

AN ORDINANCE **86014**

APPROVING A LEASE AGREEMENT WITH THE MAGIK THEATRE FOR A 15-YEAR INITIAL TERM WITH ONE 10 TEN-YEAR OPTION, SUBJECT TO CITY COUNCIL APPROVAL, TO OCCUPY, RENOVATE, RESTORE AND OPERATE THE BEETHOVEN HALL THEATER IN HEMISFAIR PARK IN CONSIDERATION FOR \$2,000,000 IN IMPROVEMENTS TO BE MADE DURING THE FIRST THREE (3) YEARS OF THE TERM AND FOR THE PAYMENT OF PRESERVATION FEES BASED ON TICKET SALES TO BE PAID IN LIEU OF RENT.

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WHEREAS, The Magik Theatre, a non-profit performing arts organization specializing in bringing live theater productions to children and their families throughout the San Antonio area at a reasonable cost, has, just three (3) years after its formation, outgrown its current location at the Staacke-Stevens Building, which only accommodates audiences of up to 200 people; and

WHEREAS, Beethoven Hall Theater ("Facility") has an occupancy rate of 640, thus The Magik Theatre approached City staff to negotiate a lease for the Facility in order to accommodate their anticipated growth; and

WHEREAS, in September 1996, City Council approved a resolution which authorized City staff to negotiate a lease with The Magik Theatre for use of the Facility; and

WHEREAS, City staff and The Magik Theatre (the "Tenant") have negotiated a lease for use of the Facility for an initial term of 15 years (commencing July 1, 1997) with one 10-year option to renew upon approval by City Council, with a provision to allow the Tenant to conduct feasibility studies and begin renovation work prior to that date, as long as, certain conditions are met, including honoring events previously booked by the Convention Facilities Department; and

WHEREAS, the Tenant has agreed to raise and spend approximately \$2,000,000 on improvements to the Facility during the first three (3) years of the Lease, based on milestones, and to pay all repair and maintenance costs; and

WHEREAS, Tenant's assumption of all repair, maintenance and operating expenses for the Facility, except for chilled water costs, will reduce operating expenses to the City by approximately \$130,104.00 per year; and

WHEREAS, a surcharge on tickets sold for all performances and events to be held in the Facility, to be known as a Preservation Fee ("Fees"), will be paid in lieu of rent, ranging from 15¢- 25¢ in Years 1-5, increasing to 50¢-75¢ in Years 6-10, and to 5% of the price of each ticket in Years 11-15, excluding throughout the term those tickets priced at \$0 to \$2.99, for which no Fees will be due; and

WHEREAS, Fees on the first 75,000 tickets sold or distributed each year (beginning on the first day of the Tenant's season) will be deposited by the Tenant into a Beethoven Hall/Magik Theatre Fund ("Theatre Fund") to be used by Tenant for capital repairs and maintenance at the Facility, upon approval by the City's Director of Asset Management, and, when this fund exceeds 5% of the Tenant's initial capital investment, (currently estimated at approximately \$2,000,000, hence \$100,000) the balance will be distributed: a) 50% to the Tenant to be used for operating expenses; and b) 50% to the City for renovation and maintenance of the City's cultural facilities through the Cultural Facilities Expendable Trust Fund ("Trust Fund"); and

WHEREAS, revenue generated by the Fees on all tickets sold or distributed over 75,000 each year (beginning on the first day of the Tenant's season) will be deposited into the Trust Fund, dedicated solely for the renovation and maintenance of the City's cultural facilities; and

WHEREAS, the City will retain the right to use the Facility for up to thirty (30) event days per year for various booked and/or contracted for conventions, meetings, and other uses through the year 2000, and City may use the facility 20 days per year from 2001 until the end of the initial term; and

WHEREAS, various City-sponsored functions, such as meetings, conferences, talent shows, etc. for up to 25 City Days per year for the initial term may be used rent, free although the City will pay performance charges for use of the Facility; and

WHEREAS, approving a lease with this Tenant is consistent with the City's goals of cooperating with non-profit arts organizations to restore and renovate the City's cultural facilities, continuing efforts to focus on youth and create a destination location for children and their families in the downtown area, complementing the Children's Playground in HemisFair Park by utilizing Beethoven Hall for activities relating to children and families, better utilizing one of the City's historic building; and providing for revenue generation through a preservation fee structure to be used for the restoration and renovation of City cultural facilities; and

WHEREAS, this action also represents recommendations from the Performing Arts and Entertainment Facilities Plan, presented in draft form to City Council in November 1996, which includes: a) the operation of City facilities in a manner that strengthens the local cultural community, b) development of strategies to manage operational issues and provide for capital improvements through possible public/private development, and c) implementation of City policies and management to generate revenue through consistent rental structures and lease agreements; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. A Lease Agreement is hereby approved with The Magik Theatre for a 15-year initial term with one 10-year option, based upon City Council approval, to occupy, renovate, restore and operate the Beethoven Hall Theater in HemisFair Park in consideration for approximately \$2 million in improvements to be made by The Magik Theatre during the first three (3) years of the Initial Term and for the payment of Preservation Fees (based on ticket sales) to be paid in lieu of rent.

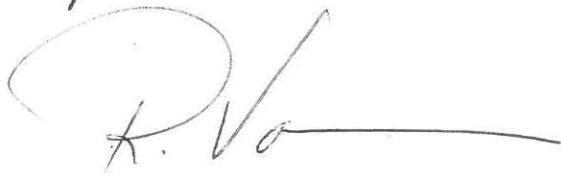
SECTION 2. The City Manager, or, in his stead, the Assistant City Manager, or an Assistant to the City Manager, is hereby authorized to execute the Agreement a copy of which is attached hereto and incorporated herein as Exhibit "A".

SECTION 3. Funds due and owing to the City of San Antonio from Preservation Fees collection on all ticket sales for all performances and events to be held in the Facility, are hereby directed to be deposited into the Cultural Facilities Expendable Trust Fund, (62-040), Revenue Index Code No. 049338, entitled "The Magik Theatre Preservation Fee Contributions."

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SECTION 4 . This ordinance shall be effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 8th day of May, 1997.



M A Y O R
PRO TEM

ATTEST: 
ASSISTANT City Clerk

APPROVED AS TO FORM: Teronica M. Zestuche
for City Attorney

97-20

MEETING OF THE CITY COUNCIL

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & MANAGEMENT ANALYSIS
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
CITY MANAGER
SPECIAL PROJECTS - FRANCES GONZALES
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - RISK MANAGEMENT
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA
YOUTH INITIATIVES

AGENDA ITEM NUMBER:

DATE:

MOTION:

ORDINANCE NUMBER:

RESOLUTION NUMBER:

ZONING CASE NUMBER:

TRAVEL AUTHORIZATION:

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 MAY 9 8 1997
 Flores
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NAME	ROLL	AYE	NAY
ROGER FLORES, II District 1		✓	
DOLORES M. LOTT District 2		✓	
LYNDA BILLA BURKE District 3		✓	
HENRY AVILA District 4		absent	
RICK VASQUEZ District 5		✓	
ROBERT A. HERRERA District 6		absent	
BOB ROSS District 7		absent	
ROBERT MARBUT District 8		absent	
HOWARD W. PEAK District 9		✓	
JEFF S. WEBSTER District 10		✓	
WILLIAM E. THORNTON Mayor			ABSENT

FILE "MAGIK THEATER"
 97-20

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5/8/97
#37

EXHIBIT "A"

TO

ORDINANCE NO. 86014

PASSED AND APPROVED ON MAY 8, 1997

LEASE AGREEMENT

(THE MAGIK THEATRE)

**LEASE AGREEMENT
(THE MAGIK THEATRE)**

This Lease Agreement ("Lease") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, as **LANDLORD** (hereafter called "**CITY**"), acting by and through its **CITY Manager**, pursuant to **CITY Ordinance No. 86014** passed and approved on MAY 08 1997, 1997 and **THE MAGIK THEATRE**, a non-profit corporation, as **TENANT** (hereafter called "**TENANT**").

WITNESSETH:

I. PREMISES

1.1 For and in consideration of the covenants and premises herein contained to be kept, performed and observed by **TENANT**, **CITY** hereby leases to **TENANT** and **TENANT** leases from **CITY**, **Beethoven Hall Theater (hereafter called "the Theatre")**, a **CITY**-owned performing arts venue located in HemisFair Park, at 418 S. Alamo Street, San Antonio, Texas, consisting of interior space of approximately 20,806 square feet, including the first and second floors, basement, mechanical space, and projection room (which is accessible through exterior stairs only) and the immediately adjacent exterior area surrounding the Theater structure, and legally described as:

A portion of Lot 12, Block 003, NCB 13814 (Building #225), San Antonio, Bexar County, Texas.

as shown outlined on the attached Exhibit "A" (hereafter called "Leased Premises" or "Premises"); and the right to ingress and egress for all of **TENANT's** agents, employees, customers and invitees to and from the Premises from public rights of way and other **CITY**-owned property located adjacent thereto in accordance with the **TENANT's** use and operations of the Premises.

II. TERM/RENEWAL

2.1 The Initial Term of this Lease shall commence on July 1, 1997 ("Commencement Date") and shall end fifteen (15) years thereafter on June 30, 2012 ("Initial Term"), unless earlier termination shall occur according to the provisions set forth under "**TERMINATION.**" However, so long as (1) the insurance required herein is in full force and effect and **CITY** has received the required Insurance Certificates, (2) **TENANT** agrees to pay all utility charges and other charges incurred by **TENANT** or its consultants, contractor, its contractor's subcontractors, or any other parties going onto the Leased Premises at **TENANT's** request, prior to such Commencement Date, and (3) **TENANT's** activities, as defined hereafter, do not disrupt existing contracted for events or booked events (existing **EVENT DAYS**) previously established by **CITY** and as shown on Exhibit "B", then **CITY** grants to **TENANT** the right to take possession of the Leased Premises prior to July 1, 1997 for **TENANT's** activities, which are defined as (1) conducting feasibility studies and (2) commencing renovation work.

2.2 All of the above notwithstanding, at any time during the first three (3) years of the Term of this Lease **TENANT** or **CITY** shall have the right to terminate this Lease without cause in accordance with the provisions set forth under **Article XXIII TERMINATION AND OTHER OPTIONS** herein.

2.3 **TENANT** hereby waives any further notice to vacate the Leased Premises upon the expiration of the Initial Term, and, as applicable, Extended Term.

2.4 For the purpose of this Lease a Lease Year (hereafter also referred to as "Season") shall mean each 12 month period during the term of this Lease beginning September 1, 1997 and continuing for each 12 month period thereafter, provided however the first lease Year shall begin with the Commencement Date of this Lease and end on August 31, 1998.

2.5 **RENEWAL.** So long as **TENANT** is not in default at the end of the Initial Term, the term of this **LEASE** may be renewed and extended for a period of ten (10) additional years ("Extended Term"), subject to approval of the **CITY**, as evidenced by passage of a subsequent **CITY Ordinance.** **TENANT** may request the 10-year renewal and extension no later than one hundred eighty (180) days prior to the end of

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EXHIBIT A

the Initial Term hereof. Upon receipt of such renewal request from **TENANT**, **CITY** reserves the right to modify the conditions, and provisions herein and will notify **TENANT** of such modifications within thirty (30) days after such receipt of notice. Should **TENANT** and **CITY** be unable to reach an agreement for the modified terms, conditions, and provisions at least thirty (30) days prior to the end of the Initial Term, then this lease will not be renewed.

2.6. All other terms of the Lease notwithstanding, in the event **TENANT** determines, in its sole and absolute discretion that the Premises are not suitable for its intended purpose it may terminate this Lease by providing **CITY** with written notice of its desire to do so on or before July 1, 1997.

III. CITY BOOKINGS PROCEDURE

3.1 **CITY** shall have the right to utilize the Leased Premises during the term hereof, on the following dates in accordance with the terms and conditions of this Lease:

A) EVENT DAYS (hereinafter referred to as Existing Bookings): those bookings of the Premises (1) contracted for by **CITY** or (2) booked by **CITY** but not contracted for various convention, meeting, and other scheduled uses as shown on Exhibit "B" attached hereto and incorporated herein by reference for all purposes. The above notwithstanding, in no event shall the Existing Bookings exceed more than thirty (30) bookings per calendar year through that date which is the earlier of the year 2000 or the date the new Convention Center facilities are substantially completed. Beginning on the earlier of January 1, 2001, or the substantial completing of the Convention Center Facility, **CITY** agrees to reduce the number of **Existing Bookings** to twenty (20) days per year for the remainder of the Term hereof. **TENANT** acknowledges and agrees to honor any and all contracted for or booked **CITY** commitments for the use of the Premises set out on Exhibit "B".

