some....

Commissioner Quesada: I had requested their financials...I received a copy.

Interim City Manager Olazabal: We have to meet again with Actor's Playhouse.

Mayor Cason: Cindy what's your...

Ms. Birdsill: Yes. I spoke with Barbara Stein. What we have put in the budget is \$50,000, the Public Works budget for maintenance of their building and we are talking with her, we'll bring it to the Commission by doing an amendment to their agreement with us for the City to take over responsibilities for plumbing, electric systems, not their fancy lighting and design of the shows...

Commissioner Quesada: The basics.

Ms. Birdsill: The basics and also the HVAC, so we will budget for that. The HVAC is aging and that's an expense that they are worried that is coming up in the future, so we will, I think Glenn's estimation was about \$60,000 to the City a year projected for all of those things.

Commissioner Lago: Let me ask you just a quick question because I know that assuming that everyone on this dais has dealt with. I went and did an outside visit and I noticed, but not I noticed they showed me, that they had a leak on the second floor which ended up warping the wooden floor, and when I say warping, it's like a six inch slope now in reference to where the water ponded and it lifted the wooden floor, nothing out of this world in the sense of it happens if you have a leak. Has that been remediated?- is the City responsible for that?- because obviously those windows do not seal when it rains, you have ponding on that portion of the deck outside of the window and then it obviously leaks into the building.

Mayor Cason: I guess the basic question, did they fix the leak?- because a tremendous storm water was coming down through the lobby.

Commissioner Lago: And the problem is the children or the members of whatever show they have, they practice in that room. So they are practicing over a floor that is not even...

Ms. Birdsill: I know that some of the leaks and Glenn may know more of the status of this, were caused by a roofing contractor. There was a claim made against them that our risk manager is working with the Actor's Playhouse to resolve a lot of the issues they've had.

Commissioner Lago: So that leak was not as a result of the old windows there?

Ms. Birdsill: I don't believe so. I think it was...

Commissioner Lago: Thank you. Thank you for that, I didn't know. I had no clue.

Mr. Pino: There was some water coming into the building from the store front that's right in front of the, they call that room the "Black Box".

Commissioner Lago: That's the second floor, right?- second floor that overlooks Miracle Mile?

Mr. Pino: Correct. Correct. And we did a repair work to the canopy and some roofing work done in there has been resolved...

Commissioner Lago: You corrected the pitch, you sealed it, the whole thing.

Mr. Pino: Yes, we have. There is one other project that's still in the works a month or two ago, is just waterproof and seal the exterior walls of the building, which also contributes to some of the water infiltration into the building.

Mayor Cason: So do you think more or less we have got a handle on the leakage?

Mr. Pino: Yes we have. And in addition, we've also reroofed the building right next to it, the Super Cuts Building, we call it the corner building, which also had some issues and it's all put together.

Commissioner Lago: So now that that's been corrected, who is going to fix the flooring issue there?- who is responsible for the flooring?

Mr. Pino: I think that's being handled through an insurance...

Commissioner Lago: Plan.

Mr. Pino: Yes - with the contractor and risk management is handling it.

City Attorney Leen: Yes Mr. Mayor. I have to say that staff has been very proactive on this one. We met with the Actor's Playhouse about 8 months ago was it?- maybe more. I remember - there was initially some back and forth with Actor's Playhouse. They felt that we were not being responsive enough, but I'm talking about a long time ago and we responded very quickly to them. We met with them. I think they've been very happy with our response since then. I don't want to speak for Actor's Playhouse, they probably always want us to do more, but in terms of

the contract and I gave a legal interpretation on what we were required to do and I think staff has followed it and I know we've been working with them on the insurance claim, and my feeling is, I talked to Barbara that they were pleased with our response. They may not completely agree with, but they saw that we were doing everything we felt we could legally under the contract.

Mayor Cason: A great step forward that we put some money in there for these basic needs because they are doing a great job and it's non-profit and we've seen their financials and there is nothing excessive in terms of compensation or anything. Anything we can do to help them on that score, it's our building.

Vice Mayor Kerdyk: I think that's the talking point, it's our building. The fact is it's our building and a lot of these other non-profits come to us and say, hey why you doing that?- it's very easy, because it's two of our buildings, the Museum and the Actor's Playhouse. OK. Thank you.

Mayor Cason: Thanks.

Finance Director Gomez: Storm water projects are being given \$457,000; sanitary sewer projects \$1.265 million; roadway projects \$2 million, this is the sidewalk repair program that we are implementing in this budget; and transportation projects have \$850,000 allocated to them.

Mayor Cason: I want to say that I'm really happy that you found the money for sidewalk repairs. We've all walked the streets of Coral Gables in our campaigns, the sidewalks are in terrible condition in many areas. Not only are they broken, a lot of times by our trees, but also they don't connect. I've seen that the County has started to connect to Anderson and a couple of areas around Granada Golf Course, which is great. I don't know how much more that's going to be done, but the more we can connect and get people off the streets and onto the sidewalks, it's a safety issue and I hope when we are doing this, we discussed this with the previous City Manager that we could have a piggyback program for residents whose sidewalks are broken because, not because of us, but just don't know how to go and get a sidewalk piece repaired. If we can piggyback off a contract where you can say, we've got a truck with our type of cement for "X" amount per square we'll do it, so that you can get your sidewalks repaired, because it's just a question of - I had it done at my house when I first moved here and I had to buy a whole cement truck to do three pieces, and then afterwards the whole truck goes away with the cement, but I think if you found a way to have a cooperative or someone piggybacking off the contract you could help people that want to repair the sidewalks don't know how to do it, don't want to buy a whole cement truck.

Mr. Kephart: Thank you Mayor. What I expect with the sidewalk program, a couple things that we will be doing is, we need to come back to you in the near future establishing the criteria that will determine that sidewalks will get placed within that \$2 million. We want to be very clear about that, so we are not chasing this all over the City, we are doing what we need to do is the most important. We have looked at and are looking at options as well as preparing that criteria