

R-92-06
1/8/92

FINAL REVISED DRAFT 12/28/91
SUBJECT TO REVIEW AND APPROVAL
BY CITY COMMISSION AND ART AND
CULTURE CENTER, INC.

BUSINESS LEASE

THIS LEASE AGREEMENT, entered into as of this 8th day of January, 1992, between the City of Hollywood, Florida, hereinafter called the "City" or the "Lessor", party of the first part, and Hollywood Art & Culture Center, Inc., a Florida not-for-profit corporation, hereinafter call the "Lessee", party of the second part:

WHEREAS, the Hollywood Art & Culture Center, Inc., is organized exclusively for charitable purposes as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which may include, but are not limited to, to engage in, among other things, (i) actions to aid, support, encourage and develop art and culture programs in the City of Hollywood and Broward County generally, including, but not limited to, the receipt of gifts, grants, bequests, transfers of money, property, art and other things of value and disbursements of such funds for the accomplishment of the ends and goals of Hollywood Art & Culture Center, Inc., (ii) actions to promote the visual and performing arts in the City of Hollywood, and Broward County, Florida, and other cities and towns in the State of Florida, (iii) to lease and operate the Art & Culture Center of Hollywood, and (iv) to do all manner of things which are authorized under law for a corporation; and

WHEREAS, on Jan. 3, 1992, Lessee's Executive Board of

Directors approved this Lease and authorized its execution by Lessee's officers; and

WHEREAS, the City owns certain real property and improvements, as more particularly described herein, and is desirous of leasing the subject property to Lessee upon certain terms and conditions specified herein and by virtue of the representations herein made, the City of Hollywood does hereby lease to Lessee, the following real properties and improvements thereon, located at 1650 Harrison Street and 1628 Harrison Street, in Hollywood, Broward County, Florida, to house its project to be known as the "Hollywood Art & Culture Center," which real properties are legally described as follows, respectively:

Lots 23, 24, 25, 26, 27, 28, 29 and 30 of Block 71 of the TOWN OF HOLLYWOOD, according to the Plat thereof, recorded in Plat Book 1, Page 21, of the Public Records of Broward County, Florida,

and

Lots 21 and 22 of Block 7 of the TOWN OF HOLLYWOOD, according to the Plat thereof, recorded in Plat Book 1, Page 21 of the Public Records of Broward County, Florida.

Hereinafter collectively referred to as the "Leased Properties"; and

WHEREAS, on January 8, 1992, pursuant to Resolution No. R-92-06, the City Commission approved and authorized the proper City officials to execute a Pre-Lease Agreement relating to the Leased Properties between City and Lessee, a copy of which is annexed hereto as Exhibit A, and at such time the City Commission authorized staff to negotiate this Lease Agreement;

NOW, THEREFORE, the terms, conditions, covenants and agreements of this Lease are as follows:

SECTION 1: LEASE TO LESSEE OF LEASED PROPERTIES.

The City hereby leases the Leased Properties to the Lessee for the sum of \$1.00 per year for the number of years set forth below and on the other terms and conditions stated herein. The Lessee shall use the Leased Properties exclusively for a program of activities, classes, and exhibits designed to promote and provide art and culture for the residents in the City of Hollywood, Broward County, and other cities and communities in the State of Florida. As more particularly set forth in Section 12 hereof, Lessee shall not use or sublease or allow any third party to use all or a portion of the Leased Properties for any other purpose or use except as set forth above without approval by the City.

SECTION 2: TERM AND TERMINATION OF LEASE.

Unless sooner terminated or extended in accordance with the terms and conditions hereof, this lease of the Leased Properties shall be for a period of forty-nine (49) years. The City shall have the right to terminate this Lease upon the occurrence of an "event of default" by Lessee as defined in Section 23 hereof, which "event of default" remains uncured for a period in excess of thirty (30) days after Lessee receives notice of such default from the City.

SECTION 3: SALE OR TRANSFER OF LEASED PROPERTIES.

City shall retain its right to sell or otherwise transfer ownership of either or both of the Leased Properties during the term of this Lease, in accordance with the applicable provisions of the City Charter and Code; provided however, that any such sale or transfer to a third party shall be subject to the leasehold interest of Lessee under this Lease; and provided further, that prior to any such sale or transfer by City, if Lessee is not then in default of this Lease then Lessee shall have a right of first refusal to purchase the Lease Properties on the same terms and conditions and same price as the City would otherwise propose to sell or transfer either or both of the Leased Properties. If Lessee fails to exercise its right of first refusal in a timely manner, then City shall have the right to consummate the sale or transfer of the Leased Properties to a third party subject to Lessee's leasehold interest hereunder. City reserves the right to make the final decision as to the official name of the Leased Properties and the buildings thereon.