TENANT will assume responsibility for coordinating all (1) contracted for events and (2) booked events per Exhibit "B." **CITY** will assign to **TENANT** all existing contracts, including the transfer of deposits, for the use of the Leased Premises as of the Commencement Date, including the right to receive all income therefrom. License ("Rental") Fees set forth in the existing contracts for the use of the Leased Premises will be honored by **TENANT**; however, Performance Charges (as hereinafter defined) may be charged by **TENANT** in connection with its use of the Premises, including those relating to utilities, labor and equipment usage; however, such Performance Charges must be based upon comparable Performance Charges by similar sized venues in the City of San Antonio and Texas as provided by **TENANT** to **CITY**, in writing, in the form of a Proposed Rate Schedule, and approved in advance, in writing, on an annual basis by the **CITY'S** Director of Asset Management prior to the commencement of each Season during the term hereof. As to those events which have been booked but not yet contracted for by **CITY**, the **CITY** agrees to refer the user(s) to **TENANT** to negotiate charges and coordinate availability of the Leased Premises. However, **TENANT** may charge the user additional Performance Charges (as hereinafter defined) in connection with its use of the Premises, including those relating to utilities, labor and equipment as necessary.

B) CITY DAYS (hereinafter referred to as CITY Bookings): those bookings to be used for **CITY**-sponsored functions such as meetings, conferences, talent shows, etc. for up to twenty-five (25) bookings per calendar year for each year of the Initial Term hereof.

C) EXCESS DAYS: those days in which **TENANT** has no bookings, performances, rehearsals or other scheduled events ("dark days"). **CITY** shall notify **TENANT** of desire to utilize any such days with the understanding that such days are subject to availability as determined by **TENANT**.

3.1.1 **CITY** agrees to pay **TENANT** Performance Charges for **CITY DAYS** and **EXCESS DAYS** usage of the Premises, but **CITY** will not be charged any rental or similar use fee by **TENANT** for **CITY DAYS** or **EXCESS DAYS**.

3.1.2. In connection with each **CITY** Booking, **CITY** shall pay to **TENANT** Performance Charges defined as those fees customarily charged by **TENANT** to other third party users in connection with its use of the Premises, including those relating to utilities, labor, equipment usage, and other similar expenses.

Beginning upon the Commencement Date, all fees for the use of the Leased Premises may be collected by the **TENANT** for its use.

3.2 BOOKING PROCEDURES: Upon the Commencement Date and on February 1st of each year of the Initial Term, beginning February 1, 1998, **TENANT** agrees to provide **CITY** the **TENANT's** Building Use and Construction Schedule ("**TENANT DAYS**" -- those days used by **TENANT** for rehearsals and performances whether by **TENANT** or third parties) to include the "dark days" of availability to **CITY**. On or before March 15 of each such year, **CITY** shall notify **TENANT** of its selection of dates and times for its **CITY** Bookings. In the event **CITY** fails to so notify **TENANT** of its selection of all 25 **CITY** Bookings on or before March 15 of a particular year, **CITY** shall thereafter be entitled to select booking dates to complete this selection process, however, such dates shall be on an as-available basis as determined by **TENANT**.

IV. USE AND OPERATION

4.1 The Leased Premises shall be used by **TENANT** solely for the purpose of a performing arts theater, assembly hall, auditorium offices, rehearsal space, support facilities for a performing arts theater, assembly hall or auditorium use, concession operations relating to such uses, and other related uses including primarily children's arts performances, as well as, other live theater productions for children and their families.

4.2 The foregoing uses and purposes may be changed only by prior written approval of the **CITY**.

4.3 Subject to the **CITY's** other obligations set out in this Lease, **TENANT's** taking possession of the Leased Premises shall be conclusive evidence of **TENANT's** acceptance thereof and **TENANT** hereby accepts said Premises as being in good and satisfactory order in its **AS IS, WHERE IS, AND WITH ALL FAULTS CONDITION** at the time of **TENANT's** review and inspection, and suitable for the purposes for which leased. However, if any existing or new state or federal law or **CITY** ordinance require modifications of the Leased Premises in order to conform with such law or ordinance and the modification is related to a pre-existing condition, that is, one which pre-dates **TENANT's** renovation work, then **CITY**, at its cost and expense, subject to the appropriation of funds by the San Antonio **CITY** Council, agrees to so modify the Leased Premises, if **CITY** Cultural Facilities Trust Fund monies, as explained hereafter, are not available for such use. If such modification is required because of **TENANT** renovation work or future **TENANT** work done to the Leased Premises precipitates a change in the Leased Premises, then in order to comply with the new federal or state law or **CITY** ordinance, the **TENANT** agrees to so modify the Leased Premises, at **TENANT's** cost and expense, if **TENANT's** portion of the Beethoven Hall/Magik Theatre Fund monies, as also explained hereafter, are not available. In either instance, the respective **CITY** Cultural Facilities Trust Fund and Beethoven Hall/Magik Theatre Fund monies may first be used by the responsible party to modify the Leased Premises, before utilizing other funds.

4.4 **TENANT** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY**, or its agents, representatives, or employees, to **TENANT**, unless the same are contained herein or made a part hereof by specific reference herein. **CITY** specifically disclaims any warranty of suitability for **TENANT's** intended uses and purposes.

4.5 **TENANT** acknowledges and agrees that **CITY** is the owner of the fee simple interest in the Leased Premises and that **TENANT's** use constitutes a leasehold interest which is inferior to **CITY's** fee interest.

4.6 While the **CITY** cannot guarantee any parking for **TENANT** use, limited parking shall be available from time to time as detailed in Exhibit "C"-Parking Policy- attached hereto and incorporated herein by reference for all purposes.

4.7. All **TENANT** sponsored events on the Leased Premises shall be suitable for families, and shall be subject to the **RULES AND REGULATIONS** set forth in **Article XVII**.

4.8 **TENANT** shall be responsible, at its expense, for maintaining adequate staffing, including stagehands, technicians and appropriate management, etc. to ensure protection of the Leased Premises,

its systems and equipment, whether during **TENANT** performances or functions, or if **TENANT** acts as a management company for third party event contracts.

4.9 **TENANT** agrees to leave the Leased Premises in a good, usable, clean condition immediately prior to use of the Leased Premises by **CITY** for any **CITY Booking** and to coordinate the transition with **CITY** for each **CITY Booking** use.

4.10 **LOADING AND OFF-LOADING OF TENANT PATRONS:** **TENANT** agrees to coordinate with the Director of the **CITY's** Convention Facilities or his/her designee for the loading and off-loading of **TENANT** patrons from buses, automobiles, etc. in order to ensure life/safety and so as not to interfere with use of the Convention Facilities. **TENANT** will use its best efforts to inform its patrons of **CITY's** requirement that all drivers must remain with their vehicle during periods of loading and off-loading.

V. RENT/PRESERVATION FEE/CONCESSIONS INCOME

5.1 **PRESERVATION FEE.** As consideration for **TENANT's** use of the Premises, and renovation of the Premises as provided herein, **TENANT** shall pay a **PRESERVATION FEE** payment upon all tickets sold by **TENANT** and/or third parties for performances and events within the Premises. **Tenant** will require third party users to pay a Preservation Fee (provided, however, in the event **TENANT** uses its best efforts to collect such Preservation Fee from any third parties and is unable to collect such Preservation Fee, then **TENANT** shall notify **CITY** and such Preservation Fee shall not be payable by **TENANT**) in the following amounts:

	Ticket Price	Preservation Fee
Year 1 - 5	\$0.00 to \$2.99*	No Fee
	\$3.00 to \$4.99	\$.15
	\$5.00 and up	\$.25
Year 6 - 10	\$0.00 to \$2.99*	No Fee
	\$3.00 to \$4.99	\$.50
	\$5.00 and up	\$.75
Year 11-15		Preservation Fees will be charged at 5% of the price of each ticket excluding those tickets at \$0 to \$2.99

***Tickets sold for this price range by TENANT will be limited to 10,000 per year and are typically used to provide tickets to economically disadvantaged students.**

5.2 These sums shall be paid as follows:

A) **For the first 75,000 tickets** sold or distributed per each year (beginning on the first day of **TENANT's** Season) upon which a Preservation Fee is payable, the Preservation Fees collected relating to these tickets must be deposited by **TENANT** into an interest-bearing bank account ("Beethoven Hall/Magik Theatre Fund") owned by **TENANT** to be used for repairs, maintenance and capital improvement items for the Leased Premises but if, and only if, the costs of which repairs, etc. exceed the amount which **TENANT** has provided for in its annual budget for each Season of the Initial Term. **TENANT** must submit a request in writing and secure the prior written approval by **CITY**, through its Director of Asset Management in order to utilize any portion of Beethoven Hall/Magik Theatre Fund which approval will not be reasonably withheld. Should said Beethoven Hall/Magik Theatre Fund for any given year not be required for use for repair, maintenance or capital improvements for the Leased Premises, the monies shall be escrowed in said bank account until such time that it is needed. Whenever the balance in the Beethoven Hall/Magik Theatre Fund account exceeds 5% of the initial capital investment, currently estimated at approximately \$2,000,000, not to exceed \$100,000, then the excess amount shall be distributed as follows: fifty percent (50%) to **TENANT** to be used exclusively for operating expenses of the Leased Premises, as the term "operating expenses" is defined in accordance with generally accepted accounting principles, but excluding personal bonuses or non-traditional benefits (i.e., funding of officer, employee or director vacations) **AND** fifty percent (50%) to **CITY**, to be used exclusively by **CITY** for repairs, maintenance and capital improvements for other **CITY-owned** cultural facilities **through the CITY Cultural Facilities Trust Fund, referenced below.**

B) **For all tickets in excess of**, 75,000 sold or distributed per each year (beginning on the first day of **TENANT's** Season) upon which a Preservation Fee is payable, the Preservation Fees collected relating to these tickets must be deposited by **TENANT** in an interest-bearing **CITY** bank account known as the **CITY Cultural Facilities Trust Fund**. Monies deposited in such Fund will be used exclusively by the **CITY** for the repair, maintenance and/or capital improvement projects, including potential future acquisition of **CITY**-owned cultural assets. **CITY** retains the sole right to determine all withdrawals and allocations of this Fund.

5.3 If an emergency repair situation occurs which may pose a risk to 1) the health and/or well-being of any building occupants of the Leased Premises, 2) the structural integrity of the Leased Premises or, 3) the property value of the Leased Premises, then **TENANT** may notify the **CITY** of any and all such emergencies. All other provisions of the Lease notwithstanding, **TENANT**, following notice to **CITY**, and to the extent that insurance proceeds are not readily available for **TENANT's** use in making repairs to the Leased Premises, may withdraw sufficient funds from the Beethoven Hall/Magik Theatre Fund to make such repairs, while proceeding with the most expedient and cost effective repair **TENANT** determines is necessary to protect the building occupants or the Leased Premises, as the situation demands. Any monies expended by **TENANT** for emergency repairs at the Leased Premises should be reported in writing to the **CITY**. In addition, if any insurance proceeds are received by **TENANT** relating to the repairs for which such escrow sums which used, the insurance proceeds shall be deposited directly into Beethoven Hall/Magik Theatre Fund.

5.4 Should **TENANT** elect to renew and extend the term pursuant to Section 2.5, above and **CITY** approves such renewal and extension, the **Preservation Fees for such renewal will be negotiated** and set as a part of any such renewal.

5.5 All payments to **CITY** shall be made by **TENANT** to **CITY** on a monthly basis in arrears on the tenth (10th) day of the month following the month in which such **Preservation Fees** are assessed and collected, by mail or hand-delivery to the **CITY** of San Antonio, Finance Department, Treasury Division, 506 Dolorosa, San Antonio, Texas 78205, and **TENANT** shall provide on a quarterly basis a report containing total ticket sales and collections for the immediately preceding quarter.

5.6 **CONCESSIONS.** **TENANT** is granted the right to control and operate, at its cost, the following concessions (the "Concessions") (a) valet parking, (b) other parking facilities which **TENANT** owns or which **TENANT** has contracted for, and (c) the right to sell or serve on, in, or about the Premises any alcoholic beverages, non-alcoholic beverages, food, souvenirs, or other merchandise or services or concessions of any sort, or **TENANT** may lease or license all or any portion of the Concession rights to any party or parties designated by **TENANT**, and no such Concessions shall be given away, served or distributed by **CITY** without the written consent of **TENANT**, which shall not be unreasonably withheld. **CITY** understands that **TENANT** has sole control of all concession rights as reserved in this Lease and that no food or beverage, with or without charge, samples or otherwise, may be served or distributed by **CITY** without the written consent of **TENANT**; and **CITY** will not allow any attendee or invitee to bring food, beverage or other concessions into the Premises.

5.7 **CITY** reserves the right to audit **TENANT's** accounting and other records with 48 hours prior notice, no more than once per quarter during the term hereof, unless **CITY** has cause to believe that fraud or malfeasance exists. In connection therewith, **TENANT** agrees to maintain and make available to **CITY** said accounting and other records.

5.8 **TENANT** agrees to submit to **CITY** an annual report each year for the term hereof, starting with the period beginning July 1, 1997, reflecting, at a minimum, the items defined in 5.2, A) and B).

VI. IMPROVEMENTS

6.1 All construction including due diligence, in the form of environmental assessment abatement, or remediation, as well as, surveying prior to the start of said construction, demolition of any improvements, making material or structural repairs, remodeling, renovation, restoration or alterations of any kind

whatsoever to the Leased Premises, or surrounding **CITY**-owned real property, whether the interior or exterior thereof and installation of equipment incident to such Leased Premises and/or other improvement thereof, shall be done by **TENANT**, at **TENANT's** sole cost and expense, and shall be referred to hereafter as "**TENANT's** Work." The purpose of such work shall be to improve the Beethoven Hall Theater and shall not be performed without the prior written approval of **CITY**.

6.2 All **TENANT's** Work, any future improvements to the Leased Premises, or surrounding real property owned by **CITY** and approved by **CITY** for construction, renovations, restorations, repairs, remodeling, additions, or alterations to the Leased Premises (i) shall receive proper permits, (ii) shall be performed by licensed contractors; and (iii) shall comply with all federal and state laws and **CITY** ordinances, including, but not limited to, the Americans with Disabilities Act, Uniform Building Code, Uniform Fire Code, National Electrical Code, and the **CITY** Plumbing Code including, but not limited to, approval of interior finish-out plans for the renovation of the theater, the exterior facade, any marquee, mural, and any other exterior and interior construction and demolition work, any site work necessary for completion of the Project, and construction plans for any other portions of the Leased Premises. Further, **TENANT**, at its sole cost and expense, shall perform all necessary structural assessments, environmental assessments, testing, and any and all remediation work, whether structural or environmental in nature. In addition, all plans and specifications must comply with all federal, State and local laws, ordinances, permits, rules, and regulations applicable to the Leased Premises and the operation of **TENANT's** business activity therein.

6.3 **TENANT** shall comply with the following in connection with **TENANT's** Work:

A) AT LEAST 30 DAYS PRIOR TO POSSESSION:

- 1). Provide **CITY** for its review and approval, a preliminary phased-in renovation schedule by **TENANT**; such schedule shall consist of construction milestones guaranteeing completion of all renovations within a three (3) year time limit from the Commencement Date hereof. **CITY** reserves the right to extend the construction completion date, at its own discretion.
- 2). Provide **CITY** with a preliminary Pro Forma.
- 3). Provide a preliminary schedule for Capital Campaign funding for the renovation work.
- 4). Submit Preliminary Plans and Specifications, and Preliminary Construction Costs Estimate to the **CITY** Asset Management and Convention Facilities Departments for approval.

Items 1 through 4 or a summary and explanation thereof will be attached as Exhibit "D", "E", "F", AND "G" hereto.

B) AT LEAST 30 DAYS PRIOR TO THE START OF CONSTRUCTION:

- 1). Submit preliminary plans and specifications to the Historic and Design Review Commission, and other boards and commissions, as required, for approval.
- 2). Submit final plans and specifications to the Texas Department of Licensing and Regulation, for disability access approval.
- 3). Submit final plans to the **CITY's** Building Inspections Department and Fire Department Engineering Division for approval. Obtain all necessary permits.
- 4). Submit the names of all contractors and consultants, specifically including, but not limited to, the environmental remediation and all SMWBE participants, to **CITY's** Asset Management Department for review.
- 5). Notify the **CITY** Asset Management Department prior to the start of any construction. Submit a construction staging plan delineating egress and ingress into the building, as well as, required safety control items.

6). Final copies of Items A (1)-(4) above shall be provided to the **CITY**.

C) WITHIN 30 DAYS AFTER COMPLETION OF CONSTRUCTION:

- 1). Notify **CITY** in writing promptly upon the completion of such **TENANT's Work**, whereupon **CITY** will inspect such completed **TENANT's work** to determine (a) if such work has been completed in a satisfactory and workmanlike manner and, as determined by **CITY**, is substantially completed in accordance with the plans and specifications for such work approved by **CITY**, and (b) that any necessary Certificate of Occupancy has been issued by the **CITY OF SAN ANTONIO**.
- 2). Submit the Certificate of Occupancy issued by **CITY's Building Inspections Department** to the Department of Asset Management.
- 3). Submit "as-built" drawings to the **CITY Asset Management and Convention Facilities Departments**.
- 4). Submit to **CITY** documented evidence of payment of all bills for materials used or labor performed, i.e., in the form of lien waivers, bills paid affidavits, or other generally accepted receipts evidencing such payment, in order to satisfy the **CITY** that no liens or other encumbrances have been placed against the land or improvements.

6.4 **CITY** agrees to examine and approve or disapprove and cause the **CITY Asset Management Department** and **CITY Architect's Office** to examine and approve or disapprove the above mentioned plans and specifications within thirty (30) days after receipt and to notify **TENANT** in writing when the same have been approved or disapproved and in the event of approval, **TENANT** agrees to commence **TENANT's Work** promptly thereafter, proceed with such work, and complete such work within the three (3) year time period referenced above. In the event of disapproval, **CITY** agrees to specify to **TENANT** in writing the nature of the deficiency in the plans and specifications which warranted the **CITY's** disapproval. Within ten (10) days after receipt of such disapproval, **TENANT** agrees to meet with **CITY** to resolve such deficiencies and within thirty (30) days after such meeting **TENANT** will present revised plans and specifications to **CITY**. Thereafter **CITY** agrees to examine and approve or disapprove the revised plans and specifications, after which time, if revised plans and specifications are approved, **TENANT** will proceed in accordance with the completion date time frame set forth herein. If for any reason the revised plans and specifications are disapproved by **CITY** then in such instance, the same procedure set forth herein for notification as to disapproval shall apply.

6.5 Said plans, when approved, shall be signed by **CITY** and **TENANT** and made a part of this Agreement, as Exhibit "G", (being a summary and explanation of said plans and specifications).

6.6 **TENANT** may need to commence, or already has commenced a fund-raising project to raise funds for the construction work called for herein. A great deal of the work to be done may be of a volunteer and "donation" nature. In the event that volunteers are utilized in the performance of **TENANT's Work**, **TENANT** will require said volunteers to submit a release and hold harmless agreement in favor of the **CITY**.

6.7 **TENANT** agrees to require its contractor and any subcontractors to provide payment and performance bonds naming the **CITY** as additional insured or indemnitee, as applicable, in order to assure completion of any improvements to be made by **TENANT**.

6.8 **TENANT** will require its contractor to provide the insurance required in **Article XIII** herein.

6.9 Failure by **TENANT** or its contractors or subcontractors to complete the **TENANT's Work** called for herein on or before three (3) years after the Commencement Date shall constitute an act of default and shall be cause for immediate termination of said Agreement by **CITY**, unless such time is extended at **CITY's** sole discretion.

6.10 Notwithstanding the time requirements specified above, if **TENANT** and **CITY** are unable to reach agreement on plans and specifications for the proposed improvements for **TENANT'S Work** by the end of the first Lease Year, that is, by **August 31, 1998**, then this Lease shall terminate and neither party shall have any obligations or liabilities to the other party hereunder.

6.11 All initial repairs, modifications, remodeling, and/or other improvements, provided for herein and in **Article VI. IMPROVEMENTS**, that is, **TENANT's Work**, and any other improvements and alterations made now or during the Lease terms, shall become, upon completion, and remain at the termination of this Agreement, for any reason, the property of **CITY**, subject to the conditions herein.

VII. FIXTURES AND PERSONAL PROPERTY

7.1 Any trade fixtures, signs, furniture, furnishings, and other personal property of **TENANT** not permanently affixed to the Leased Premises shall remain the property of **TENANT** and **CITY** agrees that **TENANT** shall have the right, at any time, and from time to time, to remove any and all of its trade fixtures, signs, furniture, furnishings, and other personal property which it may have stored or installed in the Leased Premises, including but not limiting the same to counters, booths, shelving, mirrors, and other movable personal property. **TENANT** at its expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such trade fixtures, signs, furniture, furnishings and other personal property, and upon expiration or earlier termination of this Agreement, for any reason, shall leave the Leased Premises in the same condition as immediately prior to such trade fixture or signage installation, in a good, neat and clean condition, free of debris and broom clean condition. All trade fixtures, signs, furniture, furnishings and other personal property installed in or attached to the Leased Premises by **TENANT** must be new or in good, serviceable and attractive condition when so installed or attached. If **TENANT** does not remove said trade fixtures, signs, furniture, furnishings, and other personal property promptly upon the termination of this Agreement, **CITY** may effect such removal and make any repairs necessitated thereby. The cost therefor shall be immediately due and payable from **TENANT** hereunder. **TENANT** agrees that any such trade fixtures, signs, etc., not removed within thirty (30) days after the termination of this Agreement shall become **CITY's** property without the necessity of legal action on **CITY's** part and to be disposed of by **CITY** at a private or public sale without notice or any liability whatsoever to **TENANT**. Further, **TENANT** will repair any damage caused by such removal and make any repairs necessitated thereby.

7.2 Any floor covering affixed to the floor of the Leased Premises shall be and become the property of **CITY** absolutely, but in the event **CITY** desires removal of same at the termination of this Agreement, **TENANT** shall remove the same at **TENANT's** sole cost and expense.

VIII. SIGNS

8.1 **TENANT** will be solely responsible for all costs associated with the permits, approvals, manufacture, installation and on-going maintenance of any and all signage. **TENANT** hereby agrees not to install or display any sign(s) outside the Leased Premises or in any window or on the exterior of the Leased Premises without the prior approval of said sign(s) by the **CITY**. **TENANT** further agrees to obtain all necessary permits and comply with such sign design criteria and sign review procedures as may be reasonably established and amended from time to time by duly authorized **CITY** authority, including, but not limited to, securing any approval required by the **CITY's** Historic and Design Review Commission and the Building Inspections Department. "Signs" shall also include any work to be done to the Theater marquee and tower sign.

8.2 No sign shall be placed on the improvements or premises which will in any manner cause structural damage or injury to the building or injury to any persons on or about the Leased Premises.

8.3 Whenever **TENANT's** signage is repaired, removed or replaced, **TENANT** agrees to restore the area(s) where signage existed to its original condition.

IX. REPAIR AND MAINTENANCE

9.1 **TENANT** agrees, at **TENANT's** own expense, to repair and maintain and keep in a clean, safe and sanitary condition: (1) the interior of the Leased Premises, including interior plumbing, plumbing fixtures, plumbing lines and plumbing connections and interior electrical fixtures, lamps, and/or bulbs, wiring and connections, and interior walls, flooring, doors and plate glass and other interior improvements, in good (usual wear and tear excepted), (2) the exterior and all structural elements, including, but not limited to, the roof, foundation, main beams, exterior walls of the Leased Premises, including window frames (including plate glass), as well as, exterior plumbing fixtures, lines and connections and electrical fixtures and (3) heating and air conditioning equipment. **TENANT** shall also paint the exterior and interior areas of the Leased Premises as necessary to maintain said Premises or any part thereof, in a manner reasonably satisfactory to fulfill the obligations of this **Article IX**. **TENANT** shall not commit or permit any waste of said Premises. **TENANT** also assumes any and all responsibility and associated costs for the day-to-day cleaning of the Leased Premises.

9.2 If **TENANT** neglects and does not maintain said Leased Premises in good condition, reasonable wear and tear excepted, it is agreed by both parties hereto that **CITY** may demand that **TENANT** make the same forthwith, and if **TENANT** refuses or neglects to commence such repairs or maintenance and complete the same with reasonable dispatch, the **CITY** may make or cause such repairs or maintenance to be made and shall not be responsible to the **TENANT** for any loss or damage that may accrue to **TENANT's** "business" by reason thereof, and if the **CITY** makes or causes such repairs or maintenance to be made, the **TENANT** agrees that it will forthwith, on demand, pay to **CITY** the cost thereof, and if **TENANT** shall default in such payment, **CITY** shall have the remedies provided elsewhere herein for default of indebtedness, costs, or charges due by **TENANT** to **CITY**.

9.3 **CITY** shall not be liable to **TENANT** for any damage to merchandise, trade fixtures, or personal property of **TENANT** in the Leased Premises caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment or other **TENANT's** use of their respective premises or the common areas defined hereafter.

9.4 **TENANT**, at its sole cost and expense, will gather all trash, litter and refuse in the Leased Premises and dispose of same in accordance with policy established by **CITY**.

9.6 If the **TENANT** installs any electrical equipment which would overload the existing lines in the herein Leased Premises, the **TENANT** shall at its own expense, make whatever changes are necessary to comply with the requirements of the Insurance Underwriters and/or the **CITY** of San Antonio Electrical Inspector's Department.

X. COMMON AREAS

10.1 "Common Areas" shall mean all areas, space, equipment, facilities, and services provided from time to time by **CITY** for the common use and benefit of the public, including ingress/egress to HemisFair Park, ramps, access roads, driveways, sidewalks, landscaped space, pedestrian walkways or courts, and parking areas.

10.2 **CITY** shall operate and maintain the Common Areas immediately adjacent to the Leased Premises and keep said Common Areas in good order and repair, excluding the exterior patio and staircases attached to the Building.

10.3 **TENANT** shall not place any items in the Common Areas without the permission of the Director in writing.

XI. UTILITIES, JANITORIAL AND SECURITY SERVICES

11.1 **TENANT** shall provide for and pay directly to the utility companies, all utility company connection charges, including the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water,

sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, including specific chilled water costs as set forth hereafter (except as otherwise set out below), used in or on the Leased Premises and **TENANT** shall furnish all electric light bulbs and tubes. **CITY** shall not be liable to **TENANT** in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of the **CITY**.