SECTION 4: TAXES AND UTILITIES.

Lessee hereby agrees to be responsible for and shall timely pay for all utilities and all applicable taxes in a timely manner in connection with its use of the Leased Properties throughout the term of this Lease. The parties recognize that the Leased Properties are exempt from property taxes in accordance with Florida law and City and Lessee shall make all necessary filings to maintain such exemptions. Lessee shall maintain such property tax

exemptions by continuing to use the Leased Properties to serve a "valid public purpose" within the meaning of Chapter 196, Florida Statutes.

SECTION 5: LESSEE'S ACCEPTANCE OF LEASED PROPERTIES/
LESSEE'S OBLIGATION TO REPAIR AND MAINTAIN
SAME.

The Lessee hereby accepts each of the Leased Properties and the improvements thereon in their "as is" condition at the beginning of this Lease. City makes no representations or warranties to Lessee as to the condition of the Leased Properties or as to their habitability or fitness for a particular use or purpose and Lessee assumes all risk with respect to same. Lessee agrees to maintain the Leased Properties in a safe and sanitary and clean condition throughout the term of this Lease. Lessee understands and acknowledges that the Leased Properties are in need of substantive alteration and repair in order for the Leased Properties to be used for their intended purposes hereunder. Lessee agrees to upgrade and improve each of the Leased Properties and make the necessary repairs and improvements at Lessee's sole expense. Lessee agrees to make the necessary repairs and improvements in accordance with applicable City Codes and to meet all applicable permit and inspection requirements in order for the first floor of the Leased Properties at 1650 Harrison Street to be opened to the general public for the stated purposes by no later than 12 months from the date of this Lease; provided that said period of time shall automatically be extended if due to no fault of Lessee, City is unable, due to actions taken by other regulatory

agencies, to issue building permits or certificates of occupancy for either of the Leased Properties. Lessee will make every effort in good faith to make the necessary improvements and repairs to the Leased Properties in order to have same open to the general public on an expedited basis but in no event later than 12 months from the date of this Lease. The Lessee is strictly prohibited from allowing the general public to use or enter any portion of the Leased Properties until a certificate of occupancy is issued by the City for that portion of the Leased Premises. Failure of Lessee to meet its obligations under this Section 5 shall constitute a material default of this Lease.

SECTION 6: SECURITY SYSTEM.

Lessee agrees to maintain at its expense an electronic security surveillance system adequate to protect the Leased Properties and their contents and Lessee shall pay monthly maintenance charges applicable thereto.

SECTION 7: SALES OF MERCHANDISE TO SUPPORT LESSEE'S OPERATIONS.

The Lessee shall have the right to sell art or art related materials on the Leased Properties provided that the net profits of such sales will be allocated solely for the support of the Art and Culture Center and its programs.

SECTION 8: RATIFICATION OF TRANSITIONAL GRANT.

The City hereby ratifies its prior appropriation of transitional grant funding to the Lessee in the amount of Fifty-Two Thousand (\$52,000) Dollars. Thirty Thousand (\$30,000) Dollars of

said monies have already been funded to Lessee from CRA funds. Provided that Lessee is not in default of this Lease, then on April 1, 1992, or as soon thereafter as practicable, the balance of the budgeted grant funds (\$22,000.00) earmarked from the 1991 Jazz Festival shall be transferred by the City's Director of Finance to the Lessee. The parties understand that the Lessee is fully responsible for raising funds and meeting all financial needs of the Lessee in order for Lessee to operate the Art and Culture Center in the Leased Properties. Other than the transitional grant stated herein, City has no obligation to provide any additional funding to Lessee during the term of this Lease.

SECTION 9: LIABILITY INSURANCE.

The Lessee shall maintain public liability and property insurance covering the Leased Properties and its contents at least in the amount of One Million Dollars (\$1,000,000.00) bodily injury per person, One Million Dollars (\$1,000,000.00) bodily injury per occurrence, Five Hundred Thousand Dollars (\$500,000.00) fire insurance and Two Million Dollars (\$2,000,000.00) combined bodily injury and property damage umbrella coverage. Said insurance shall name the City as an additional insured and the annual premiums shall be paid for by Lessee in a timely manner. Certificates of insurance shall be forwarded to the City's Risk Manager and Lessee shall be obligated to maintain such insurance coverages at all times throughout the term of this Lease. Lessee shall not allow said policies to lapse during the term of this Lease. Failure of Lessee to maintain such insurance policies shall constitute a material default of this Lease.