11.2 **TENANT** agrees to continue to use the current Chilled Water System and pay its proportionate share of the annual costs thereof, as set forth in **Section 11.3** below:

11.3 **CITY** agrees to pay 75% of the chilled water costs during the first year of the term (estimated at \$38,000). **TENANT** will pay the greater of the following: 1) 25% of the chilled water costs per year or, 2) 3% of gross annual sales per year, payable to the **CITY** on or before February 1st of the year following such usage. A maximum amount to be paid by the **CITY** for chilled water costs for the remaining portion of the 15-year term will be established at the start of the second year of the Initial Term, based on actual usage costs for the first year.

11.4 **TENANT** will be responsible for due diligence concerning potential increases in the chilled water costs due to **TENANT** usage during the Initial Term, as opposed to the current **CITY** usage.

11.5 Further, in connection with its use of the Leased Premises, **TENANT** agrees to provide for (1) the cost of janitorial services and (2) in the event **TENANT** chooses to provide security services for the Leased Premises, **TENANT** will provide for the payment of all private security services for the Leased Premises and use the off-duty Police Employment of the San Antonio Police Department so long as it is required by the San Antonio Police Department Police Union Contract.

XII. LIENS

12.1 Except as set out below, the **TENANT** and **CITY** agree with each other not to permit any lien to be filed against the Premises, or any Improvements located on the Premises or **CITY**'s leasehold interest in the Premises, on account of nonpayment or dispute with respect to labor or materials furnished in connection with construction or any subsequent repairs, modifications or additions thereto, nor shall the parties permit any final judgment, lien or attachment to lie against the Premises for any other reason. Should any such lien be filed against (i) the Premises, (ii) any Improvements located upon the Premises or (iii) the **TENANT**'s or **CITY**'s leasehold interest in the Premises, the party from whose fault or alleged debt such lien arises shall within thirty (30) days after filing cause such lien to be removed or shall commence to diligently pursue the removal of such lien within such thirty (30) day period and in any event remove such lien within six (6) months from the date of its filing. **CITY** or **TENANT** shall have the right, at its own cost and expense, to initiate and prosecute any proceeding permitted by law for the purpose of obtaining an abatement or otherwise contesting the validity or amount of account relating to the non-payment or dispute of labor or material costs furnished in connection with the construction or subsequent repairs, modifications or judgments thereto.

12.2 **LEASEHOLD MORTGAGE**. In the event that **TENANT** shall pledge, hypothecate, mortgage, or assign all or part of its interest in the Premises as security for an indebtedness in any form whatsoever (this pledge hereinafter referred to as a "mortgage"), and if the holder of the indebtedness secured by such interest in the Premises (hereinafter "mortgagee") notifies the **CITY** of the execution of such mortgage, and the name and place for service of notices upon such mortgagee, then and in such event, **CITY** hereby agrees for the benefit of **TENANT** and such mortgagee from time to time:

- A) That **CITY** will give to any such mortgagee simultaneously with service on **TENANT** a duplicate of any and all notices or demands given by **CITY** to **TENANT** and no such notice to **TENANT** shall be effective unless a copy is so served upon the mortgagee.
- B) In the event of any default by **TENANT** hereunder, or under the terms of the mortgage, such mortgagee shall have the privilege of performing any of **TENANT**'s covenants or of curing any defaults by **TENANT** or of exercising any election, option or privilege conferred upon **CITY** by the terms of this Lease.

- C) **CITY** shall not terminate this Lease for any default of **TENANT** if, within a period of thirty (30) days after the expiration of the period of time within which **TENANT** might cure such default, such default is cured or caused to be cured by such mortgagee or, if within a period of thirty (30) days after the expiration of the period of time within which **TENANT** might commence to eliminate the cause of such default, such mortgagee commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch to cure the default not later than ninety (90) days from the date notice is received by such mortgagee, subject to force majeure or **CITY'S** agreement to extend such date beyond ninety (90) days.
- D) No liability for any payment hereunder or the performance of any of **TENANT's** covenants and agreements hereunder shall attach to or be imposed upon any mortgagee while not in possession of the Premises, unless such mortgagee has undertaken to cure a default by **TENANT** or has undertaken to commence to eliminate the cause of any such default.
- E) The execution, delivery or filing of record of a leasehold mortgage, or deed of trust, financing statement or a conditional assignment of this Lease by **TENANT**, as collateral security therefor shall not be deemed a Lease assignment for any other purpose.
- F) Subject to the Non-Disturbance and Attornment language set out below, **CITY** will execute such instruments as **TENANT** may request from time to time to subordinate **CITY's** interest in the Premises to any indebtedness incurred and/or mortgage executed by **TENANT** relating to the Premises.

XIII. INSURANCE

13.1 **TENANT** understands and agrees that any and all employees, agents, representatives, contractors, subcontractors, invitees, or volunteers of **TENANT** while engaged in the performance of any work required by the **TENANT** or any work related to this Agreement shall be considered employees, agents, representatives, contractors, subcontractors, invitees or volunteers of **TENANT** under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, contractors, subcontractors, invitees, agents or volunteers and shall be the sole obligation and responsibility of **TENANT**.

13.2 Prior to the commencement of any work under this Agreement, **TENANT** shall furnish a completed Certificate of Insurance to the **CITY** Clerk, with a copy to the Director of the Asset Management Department and the Director of the Convention Facilities Department, which Certificate shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. **CITY** shall have no duty to perform under this Agreement until such certificate shall have been delivered to the **CITY** Clerk, with copies to the department directors named herein, and no officer or employee shall have authority to waive this requirement.

13.3 **CITY** reserves the right to review insurance requirements of this Article during the effective period of this Agreement and any extension or renewal of the term thereof and to modify insurance coverage and their limits when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

13.4 **TENANT's** financial integrity is of interest to **CITY**, therefore, subject to **TENANT's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, and without limiting **CITY's** indemnification, **TENANT** shall obtain and maintain, with respect to the Leased Premises, in full force and effect for the duration of the Agreement, and any extensions thereof, thereof, including during the period of any **TENANT's** Work in the construction of improvements, renovations, restorations, repairs, remodeling, additions, or alterations ("construction work"), insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas, and rated A- or better by A.M. Best Company or otherwise acceptable to **CITY**, in the following types and amounts:

TYPE	AMOUNT (Minimum Limits)
(A) Workers' Compensation or an alternate program, which alternate program must be approved by the CITY's Risk Manager	Statutory
(B) Employers' Liability or an alternate program, which alternate program must be approved by the CITY's Risk Manager	\$500,000/\$500,000/\$500,000
(C) Commercial General (Public) Liability-to include, but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000
(1) Premises Operations	
(2) Contractual Liability	
(3) Broad Form Property Damage to include Fire Legal Liability	
(4) Independent Contractors	
(5) Explosion, Collapse and Underground ("ECU") Property Damage; (if applicable)	
(6) Personal Injury Liability	
(7) Liquor Host Liability, if TENANT serves alcoholic beverages;	
(8) Products/Completed Operations (if applicable)	
(D) Liquor Legal Liability if liquor is sold on the Leased Premises	
(E) Builders' Risk insurance for physical damage to the improvements described herein (if applicable), i.e., when TENANT's Work and construction work is to be done	Replacement Cost Coverage
(F) Professional Liability Insurance for architects and engineers, if design or construction work is to be done	
(G) Business Automobile Liability Insurance-to include coverage of:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
(1) Owned/Leased Automobiles	
(2) Non-owned Automobiles	
(3) Hired Automobiles	

TYPE	AMOUNT (Minimum Limits)
(H) Property Insurance-for physical damage to the personal property of TENANT AND all TENANT improvements and betterments to the Premises	Coverage for a minimum of the replacement cost of TENANT'S personal property and TENANT'S improvements and betterments to the Premises
(I) Plate Glass coverage	Coverage for the replacement of windows and doors of the Leased Premises, or, at TENANT's option, self-insurance

13.5 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the **CITY**, **TENANT** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

13.6 **TENANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or behalf of, the named insured performed under contract with **CITY**, with the exception of the workers compensation policy;
- Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy; Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

13.7 **TENANT** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following address:

**CITY CLERK
P.O. Box 839966
San Antonio, Texas 78283-3966**

with a copy to: Director, Department of Asset Management and Director, Department of Convention Facilities at the same address.

13.8 If **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this agreement; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **TENANT** to maintain said insurance or secure such endorsement. In addition, to any other remedies **CITY** may have upon **TENANT's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **TENANT** to stop performing under this Agreement and/or withhold any payment(s) which become due, to **TENANT** hereunder until **TENANT** demonstrates compliance with the requirements hereof.

13.9 During any **TENANT's** work or other construction, repair, renovation, etc., **TENANT** agrees, at **TENANT's** expense, to obtain and maintain Builder's Risk, Public Liability insurance and Worker's Compensation insurance adequate to fully protect **CITY** as well as **TENANT** from and against liability for death of or injury to persons, or damage to property, caused in or about, or by reason of, the construction of **TENANT's** Work or other construction work, in such amounts as **CITY's** Risk Manager may deem appropriate..

13.10 Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for payments of damages to persons or property resulting from **TENANT's** or any approved subtenant's performance of the work covered under this Agreement.

13.11 **CITY** agrees to maintain Property Insurance for the shell portion of the Premises, or evidence of self-insurance in an amount equal to the replacement cost value of such shell, excluding the cost to replace **TENANT'S** improvements, which are insured by **TENANT** as required above.

13.12 **CITY** shall, at all times, following the Commencement Date, cause each of its subtenants, licensees (and persons who use the Premises through or under the rights of its subtenants or licensees), or any persons (other than **CITY**) who shall use the Premises pursuant of the Booking rights of the **CITY** under the terms of this Lease to maintain with respect to use of the Premises the insurance **required of TENANT** set forth in Section 13 above and to fulfill the other requirements of **TENANT** set forth in Sections 13.2, 13.5 through 13.7 above.

13.13 **CITY**, upon its use of the Premises, shall maintain such similar insurance or evidence of self-insurance in the amounts referenced above in Section 13.4, and in compliance with Section 13.2.

13.14 If any blanket general insurance policy or evidence of self-insurance of **CITY** complies with the requirements of this **Article XIII**, such insurance shall fulfill the requirements set forth herein.

XIV. FIRE & OTHER CASUALTY

14.1 In the event that the Leased Premises shall be partially damaged by fire, the elements, civil disorder, or other casualty, the **TENANT** shall give immediate notice thereof to the **CITY** and the same shall be repaired at the expense of the **CITY** without unreasonable delay unless (1) the **CITY** determines that the damage is so extensive that repair or rebuilding is not feasible since the damage has rendered the Leased Premises untenable as determined by the exclusive judgment of the **CITY** (2) or that such damage was caused by the negligence of **TENANT**, its agents, employees, representatives, contractors, subcontractors, subtenants or invitees. In the event that the damage should be so extensive as to render the Leased Premises untenable, in the exclusive judgment of **CITY**, then, at the option of the **CITY**, and upon notice to **TENANT**, in writing, this Agreement shall cease and come to an end. If **CITY** elects to rebuild the Leased Premises and continue this Agreement, **CITY** shall notify **TENANT** of such intention within sixty (60) days after the date of the damage. Within thirty (30) days of receipt of **CITY's** written notice to **TENANT** of such intention to rebuild, **TENANT** shall notify **CITY** in writing of its election to rebuild its improvements, signs, trade fixtures, equipment and other items provided and/or installed by **TENANT** or not; otherwise, this Agreement shall be deemed canceled and of no further force or effect. In the event that **TENANT** elects not to rebuild, then **CITY's** obligation to rebuild shall terminate as to such damages.

14.2 **CITY's** obligations to rebuild or repair under this **Article XIV** shall in any event be limited to restoring the Leased Premises to substantially the condition that existed prior to the completion of **TENANT's** Work performed by **TENANT** and shall further be limited to the extent of the insurance proceeds available to **CITY** and, as applicable, to **TENANT** for such restoration of its improvements, signs, trade fixtures, equipment and other items provided and/or installed by **TENANT**, if **TENANT** elects to rebuild such improvements, etc. **TENANT** agrees that promptly after completion of the aforementioned restoration by **CITY**, **TENANT** will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore such of its improvements, signs, trade fixtures, equipment and other items provided and/or installed by **TENANT** to the extent of the insurance proceeds they may receive from such damage.

14.3 CITY shall have no obligation to repair or rebuild the Leased Premises if the damage, whether partial or otherwise, was caused by the negligence of TENANT.