SECTION 10: MAINTENANCE OF PARKING AREA
AND SIDEWALK AREA:

Lessee shall be responsible for maintaining and keeping the adjacent parking lots and sidewalk areas abutting the Leased Properties and any landscaped areas on same in a clean, neat, sanitary and safe condition at all times.

SECTION 11: PERSONAL PROPERTY:

All personal property placed, moved or displayed in the Leased Properties shall be at the risk of the Lessee and the respective owner thereof, and the City shall not be responsible or liable for any damage to said personal property, arising from an Act of God or from the bursting or leaking of water pipes, or from any act of negligence of Lessee or invitee or occupants of the Leased Properties or of any other person whomsoever, or because of any act of theft or vandalism by third parties. Lessee shall be responsible to maintain, repair, or replace, as necessary, all City owned personal property being used by Lessee in the Leased Properties.

SECTION 12: PROHIBITED USE OF LEASED PROPERTIES.

The Lessee hereby further covenants and agrees with the City that the Leased Properties and any improvements thereon, shall be used only for the proper, legitimate and lawful purposes as set forth in Section 2 hereof, and that the Lessee will not use or cause to be used or permit any other person or third party to use in any manner whatsoever, the Leased Properties or any improvement thereon or any portion thereof, for any use or purpose in contravention of Section 2 hereof or in contravention of the laws,

Florida, or the City of Hollywood or any other lawful authority having jurisdiction thereover. Lessee shall remain fully responsible and indemnify and hold the City harmless for the actions or negligence of any sublessee of the Leased Properties. Lessee's is strictly prohibited from assigning this Lease in whole or in part. Lessee is strictly prohibited from subleasing this Lease in whole or in part, except for short-term subleases of 1 (one) month or less consistent with the purposes of Section 2 hereof, subject to City Manager review and approval which will not be unreasonably withheld.

SECTION 13: CITY'S RIGHT TO INSPECT PREMISES.

The City, acting through the City Manager or his designees, including, without limitation, the City Fire Marshall and the City Neighborhood Improvement Officers, shall have the right to enter either or both of the Leased Properties during all reasonable hours, to examine the same and to make such reports to the Commission and Lessee on the condition of the Leased Properties and to require Lessee to make such repairs, or alterations as may be deemed necessary in order to ensure the public's safety and preservation thereof.

SECTION 14: ANNUAL FINANCIAL REPORTING

Within ninety (90) days of the end of Lessee's fiscal year, Lessee shall provide City with a copy of its audited annual financial report reflecting Lessee's annual revenues, expenses, reserves, fund balances, grants and donations. Lessee shall also provide City with such other financial information of Lessee, as

may be requested from time to time by the City Commission, City Manager or City Attorney.

SECTION 15: NO WAIVER OF RIGHTS.

The rights of the City under this Lease Agreement shall be cumulative, and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the City's rights.

SECTION 16: NOTICE.

It is understood and agreed between the parties hereto that written notice addressed to Lessee's President mailed or hand-delivered to the Leased Properties at 1650 Harrison Street, Hollywood, FL hereunder shall constitute sufficient notice to the Lessee and written notice mailed or hand-delivered to the Office of the City Manager, 2600 Hollywood Boulevard, Hollywood, Florida 33020 with a copy to the Office of the City Attorney at the same address shall constitute sufficient notice to the City, to comply with the terms of this Agreement.

SECTION 17: LEGAL FEES OF PREVAILING PARTY.

In the event it shall be necessary for either of the parties to bring legal action for collection in a Court of Law or otherwise retain legal counsel to enforce this Lease Agreement or any provision hereof or any rights established hereunder, including, but not limited to the enforcement of Lessee's obligations hereunder, right to occupancy and possession and to enforce the Lessee's obligation to vacate upon termination or default, then the prevailing party in any such action shall be

entitled to reimbursement from the non-prevailing party of their reasonable attorney's fees and court costs incurred in connection therewith.

SECTION 18: COMPLIANCE WITH APPLICABLE LAWS.

The Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their departments and bureaus applicable to the Leased Properties and any improvements thereon. Lessee shall also be and remain in compliance with all rules, regulations and ordinances of the City of Hollywood and any other governmental entity or agency established for protection against or prevention of fires.