XV. INDEMNIFICATION

15.1 Excluding sole active negligence on part of CITY, its elected officials, employees, officers, directors, and representatives, TENANT SHALL AND WILL INDEMNIFY AND SAVE HARMLESS only CITY, and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, but not including subtenants, licensees or other users of the Premises through CITY'S Booking rights, from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action, and any and every kind and nature arising or growing out of or in any way connected with TENANT'S use, occupancy, management, operation, or control of the Premises ("the Claims") but only to the extent that liability for such claims exceeds insurance proceeds available to CITY as coverage for such acts or other funds or insurance proceeds available to CITY from other parties. This obligation to indemnify shall include the retention of outside legal counsel and third party investigation costs, expenses, and liabilities from the first notice that any Claim or demand has been made. It is expressly understood and agreed that TENANT is, and shall be, deemed to be an independent contractor and operator responsible to all parties for TENANT'S negligent acts and omissions. Such indemnity is tendered by TENANT, all without however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall promptly advise CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this Agreement and shall see to the investigation of and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this Article.

15.2 It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this Article, is an INDEMNITY extended by TENANT to INDEMNIFY AND PROTECT CITY from the consequences of CITY'S own negligence, provided however, that the indemnity provided for in this Article shall apply only when the negligent act of CITY is a contributory cause of the resultant injury, death, or damage, shall apply only to the extent liability for such claims exceeds proceeds available to CITY as coverage for such acts or other funds or insurance proceeds available to CITY from other parties and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death, or damage. TENANT further agrees to defend, at its own expense, and on behalf of CITY and in the name of CITY, any claim or litigation brought in connection with any such injury, death, or damage.

XVI. LAWS AND ORDINANCE

16.1 TENANT agrees to comply promptly with all laws, ordinances, orders, and regulations affecting the Leased Premises and the cleanliness, safety, operation, or use thereof or the business conducted therein.

16.2 TENANT agrees to comply with the regulations or requirements of any insurance underwriter, inspection bureau, or similar agency, with respect to the Premises leased by TENANT. TENANT also agrees to permit CITY to comply with such recommendations and requirements with respect to that portion of the Leased Premises maintained by CITY.

XVII. RULES AND REGULATIONS

17.1 **TENANT** covenants and agrees:

- A) **TENANT** will not use the Leased Premises except for the purposes permitted in **Article IV**.
- B) Subject to **TENANT**'s right to conduct its business, **TENANT** shall not injure, overload or deface the Leased Premises or building, nor make any use thereof which is contrary to any law or ordinances, nor permit any act or thing to be done on the Leased Premises which may make void or voidable or increase the rates of any insurance covering the Leased Premises; nor cause or permit the omission of any excessive noise or odor from the Leased Premises by the operation of any instrument, apparatus, equipment therein, or other means which may, in **CITY**'s judgment, be deemed offensive or disturbing in nature; nor perform any act or carry on any practice which may be a nuisance or menace to other parties; or which is illegal, immoral or disreputable, or which may reduce the market value of the Leased Premises.
- C) **TENANT** shall dispose of garbage and refuse in accordance with municipal ordinances. Garbage and refuse shall be removed from the Leased Premises daily and shall not be left for collection outside the Leased Premises.
- D) No loudspeakers, televisions, satellite antennas, phonographs, radios, flashing lights, or other devices shall be used in a manner so as to be heard or seen outside of the Leased Premises without the prior written consent of **CITY**.
- E) As applicable, no auction, fire, bankruptcy, going out of business, or other selling-out sales shall be conducted on or about the Leased Premises without the prior written consent of the **CITY**.
- F) The **TENANT** agrees to keep the premises clear and free from rodents, bugs and vermin.

17.2 **TENANT** further covenants and agrees to comply with any reasonable standard Rules and Regulations which apply to all tenants of HemisFair Park, if any. **TENANT** shall have the right to vote in the establishment of any future Rules and Regulations as a tenant of HemisFair Park.

XVIII. SUBORDINATION TO SCHEDULED EVENTS

18.1 **TENANT** acknowledges and agrees that **CITY** will from time to time accommodate various functions or events that may require temporary street closures, controlled or limited access to the Leased Premises and/or temporary closure of access or temporary closure of the Leased Premises. **TENANT** expressly recognizes that any such determination or requirement by the **CITY** is superior to any right, privilege or leasehold interest granted **TENANT** under this Agreement and **TENANT** hereby agrees to cooperate fully with **CITY** upon notification. **TENANT** further waives any and all claims for damages, including but not limited to, loss of business, which **TENANT** may suffer as a result of any such requirement by **CITY**. **CITY** will use its bests efforts to provide advance notice to **TENANT** of such scheduled events.

XIX. ACCESS TO PREMISES

19.1 **TENANT** agrees that **CITY**, its agents, employees or servants, or any person authorized by **CITY**, may enter the Leased Premises for the purpose of: (a) inspecting the condition of same; (b) making such repairs, additions, alterations or improvements thereto, or to the building of which they are a part, as **CITY** may elect or be required to make; and (c) exhibiting the same to prospective purchasers of the Building in which the Leased Premises are contained. **CITY** agrees that any such acts shall be carried out in a manner that will not interfere with **TENANT**'s operations of the Premises except in the case of a bona fide emergence relating to life safety issues or issues of material damage. **TENANT** agrees that neither **TENANT** nor any person within **TENANT**'s control will, otherwise, interfere with such notices or exhibits.

XX. YIELDING UP

20.1 As noted above, upon the expiration or termination of this Agreement, provided **TENANT** is not in default, **TENANT** may remove its trade fixtures, signs, furniture, furnishings, other personal property and such of **TENANT's** non-structural improvements not permanently affixed as **TENANT** shall desire and **TENANT** agrees to repair all damages caused or exposed by such removal. **TENANT** shall yield up peacefully to **CITY** the Leased Premises and all other improvements, alterations, additions and changes made to or upon the same in good order, repair and condition in all respects (reasonable wear and tear excepted), damage by fire, casualty, taking by eminent domain or act of public authority excepted.

XXI. HOLDING OVER

21.1 Should **TENANT** hold over the Leased Premises, or any part thereof, after the expiration of the Initial Term, or Extended Term (if applicable), of this Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental of double the Preservation Fee set forth in **Article IV**, per month. The inclusion of the preceding sentence shall not be construed as **CITY's** consent for the **TENANT** to hold over.

XXII. ASSIGNMENT

22.1 No assignment shall be made by **TENANT** of its rights under the terms of this Lease without the prior written approval of **CITY**, provided, however, **TENANT** shall be entitled to (i) sub-lease or license the use of all or any part of the Premises without the prior written consent of **CITY** provided such sub-lease or license is carried out in connection with the rental of the Improvements in the ordinary course of **TENANT's** intended use of the Premises, or (ii) assign or pledge its leasehold interest to a lender as security for any financing provided to **TENANT** (in which case **TENANT** shall remain responsible for all of the obligations of "**TENANT**" as set out under the terms of the Lease.)

22.2 As a condition precedent to **TENANT's** sub-letting, license, assignment or pledge, **TENANT** agrees to furnish to **CITY** and any mortgagee, upon request, an executed copy of each such sub-lease, license or assignment at the time the written instrument is executed.

22.3 **CITY** may assign or transfer its interest in this Lease without the prior written approval of **TENANT**. No assignment or transfer of this Lease by the **CITY** shall be binding on the **TENANT** unless the assignee or transferee of **CITY** shall assume and agree to be bound by the terms of this Lease and **CITY** shall remain responsible for all of the obligations of "**CITY**" as set out under the terms of the Lease.

XXIII. TERMINATION

23.1 **DEFAULT AND REMEDIES - TENANT** The following events shall be deemed to be events of default by **TENANT** under this Agreement:

- A). **TENANT's** failure to take possession of the Leased Premises on or before September 1, 1997; or
- B). **TENANT's** abandonment of all or any part of the Leased Premises; or
- C). The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act; or
- E). If the estate hereby created shall be taken by execution or by other process of laws; or
- F). If **TENANT** (i) fails to pay any payment obligation or fails to perform any of its other monetary obligations under this Lease within ten (10) days after **CITY** has furnished written notice of the breach of any such obligation to **TENANT** or (ii) fails to cure or commence to cure and diligently pursue the completion of the cure of a non-monetary breach within thirty (30) days after

CITY has furnished **TENANT** written notice of such non-performance, with such cure to be completed not to exceed a total period of sixty (60) days from the date of the non-monetary default, then **CITY** may take any of the following actions:

A) Upon the occurrence of an event of default by **TENANT** as heretofore provided, **CITY** may, at its sole remedies (i) declare this Agreement and all rights and interests created by it to be terminated as of the date of such default and (ii) and pursue any and all damages sustained by **CITY** up to the date of termination. Upon **CITY** terminating, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney, may resume possession of the Premises. Upon repossession and termination, notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, **TENANT** and **CITY** agree that **CITY** shall have no duty to relet the **Leased Premises** or otherwise to mitigate damages under this Agreement, and **TENANT** hereby waives and releases **CITY** from any and all duty to relet the **Leased Premises** or otherwise to mitigate damages. **TENANT** agrees that **CITY** shall in no event be liable and **TENANT**'s liability shall not be affected or diminished in any way whatsoever for failure to relet the **Leased Premises**, or in the event the **Leased Premises** are relet, for failure to collect any rental under such relating. In the event, and only in the event that (despite such waiver and contrary to the intent of the parties hereto) applicable law requires **CITY** to attempt to mitigate damages, **CITY** and **TENANT** agree that any such duty shall be satisfied and **CITY** shall be deemed to have used objectively reasonable efforts to relet the **Leased Premises** by doing the following: (a) posting a "For Lease" sign on the **Leased Premises**; (b) advising **CITY**'s lease agent, if any, of the availability of the **Leased Premises**; and (c) advising at least one outside commercial brokerage entity of the availability of the **Leased Premises**. If **CITY** receives any payments from the relating of the **Leased Premises** and is required to mitigate damages (despite the intent of the parties), any such payment shall first be applied to any costs or expenses incurred by **CITY** as a result of **TENANT**'s fault under this Agreement.

B) Any termination of this Agreement by **CITY** as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable to the date of termination, but not thereafter, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default thereunder up to the date of termination but not thereafter. No waiver by **CITY** of a breach of any of the covenants, conditions, or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

C) Upon any such expiration or termination of this Agreement, **TENANT** shall quit and peacefully surrender the **Leased Premises** to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the **Leased Premises** and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the **Leased Premises**.

D) If **CITY** shall terminate this Agreement by reasons of a condition of default, **TENANT**, and those holding under **TENANT**, shall forthwith remove their trade fixtures, signs, furniture, furnishings and other personal property (hereafter collectively "good and effects") from the **Leased Premises**. If **TENANT** or any such claimant shall fail to effect such removal within ten (10) days after such termination, then **TENANT** agrees that any such goods and effects left shall automatically become the property of **CITY**, whereupon **CITY** may, without liability to **TENANT** or those claiming under **TENANT**, remove such goods and effects and store the same for the account of **TENANT** or of the owner thereof at any place selected by **CITY** with all costs for said removal and storage to be borne by **TENANT** or, at **CITY**'s option, **CITY** may retain or dispose of **TENANT**'s goods and effects, without notice, at a private or public sale and without liability to **TENANT** or those claiming under **TENANT**.

E) If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby **TENANT** shall be permitted to retain possession of said **Leased Premises**, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or of this Agreement.

F) Any amount paid or expense or liability incurred by **CITY** for the account of **TENANT** may be deemed to be additional rental and the same may, at the option of **CITY**, be added to any Preservation Fee or other sums then due or thereafter falling due hereunder.

23.2 DEFAULT AND REMEDIES - CITY-The following events shall be deemed to be events of default by **CITY** under this Agreement:

A) If **CITY** (i) fails to pay any payment obligation or fails to perform any of its other monetary obligations under this Lease within ten (10) days after **TENANT** has furnished written notice of the breach of any such obligation to **CITY** or (ii) fails to cure or commence to cure and diligently pursue the completion of the cure of a non-monetary breach within thirty (30) days after **TENANT** has furnished **CITY** written notice of such non-performance, with such cure to be completed not to exceed a total period of sixty (60) days from the date of the non-monetary default, then **TENANT** may take any of the following actions:

B) Upon the occurrence of an event of default by **CITY** as heretofore provided, **TENANT** may, at its sole remedies (i) declare this Agreement and all rights and interests created by it to be terminated as of the date of such default and/or (ii) pursue any and all damages sustained by **TENANT** relating to such default. Upon **TENANT** terminating, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof.

23.3 TERMINATION WITHOUT CAUSE DURING FIRST THREE (3) YEARS OF INITIAL TERM:

Notwithstanding the termination with cause provisions in case of default hereof, this Lease may be terminated at its option by either party without cause, during the first three (3) Lease Years of the Initial Term, upon written notice, (i) provided such notice is in writing and specifies an effective date for termination of not less than six (6) months from the date such notice is mailed by certified mail, return receipt requested to the other party and (ii) provided the following conditions are met:

(A) In the case of a termination by **CITY** without cause, except as provided for in Section 6.10, **CITY** pays to **TENANT**, at the time of such election, a sum equal to:

the then depreciated value of **TENANT**'s original investment for Improvements constructed by **TENANT** to the date of termination, which sum is: (i) based on Internal Revenue Service depreciation schedules for such improvements, (ii) subject to verification by **TENANT**'S accounting records and tax returns, copies of which shall be made available to **CITY** and (iii) is agreed upon by **CITY**.

(B) In the case of a termination by **TENANT** without cause, except as provided for in Section 6.10, **TENANT** pays to **CITY**, at the time of such election, a sum equal to:

(i) the amount of **CITY**'S actual operating costs including, but not limited to, **CITY**'S portion of the chilled water costs, up to the date of termination, as verified by **TENANT** based on **CITY**'S accounting records, multiplied by:

(ii) the cost of the improvements (in terms of dollar amounts) established by **CITY** and **TENANT**, as set forth in Exhibit "H" hereto, which through the termination date have not been completed by **TENANT**, divided by:

(iii) the cost of the improvements (in terms of dollar amounts) proposed for construction during, up to, and through such termination date, as set forth in Exhibit "H".

EXAMPLE : DURING THE FIRST LEASE YEAR,

If **CITY**'S actual operating costs = \$150,000,
TENANT'S improvements not completed = \$300,000, and
TENANT'S improvements proposed to be completed, but not completed = \$500,000.
CITY would be entitled to \$150,000 X [(\$300,000 ÷ \$500,000)] = \$120,000

If either party terminates without cause hereunder and should the parties fail to agree on the sum called for above, each said party agrees to submit the determination to non-binding mediation, as soon as reasonably possible, with each to pay their respective costs. Once the final sum is paid or otherwise resolved as to the other party by the party seeking to terminate without cause, then neither party will have any further obligations or liabilities under this Lease, as if a full and complete release of lease had been mutually executed by said parties.

23.4 TERMINATION WITHOUT CAUSE FOLLOWING THE FIRST THREE (3) YEARS OF THE INITIAL TERM:

Notwithstanding the termination with cause provisions in case of default hereof, this Lease may be terminated at its option by either party without cause, following the end of the first three (3) Lease Years of the Initial Term, upon written notice, (i) provided such notice is in writing and specifies an effective date for termination of not less than six (6) months from the date such notice is mailed by certified mail, return receipt requested to the other party and (ii) provided the following conditions are met:

(A) In the case of a termination by **CITY** without cause, except as provided for in Section 6.10, **CITY** pays to **TENANT**, at the time of such election, a sum equal to:

the then depreciated value of **TENANT**'s original investment for Improvements constructed by **TENANT** to the date of termination, which sum is: (i) based on Internal Revenue Service depreciation schedules for such improvements, (ii) subject to verification by **TENANT**'S accounting records and tax returns, copies of which shall be made available to **CITY** and (iii) is agreed upon by **CITY**.

(B) In the case of a termination by **TENANT** without cause, except as provided for in Section 6.10, **TENANT** pays to **CITY**, at the time of such election, a sum equal to:

three (3) years of the Preservation Fees from the **Leased Premises** which sum would be unrealized by virtue of the termination, to be based on average Preservation Fees for the consecutive three (3) year period immediately ending December 31 of the year proceeding such termination.

If either party terminates without cause hereunder and should the parties fail to agree on the sum called for above, each said party agrees to submit the determination to non-binding mediation, as soon as reasonably possible, with each to pay their respective costs. Once the final sum is paid or otherwise resolved as to the other party by the party seeking to terminate without cause, then neither party will have any further obligations or liabilities under this Lease, as if a full and complete release of lease had been mutually executed by said parties.

XXIV. LIEN FOR RENT

24.1 In consideration of the mutual benefits arising under this Agreement, **TENANT** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto **CITY** upon all property of **TENANT** now or hereafter placed in or upon the **Leased Premises** (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest of **CITY** for the payment of all rents and other sums agreed to be paid by **TENANT** herein. At **CITY**'s request, **TENANT** shall execute and deliver to **CITY** a financing statement appropriate for use under said code. Such lien and security interest shall be in addition to and cumulative of **CITY**'s Landlord's and other liens provided by law. The above notwithstanding, upon **TENANT**'s request, **CITY** agrees to subordinate the lien created hereunder and any statutory landlords lien to any financing to or for the benefit of **TENANT** so long as **CITY**'S fee interest in the Leased Premises is not subordinated to the lien or security interest created by such financing.

XXV. CONDEMNATION

25.1 It is agreed and understood that in the event that the **Leased Premises** are taken, in whole or in part, by any governmental authority including **CITY** (as to **TENANT'S** leasehold interest herein), this Agreement and all rights, title, and interest hereunder shall, at the option of the **TENANT** and/or **CITY**, cease on the date title to such land so taken or transferred vests in the condemning authority ("Condemnation Date"), unless **TENANT** can establish that the remaining portion of the Leased Premises is still tenantable. The condemnation award, if any, shall be allocated between **CITY** and **TENANT** as their interest and value of land and improvements may have existed immediately prior to such Condemnation Date.

XXVII. SURRENDER OF PREMISES

27.1 No act or thing done by the **CITY** or its agents during the term hereby granted shall be deemed an acceptance of a surrender of the **Leased Premises**, and no Agreement to accept a surrender of the **Leased Premises** shall be valid unless the same be made in writing and subscribed to by the **CITY**. **TENANT** acknowledges **CITY's** superior fee ownership in the **Leased Premises**.

XXVIII. CITY REPRESENTATIONS

28.1 Except for such defects as are as set forth in the Performing Arts and Entertainment Facilities Plan presented in draft form to the San Antonio City Council in a "B" Session in November, 1996, **CITY** hereby represents and that to the best of its knowledge, there are no structural, mechanical (including HVAC) or other defects in the Premises.

XXIX. MISCELLANEOUS

29.1 **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

29.2 **Entire Agreement.** This Agreement, together with the authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

29.3 **Taxes.** **TENANT** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon the leasehold interest of **TENANT** in the **Leased Premises**, and, to the extent real property taxes are assessed against the fee interest of **CITY** in the **Leased Premises**, such real property taxes, or such taxes and fees levied or assessed against the business conducted on the **Leased Premises**, or upon any of **TENANT's** property used in connection therewith; and **TENANT** shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **TENANT**.

29.4 **Minimum Wages.** **TENANT** shall pay wages that are not less than the minimum wages required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

29.5 **Non-Discrimination.** Any discrimination by **TENANT** or its agents or employees on account of race, color, sex, age, religion, handicap, or national origin, in employment practices or in the use of or admission to **Leased Premises**, is prohibited.

29.5 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns.

29.7 **Approval of CITY.** Whenever this Agreement calls for approval by **CITY**, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of Asset Management of the **CITY OF SAN ANTONIO** or his designee.

29.8 **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of landlord and **TENANT**.

29.9 **TEXAS LAW TO APPLY.** **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

29.10 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

29.11 **Captions.** The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.

XXX. NO SUBSTANTIAL INTEREST

30.1 **TENANT** acknowledges that it is informed that Texas Law prohibits contracts between the **CITY** and any local public official ("official"), such as a **CITY** officer or employee, and that the prohibition extends to an officer and employee of **CITY** agencies such as **CITY**-owned utilities and certain **CITY** boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas Law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. **TENANT** certifies (and this Agreement is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this Agreement is an officer or employee of the **CITY** or any of its agencies. **TENANT** has complied with the **CITY's** Ethics ordinance.

XXXI. NOTICES

31.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **CITY** Clerk, **CITY** Hall, P.O. Box 839966/2nd Floor, San Antonio, Texas 78283-3966 with a copy to Roland A. Lozano, Director of Asset Management at the same address. Notices to **TENANT** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid to the following address:

Mr. Richard Rosen, Executive Director
The Magik Theatre
HemisFair Park, Building #225
(Beethoven Hall Theater)
418 S. Alamo Street
San Antonio, Texas 78205

or to such other address on file with the **CITY** Clerk as **TENANT** may provide from time to time in writing to **CITY**.

31.2 All notices shall be deemed to have been delivered three (3) days after deposit in the United States mail, as described above.

XXXII. AUTHORITY

32. 1 If the signer of this Agreement is an entity or other than an individual who is the **TENANT**, then the signer of this Agreement for **TENANT** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **TENANT**.

XXXIII. TIME IS OF THE ESSENCE

33.1 Time is of the essence in all matters pertaining to this Agreement.

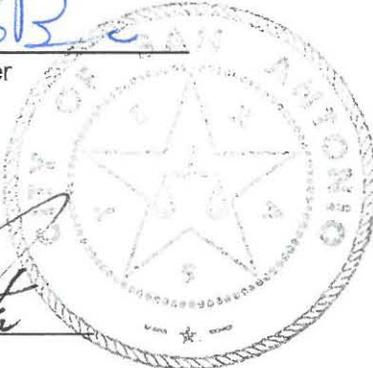
EXECUTED to be effective and commence on the 1st day of July, 1997 ("Commencement Date")

LANDLORD:
CITY OF SAN ANTONIO,
a Texas municipal corporation

TENANT:
THE MAGIK THEATRE,
a Texas non-profit corporation

BY: [Signature]
Asst. CITY Manager

BY: Bebe C. Inkley
NAME: Bebe C. INKLEY
TITLE: President, Board of Directors



ATTEST:
[Signature]
CITY Clerk

APPROVED AS TO FORM:
Lawrence F. Fassnidge
for CITY Attorney

APPROVED AS TO FORM:
[Signature]
Counsel for TENANT

EXHIBIT "A" - LEASED PREMISES

A TRACT OF LAND BEING A PORTION OF LOT 12, BLOCK 3, NEW CITY BLOCK 13814, CIVIC CENTER, PROJECT NO. 5, TEX. R-83, URBAN RENEWAL AGENCY, CITY OF SAN ANTONIO, TEXAS, IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 9518, PAGES 123-126, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS; AND A PART OF SURPLUS RIGHT-OF-WAY PARCELS FROM THE STATE OF TEXAS TO CITY OF SAN ANTONIO RECORDED IN VOLUME 4198, PAGE 1947, OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS;

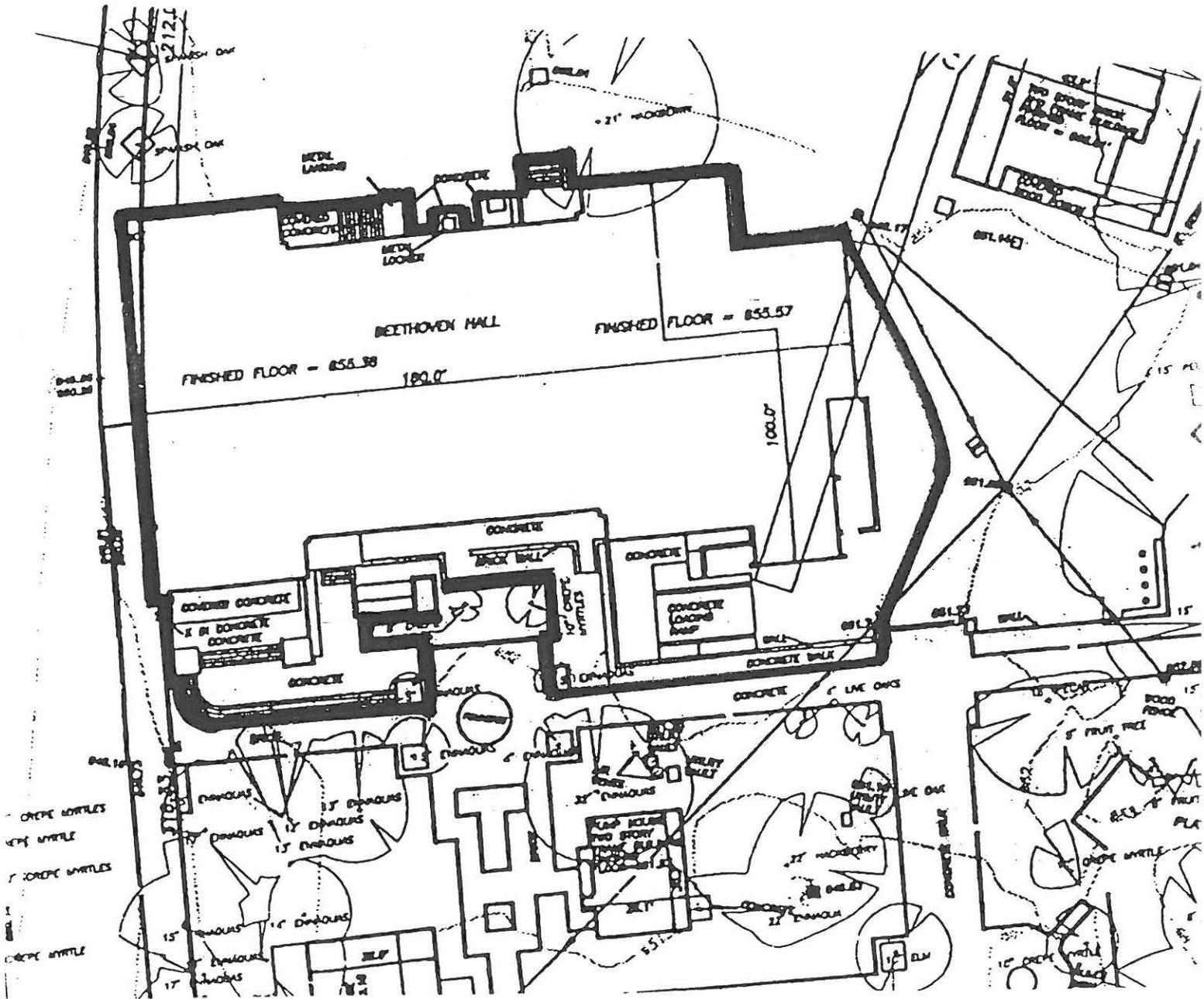


EXHIBIT "B"