SECTION 19: INDEMNITY AND HOLD HARMLESS.

The Lessee shall indemnify, save harmless and defend the City, its officers, employees and agents from and against all claims, suits, actions, damages or causes of action arising during the term of this Agreement for any personal injury, loss of life or damage to property sustained by reason or as a result of the use of the Leased Properties and improvements thereon for which this Lease Agreement is entered into or its agents, employees, invitees, and all other persons, and from and against any orders, judgments or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. During the construction and remodeling

period of the Leased Premises all volunteers, agents or others under the direction or control of the Lessee shall execute an indemnification and hold harmless agreement in favor of the City of Hollywood, with terms substantially similar to those contained in this paragraph, in the form of Exhibit B attached hereto. Any permitted sublessee of Lessee shall be required to sign an indemnity and hold harmless agreement substantially in the form of Exhibit B hereto. Nothing in this Lease shall be deemed to affect or waive the rights, privileges and immunities of the City, as are set forth in Florida Statutes, Section 768.28.

SECTION 20: WATER DAMAGE.

It is expressly agreed and understood by and between the parties to this Agreement, that the City shall not be liable for any damage or injury by water, which may be sustained by the Lessee or any other person or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of the Lessee or its agents, or employees, or by reason of the breakage, leakage, or obstruction of the water, sewer or soil pipes, or other leakage in or about the Leased Properties and buildings and improvements thereon.

SECTION 21: ABANDONMENT OF PREMISES:

If the Lessee shall abandon or vacate the Leased Properties before the end of the term of this Lease, or shall be in default without curing same for more than 30 days after notice of such default, the City may, at its sole option, forthwith cancel and terminate this Lease or it may enter the leased premises as the

agent of the Lessee, by force or otherwise, without being liable in any way therefor, and re-let the premises with or without any furniture that may be therein, as the agent of the Lessee, at such price and upon such terms and for such duration of time as the City may determine, and receive the rent therefor.

SECTION 22: CITY'S RIGHTS TO TERMINATE LEASE UPON DEFAULT.

The prompt payment by the Lessee of the rent when due and the timely observance by Lessee of the terms and conditions stated in this Lease, and which are hereby made a part of this covenant, are the terms and conditions upon which the Lease is made and accepted by Lessee and City and any failure on the part of the Lessee to comply with the terms and conditions of this Lease, shall at the option of the City, constitute a default by Lessee of this Lease Agreement. In the event of any such default by Lessee, City shall give Lessee notice and thirty (30) days to cure such default. If such default continues to exist after the thirty (30) day cure period, then at City's option, City can terminate this Lease and thereupon the City, its agents or attorneys, shall have the right to enter the Leased Properties, and remove all persons therefrom forcibly or otherwise, and the Lessee thereby expressly waives any and all notice required by law to terminate tenancy, and also waives any and all legal proceedings to recover possession of the Leased Properties, and expressly agrees that in the event of a violation of any of the terms or conditions of this Lease, then the City, its agents or attorneys, may immediately re-enter said Leased

Properties and dispossess Lessee without legal notice or the institution of any legal proceedings whatsoever. A default by Lessee with respect to one of the Leased Properties shall be deemed a default of all Leased Properties hereunder.

SECTION 23: SUCCESSORS AND ASSIGNS

This Agreement shall bind the City and its assigns or successors, and the Lessee and its administrators, legal representatives, or successors, if any, as the case may be.

SECTION 24: ENTIRE AGREEMENT.

This document, together with the Exhibits hereto, shall constitute the entire agreement between the parties. The parties agree that there is no other agreement, understanding or document which governs the relationship between the Lessee and the City apart from this Lease Agreement and the Exhibits hereto.

SECTION 25: FLORIDA LAW GOVERNS.

This Agreement shall be enforced and interpreted under the laws of the State of Florida. Venue for all legal actions shall be in the Circuit Court of Broward County. Both parties waive their rights to a jury trial.

SECTION 26: CAPTIONS/COUNTERPARTS.

The captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof. This Lease Agreement may be executed in one or more counterparts, each of which when executed by a party hereto shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed, the day and year above written.

WITNESSES:

James B. Glover
as to Lessor

Suzanne Tarrow
as to Lessor

CITY OF HOLLYWOOD, FLORIDA, a
municipal corporation of the
State of Florida

BY: Sal Oliveri
SAL OLIVERI, MAYOR

ATTEST: Martha S. Lambos
MARTHA S. LAMBOS
CITY CLERK

APPROVED: Donald K. Allen Cantello
~~82~~ PAUL E. WIMBERLY
DIRECTOR OF FINANCE

PREPARED BY AND ENDORSED AS
TO FORM AND LEGALITY:

Alan B. Koslow
ALAN B. KOSLOW, CITY ATTORNEY

Marina J. Whisman
as to Lessee

Carolyn Kassac
as to Lessee

HOLLYWOOD ART & CULTURE CENTL.,
INC.

BY: Johnnie Glantz
JOHNNIE GLANTZ, PRESIDENT

ATTEST: Barton A. Marks
CORPORATE SECRETARY

RESOLUTION NO. R-92-06

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY OF HOLLYWOOD AND THE HOLLYWOOD ART AND CULTURE CENTER, INC., RELATING TO THE PREMISES OWNED BY THE CITY AND LOCATED AT 1650 AND 1628 HARRISON STREET IN HOLLYWOOD, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, TOGETHER WITH SUCH NONMATERIAL CHANGES, IF ANY, AS MAY BE SUBSEQUENTLY AGREED TO BY THE CITY MANAGER AND APPROVED BY THE CITY ATTORNEY


BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

That the appropriate City officials are hereby authorized to execute the attached Lease Agreement between the City of Hollywood and the Hollywood Art and Culture Center, Inc., relating to the premises owned by the City and located at 1650 and 1628 Harrison Street in Hollywood, in substantially the form attached hereto, together with such nonmaterial changes, if any, as may be subsequently agreed to by the City Manager and approved by the City Attorney.

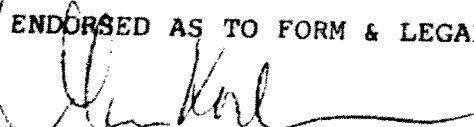
PASSED AND ADOPTED this 8th day of January, 1992


SAL OLIVERI, MAYOR

ATTEST:


MARTHA S. LAMBOS, CITY CLERK

ENDORSED AS TO FORM & LEGALITY


ALAN B. KOSLOW, CITY ATTORNEY



CITY of HOLLYWOOD, FLORIDA

ALAN B. KOSLOW
City Attorney

(305) 921-3435
Telefax (305) 921-3081

December 30, 1991

Ms. Johnnie Glantz
3630 North 52nd Avenue
Hollywood, FL 33021

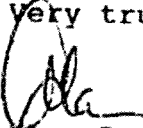
Re: Proposed Lease Agreement Between the City of Hollywood
and the Hollywood Art and Culture Center, Inc.

Dear Ms. ^{Johnnie} Glantz:

Pursuant to our recent conversation, enclosed please find the revised final draft Agreement between the City and the Hollywood Art and Culture Center, Inc. which incorporates the final changes we discussed last Friday. The Lease Agreement is now in final form for the City Commission's consideration on January 8, 1992. It is my understanding that you will be at the meeting to explain to the Commission the need for the long term feature of the Lease. In this regard, please be advised that the City's Charter requires the affirmative vote of four Commissioners for all leases in excess of ten years in length.

Best wishes for a happy, healthy and successful New Year!

Very truly yours,


Alan B. Koslow
City Attorney

ABK:clb
Enclosures

cc: Robert S. Nce, Jr.
Mike G. Rozos
Wendy Blazier
Douglas Kaplan, Esq.

THE ART AND CULTURE CENTER OF HOLLYWOOD

December 19, 1991

Honorable Mayor and
City Commissioners
City of Hollywood
2600 Hollywood Boulevard
Hollywood, Florida 33022

RE: Art and Culture Center of Hollywood
Lease Agreement
January 9, 1992

Dear Mayor and Commissioners:

In working with Mr. Koslow, we have endeavored to formulate a lease in keeping with the intentions and wishes of the Commission. Mr. Koslow has negotiated with us in good faith and we are satisfied with the lease as of our last review. A lease for 49 years will be preferred by the Board of Directors because it will create a sense of stability and permanence. Most importantly, this will enable the Center to secure major gifts for our future operating and renovation costs. We appreciate the Commission's support and cooperation and we look forward to reopening the Center in the new year.

Sincerely,

Johnnie Sue Glantz
Chair, Board of Directors

JSG/csk

c.c. Robert S. Noe, Jr., City Manager
Alan B., Koslow, City Attorney