**SAN ANTONIO CONVENTION FACILITIES
HENRY B. GONZALES CONVENTION CENTER
BEETHOVEN HALL BOOKINGS
JULY 1, 1997 THROUGH NOVEMBER 21, 2010**

1997

April 08, 1997

JULY 02, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 05, 1997	-	WORLDWIDE CHURCH OF GOD *(D)
JULY 06, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 09, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 12, 1997	-	WORLDWIDE CHURCH OF GOD *(D) SOCIETY ANCIENT ORDER OF HEBERNIANS *(T)
JULY 13, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 15-18, 1997	-	S.A./PARKS & RECREATION DEPARTMENT (SUMMER DANCE RECITAL) *(D)
JULY 19, 1997	-	WORLDWIDE CHURCH OF GOD *(D)
JULY 20, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 23, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 26, 1997	-	WORLD WIDE CHURCH OF GOD *(D)
JULY 27, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
JULY 30, 1997	-	SAN ANTONIO CHURCH OF CHRIST JESUS *(D)
AUGUST 01-02, 1997	-	WORLD YOUTH FEDERATION *(T)
AUGUST 11, 1997	-	TEXAS EMPLOYEE RETIREMENT SYSTEMS *(T)
AUGUST 12-18, 1997	-	LATINO LAUGH FESTIVAL *(D)
SEPTEMBER 05-06, 1997	-	ITT TECHNICAL (GRADUATION) *(D)
SEPTEMBER 14, 16-19, 1997	-	DR. PEPPER *(T)

DECEMBER 04, 1997 - ITT TECHNICAL (GRADUATION) *(D)
DECEMBER 05-06, 1997 - U.T. HEALTH SCIENCE CENTER *(T)
DECEMBER 12-15, 1997 - CHRISTINA ORTEGA *(T)

1998

FEBRUARY 12-14, 1998 - TEXAS MUSIC EDUCATORS ASSOCIATION *(D)
MARCH 27, 1998 - S.A. POLICE DEPARTMENT *(D)
APRIL 03-04, 1998 - ARTS SAN ANTONIO *(T)
APRIL 20-24, 1998 - FIESTA CORNYATION *(D)
APRIL 25, 1998 - STARLIGHT PRODUCTIONS *(D)
MAY 07-09, 1998 - TEXAS DENTAL ASSOCIATION *(D)
JUNE 21, 1998 - TEXAS MUSIC TEACHERS' ASSOCIATION *(D)
JULY 06-11, 1998 - NATIONAL ASSOCIATION/DEAF *(T)
NOVEMBER 23, 1998 - AMERICAN SPEECH LANGUAGE & HEARING ASSOCIATION *(T)
NOVEMBER 29-
DECEMBER 05, 1998 - BANK ADMINISTRATION INSTITUTE *(T)

1999

FEBRUARY 04-06, 1999 - TEXAS MUSIC EDUCATORS ASSOCIATION *(D)
APRIL 12-14, 1999 - INTERNATIONAL ASSOCIATION OF HERBIVORES *(T)

2000

FEBRUARY 09-12, 2000 - TEXAS MUSIC EDUCATORS ASSOCIATION *(D)

EXHIBIT "C" - PARKING POLICY

- **ALAMO STREET PARKING LOT/DURANGO STREET PARKING LOT
(REFERENCE ATTACHED "C-1"- PARKING AREAS)**

During the day, one (1) or two (2) spaces may be allocated to The Magik Theatre in the above noted parking lot(s). After 5:00 or 6:00 p.m., the lots are free on a first-come, first-served basis - UNLESS, CITY uses lot(s) for events such as Fiesta or the Convention Center requires use of the lot(s) for its events. When this occurs, parking is prohibited in both lots unless vehicles show a CITY-approved parking pass.

- **PARKING BEHIND BEETHOVEN HALL
(REFERENCE ATTACHED "C-1"- PARKING AREAS)**

The Convention Center controls this area, but the CITY's Parks and Recreation Department patrols all of HemisFair Park ensuring the general safety, security and maintenance of the Park, including compliance with parking guidelines and observance of fire code/parking ordinances. A maximum of five (5) vehicles may park in the area as shown after making arrangements with the Convention Center. No obstruction of the fire lane will be allowed, regardless of the number of vehicles parking in this area.

- **BUS LOADING/OFF-LOADING**

Buses may use the Alamo Street Parking Lot strictly as a loading and off-loading area for children attending performances and/or events at The Magik Theatre at Beethoven Hall. Buses must locate alternative parking during the performance or event or return to the area following the performance for pick-up and loading. Special arrangements for bus parking, loading and off-loading on Alamo Street near Beethoven Hall can be arranged with the San Antonio Police Department and the CITY's Traffic Department, prior to events and performances. Any and all fees or permits for this type of arrangement would be at the sole expense of the group attending the performance or The Magik Theatre and NOT the CITY.

EXHIBIT "C-1" - P. KING AREAS

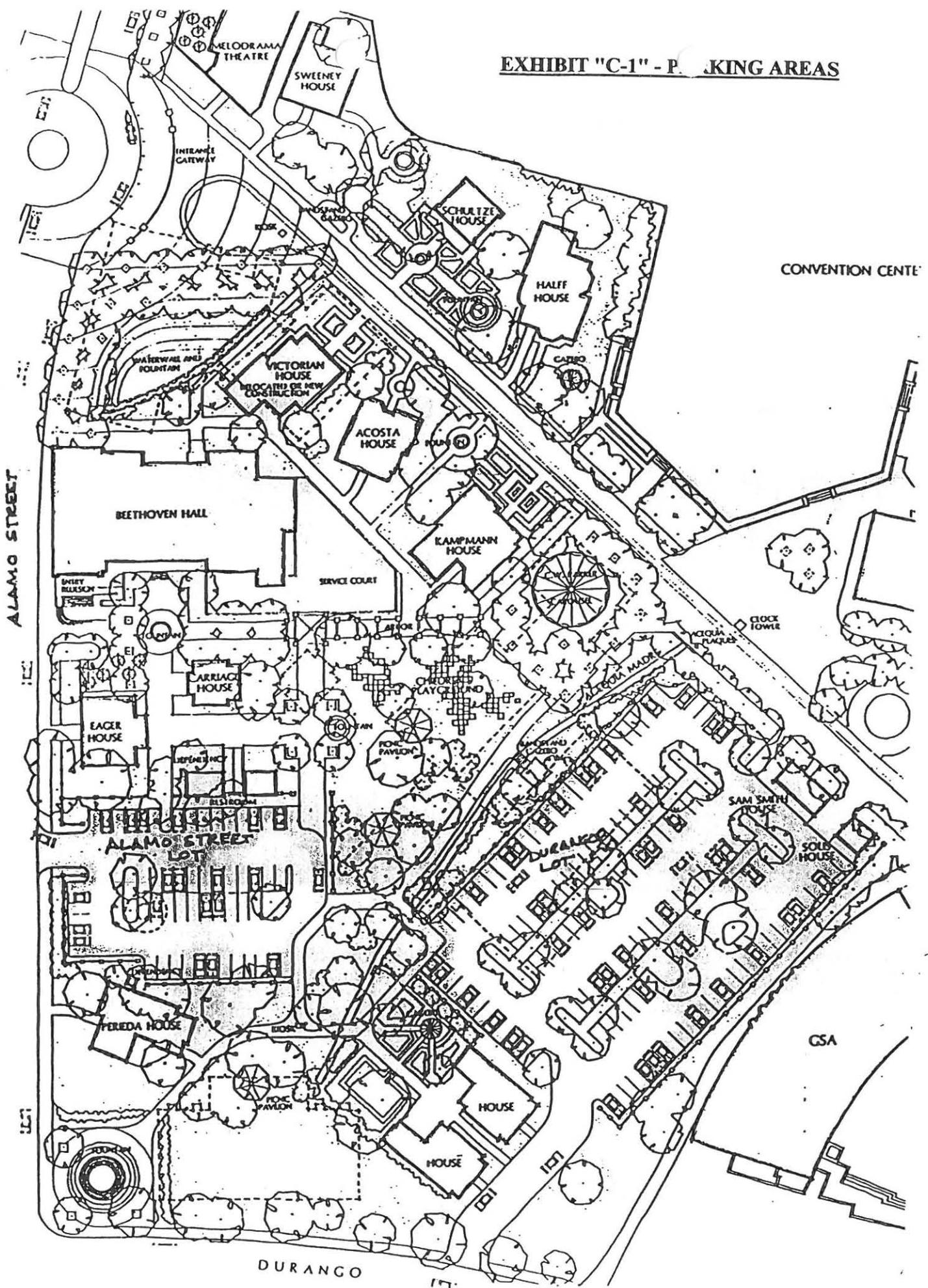


EXHIBIT "D" - TENANT RENOVATION SCHEDULE

(TO BE SUBMITTED BY TENANT)

EXHIBIT "E" - TENANT PROFORMA

(TO BE SUBMITTED BY TENANT)

EXHIBIT "F" - TENANT CAPITAL CAMPAIGN FUNDING

(TO BE SUBMITTED BY TENANT)

EXHIBIT "G" - TENANT PRELIMINARY PLANS AND SPECIFICATIONS

(TO BE SUBMITTED BY TENANT)

EXHIBIT "H" - TENANT CONSTRUCTION COST ESTIMATE

(TO BE SUBMITTED BY TENANT)

**DEPARTMENT OF ASSET MANAGEMENT
INTERDEPARTMENTAL CORRESPONDENCE SHEET**

TO: Mayor and City Council
FROM: Roland A. Lozano, Director, Department of Asset Management
COPIES: Frank Garza, Acting City Attorney; Eddie Garcia; Eduardo Diaz; File
SUBJECT: Ordinance Approving a Lease Agreement with The Magik Theatre at Beethoven Hall
DATE: April 28, 1997

SUMMARY AND RECOMMENDATIONS:

This ordinance approves a lease agreement with The Magik Theatre for a 15-year initial term with one 10-year option, based upon City Council approval, to occupy, renovate, restore and operate the Beethoven Theater in HemisFair Park in consideration for approximately \$2 million in improvements to be made during the first three (3) years of the term and for payment of Preservation Fees based on ticket sales to be paid in lieu of rent.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION:

In September, 1997, City Council approved a resolution which authorized City staff to negotiate a lease agreement with The Magik Theatre as the primary tenant at Beethoven Hall. The Magik Theatre is a non-profit performing arts organization specializing in bringing live theater productions to children and their families throughout the San Antonio area at a reasonable cost.

Due to the success of The Magik Theatre since being formed nearly three years ago, the organization has outgrown its current location at the Staacke-Stevens Building, located at Commerce and Navarro Streets, which only accommodates audiences of up to 200 people. Since Beethoven Hall offers seating for 640, The Magik Theatre approached City staff to negotiate a lease for the facility which would accommodate their anticipated growth. The Magik Theatre expects to increase its performances at Beethoven Hall with anticipated ticket sales increasing from 117,000 in their 1996-97 season to over 200,000 by 2002.

City staff and The Magik Theatre's President, Richard Rosen, and members of their Board of Directors have finalized a lease for the Beethoven Hall with the following business terms:

- **TERM:** 15 years, with one 10 year option to renew upon approval by City Council.
- **COMMENCEMENT:** July 1, 1997 with provision to conduct feasibility studies and begin

renovation work prior to that date as long as certain conditions are met, including honoring events previously booked by the Convention Facilities Department.

- **REPAIR & MAINTENANCE:** Tenant to pay all repair and maintenance costs.
- **IMPROVEMENTS:** Tenant to raise and expend approximately \$2,000,000 for construction improvements to the facility during the first three (3) years of the initial term, based on Construction Milestones. Tenant must secure all permits and approvals for City, state, and federal requirements, including approval by the Historic Design and Review Commission.
- **RENT:** Preservation Fees will be paid in lieu of rent based on ticket sales as follows:

	<u>Ticket Price</u>	<u>Preservation Fee/Ticket</u>
Year 1-5	\$0 to \$2.99*	\$0
	\$3.00 to \$4.99	\$.15
	\$5.00 and up	\$.25
Year 6-10	\$0 to \$2.99*	\$0
	\$3.00 to \$4.99	\$.50
	\$5.00 and up	\$.75
Year 11-15	Preservation Fees will be charged at 5% of the price of each ticket, excluding those tickets at \$0 to \$2.99	

*Tickets sold for this price range will be limited to 10,000 per year and are typically used to provide tickets to economically disadvantaged students.

Renewal

Term Preservation Fees will be negotiated and approved by City Council.

Preservation Fees will be used as follows:

- 1) For the first 75,000 tickets sold or distributed each season, all Preservation Fees will be deposited by Tenant into a **Beethoven Hall/Magik Theatre Fund** to be used by Tenant for capital repairs and maintenance at Beethoven Hall. All withdrawals by the Tenant from this fund must be approved by the City. When this fund exceeds 5% of the Tenant's initial capital investment, currently estimated at approximately \$2,000,000, not to exceed \$100,000, the balance will be distributed as follows: a) 50% to the Tenant to be used for operating expenses and, b) 50% to the City for renovation and maintenance of the City's cultural facilities through a **Cultural Facilities Trust Fund**.
- 2) For all tickets sold or distributed over 75,000 per year, all revenue generated by the Preservation Fees will go to the **Cultural Facilities Trust Fund** dedicated solely for the renovation and maintenance of the City's cultural facilities.

UTILITIES:

- A) Tenant to pay all electric, gas, domestic water, sewer and garbage collection costs associated with their occupancy of the building.
- B) Chilled water: City to pay 75% of the chilled water costs during the first year of the term (estimated at \$38,000). Tenant to pay the greater of the following: 1) 25% of the chilled water costs per year or, 2) 3% of gross annual sales per year. A maximum amount to be paid by the City for chilled water costs for the remaining portion of the 15-year term will be established at the start of the second year of the initial term, based on actual usage costs for the first year.

CITY USE:

The City will retain the right to use the Beethoven Hall for:

- A) **Event Days:** various booked and/or contracted for conventions, meetings and other uses up to 30 days per year through the year 2000. Beginning in 2001, the City may use the facility 20 days per year until the end of the initial term.
- B) **City Days:** various City-sponsored functions such as meetings, conferences, talent shows, etc. for up to 25 days per year for the initial term at no rent to City but City will pay performance charges for use of the facility.
- C) **Excess Days:** days not utilized by Tenant for rehearsals and performances. City to pay performance charges but no rent for use of the facility in excess of the 25 City Days per year.

FINANCIAL IMPACT:

A) Operating Expenses:

Recent annual operating costs at Beethoven Hall have averaged \$168,104 per year for the last three (3) years. The Magik Theatre will assume all repair, maintenance and operating expenses for the facility upon occupancy except that chilled water costs will be shared with the City. With the City's first year contribution of approximately \$38,000 for chilled water, this agreement will reduce operating expenses to the City approximately \$130,104 per year. If The Magik Theatre's 3% of gross annual sales exceeds 25% of the chilled water costs, the chilled water costs to be paid by the City may decrease. In addition, The Magik Theatre will be responsible for renovation improvements at Beethoven Hall totaling approximately \$2,000,000 in the first three years of the agreement, eliminating additional repair and maintenance and capital expenditures for the City.

B) Preservation Fees:

Anticipated revenue generated by the Preservation Fees, based on the proforma (attached), is as follows:

1) Estimated Preservation Fees generated for the first 75,000 tickets sold or distributed per season (will be deposited by Tenant into the Beethoven Hall/Magik Theatre Fund):

Year 1 through 5	\$13,126 per year
TOTAL	\$65,630

2) Based on the attached proforma, the Preservation Fees will be split 50/50 beginning in the latter part of the 7th year of the lease, depending upon the amount of funds withdrawn by The Magik Theatre for capital repairs and maintenance during this period.

3) Estimated Preservation Fees generated for all tickets sold or distributed beyond 75,000 per season (these fees will be deposited into a City Cultural Facilities Trust Fund for the exclusive use of the City to repair and renovate its cultural facilities):

Year 1	\$10,500
Year 2	\$15,226
Year 3	\$21,176
Year 4	\$24,500
Year 5	\$28,350
TOTAL	\$99,752

C) Convention Bookings:

The Convention Facilities Department has indicated there are approximately 65 Event Days currently booked at Beethoven Hall, starting July 1, 1997, through the year 2000. Historically, revenues for bookings have averaged \$51,120 per year for the past three (3) years. The Magik Theatre will assume responsibility for, and receive income from, any events booked at Beethoven Hall upon occupancy. Revenue generated by events in addition to performances by The Magik Theatre will figure into gross annual sales and all Preservation Fees will apply. Anticipated revenue from events other than those by The Magik Theatre has not been figured into the attached proforma.

POLICY ANALYSIS:

This action is consistent with the City's goals to: cooperate with non-profit arts organizations to restore and renovate the City's cultural facilities; continue efforts to focus on youth and create a destination location for children and their families in the downtown area; complement the Children's Playground in HemisFair Park by utilizing Beethoven Hall for activities relating to children and families; better utilize one of the City's historic buildings; and provide for revenue generation through a Preservation Fee structure to be used for the restoration and renovation of City cultural facilities.

This action also also represents recommendations from the Performing Arts and Entertainment Facilities Plan, presented in draft form to City Council in November 1996, which includes: a) the operation of the facilities in a manner that strengthens the local cultural community, b) development of strategies to manage operational issues and provide for capital improvements through possible public/private development, and c) implementation of new city policies and management to generate revenue through consistent rental structures and lease agreements

COORDINATION:

This item has been coordinated with the following City departments: Convention Facilities; City Attorney's Office, Parks and Recreation, Public Works, Arts and Cultural Affairs, and Finance.

SUPPLEMENTAL INFORMATION:

Ethics Ordinance Disclosure Statement is not required since the The Magik Theatre is a non-profit organization.

CONCLUSIONS AND RECOMMENDATIONS:

Based upon the proposed use of the Beethoven Hall, the opportunity to upgrade the facility by others, and the reduction of operating expenses for the City, the Department of Asset Management recommends approval of this ordinance.



Alexander E. Briseño
City Manager



Roland A. Lozano
Director
Department of Asset Management

Attachment

The Magik Theatre - 5 year Proforma
4/28/97

Year	Total # of Tickets/Year	75% @ \$3.00-\$4.99 \$.15 Preserv. Fee	25% @ \$5.00 + \$.25 Preserv. Fee	Beethoven Hall Trust Fund	Balance	Cultural Facilities Trust Fund	Estimated Gross Sales*	3% of Gross Sales
1	135,000						\$523,125	\$15,694
	75,000	56,250 = \$8,438	18,750 = \$4,688	\$13,126	\$13,126			
	60,000	45,000 = \$6,750	15,000 = \$3,500	0		\$10,500		
2	162,000						\$627,750	\$18,833
	75,000	56,250 = \$ 8,438	18,50 = \$4,688	\$13,126	\$26,252			
	87,000	65,250 = \$ 9,788	21,750 = \$5,438	0		\$15,226		
3	196,000						\$759,500	\$22,785
	75,000	56,250 = \$ 8,438	18,50 = \$4,688	\$13,126	\$39,378			
	121,000	90,750 = \$13,613	30,250 = \$7,563	0		\$21,176		
4	215,000						\$833,125	\$24,994
	75,000	56,250 = \$ 8,438	18,50 = \$4,688	\$13,126	\$52,504			
	140,000	105,000 = \$15,750	35,000 = \$8,750	0		\$24,500		
5	237,000						\$913,375	\$27,551
	75,000	56,250 = \$ 8,438	18,50 = \$4,688	\$13,126	\$65,630			
	162,000	121,500 = \$18,225	40,500 = \$10,125	0	<u>\$65,630</u>	<u>\$28,350</u> \$99,752		

*Based on 75% of total ticket sales per year @ avg. ticket price of \$3.50 and 25% of total ticket sales per year @ avg. ticket price of \$5.00

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The Department of Asset Management

Ordinance Approving a Lease Agreement with The Magik Theatre for a 15-year initial term and one 10-year option, based on City Council approval, to occupy, renovate, restore and operate Beethoven Hall in HemisFair Park in consideration for approximately \$2 million in improvements to be made during the first 3 years of the term and for Preservation Fees based on ticket sales to be paid in lieu of rent.

BACKGROUND:

- ◆ September, 1996 City Council approved a resolution authorizing City staff to negotiate a lease with The Magik Theatre at Beethoven Hall
- ◆ The timeline for completion of leasing negotiations was scheduled for Spring, 1997
- ◆ The Lease Agreement has been fully negotiated and approved by The Magik Theatre

BACKGROUND continued:

- ◆ The Magik Theatre is a non-profit performing arts organization specializing in live theater productions for children and families
- ◆ The Magik Theatre was formed 3 years ago and has outgrown the Staacke-Stevens Building which holds audiences of up to 200
- ◆ Beethoven Hall has seating for 640
- ◆ The Magik Theatre expects to increase ticket sales from 117,000 in 96-97 to over 200,000 by 2002 by moving to Beethoven Hall

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BUSINESS TERMS:

- ◆ **TERM:**
15-years with one 10-year option to renew based on City Council approval
- ◆ **COMMENCEMENT:**
July 1, 1997 based on feasibility studies
- ◆ **REPAIR & MAINTENANCE:**
Tenant pays all repair and maintenance costs
- ◆ **IMPROVEMENTS:**
Tenant pays for approximately \$2 million in construction improvements over first 3 years

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BUSINESS TERMS continued:

- ◆ **RENT:**
Preservation Fees will be paid in lieu of rent based on ticket sales
- | | <u>Ticket Price</u> | <u>Preservation Fee</u> |
|----------|---------------------|-------------------------|
| YEAR 1-5 | \$0 to \$2.99 | \$0 |
| | \$3.00 to \$4.99 | \$.15 |
| | \$5.00 and up | \$.25 |
- ⇒ Ticket sales anticipated for 97-98 season could generate a total of \$23,626 in Preservation Fees

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PRESERVATION FEES continued:

- ✦ Preservation Fees will produce revenue for both the City and the Tenant:

TENANT:

- For the first 75,000 tickets sold or distributed each season, all Preservation Fees go into a Beethoven Hall/Magik Theatre Fund for capital repairs and maintenance at Beethoven Hall
- All withdrawals by Tenant from this Fund must be approved by City through its Director of Asset Management

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PRESERVATION FEES continued:

- Approximately \$65,630 in revenue is estimated to be generated for the Beethoven Hall/Magik Theatre Fund over the first 5 years of the term
- When funds exceed 5% (\$100,000 maximum) of Tenant's initial capital investment, estimated at approximately \$2,000,000, then 50% of the balance goes to the Tenant for operating expenses and 50% goes to the City's Cultural Facilities Expendable Trust Fund

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PRESERVATION FEES continued:

CITY:

- For all tickets sold or distributed over 75,000 each season, all revenue generated by Preservation Fees goes to the Cultural Facilities Expendable Trust Fund
- Approximately \$99,752 in revenue is estimated to be generated for the City's Cultural Facilities Expendable Trust Fund over first 5 years of term
- The Cultural Facilities Expendable Trust Fund will be used by the City for the repair, improvement and potential future acquisition of City cultural assets

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BUSINESS TERMS continued:

◆ UTILITIES:

- Tenant to pay all electric, gas, domestic water, sewer and garbage
- Chilled water: City to pay 75% during first year of term, Tenant to pay 25%. At the start of the second year, City will establish a maximum amount of chilled water expenses to be paid by City. Tenant will pay the greater of the following:
 - 25% per year or,
 - 3% of gross annual sales per year

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BUSINESS TERMS continued:

- ◆ CITY USE:
- ◆ Event Days: 30 days per year through 2000 for booked and contracted events for conventions, meetings and other uses, then 20 days per year to end of initial term
- ◆ City Days: 25 days per year for City-sponsored functions such as meetings, conferences, talent shows etc. City to pay performance charges but no rental fee
- ◆ Excess Days: days not used by Tenant subject to availability. City to pay performance charges but no rental fee

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FINANCIAL IMPACT:

- ◆ Annual operating expenses average \$168,104 per year at Beethoven Hall
- ◆ With the City's contribution of approximately \$38,000 for chilled water the first year, operating expenses for the City will decrease an estimated \$130,104 per year
- ◆ Further repair and maintenance by the City at this facility will be eliminated
- ◆ The City will gain approximately \$2 million in construction improvements to Beethoven Hall

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POLICY ANALYSIS:

- ◆ This lease meets City goals to:
- ✓ Cooperate with non-profits arts organizations to restore/renovate City cultural facilities
- ✓ Focus on youth and create a destination location for children and families in the Downtown area
- ✓ Better utilize one of the City's historic buildings
- ✓ Provide for revenue generation to restore and renovate City cultural facilities
- ◆ This action also represents recommendations from the Performing Arts and Entertainment Facilities Plan

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COORDINATION:

- ◆ This item was coordinated with the following departments:
- ✓ Arts and Cultural Affairs
- ✓ City Attorney's Office
- ✓ Convention Facilities
- ✓ Finance
- ✓ Parks and Recreation
- ✓ Public Works

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RECOMMENDATION:

- ◆ Staff recommends approval of this ordinance

RECEIVED
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CITY CLERK
97 MAY 20 AM 9:46

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
Interdepartmental Correspondence Sheet**

TO: Dick Porter, Assistant City Clerk, City Clerk's Office

FROM: Warner F. Fassnidge, Assistant City Attorney III, Government & Business Services Division, City Attorney's Office

COPIES TO: File; Veronica M. Zertuche, Deputy City Attorney, Chief, Government & Business Services Division, City Attorney's Office

SUBJECT: **MAGIK THEATRE LEASE , FILE NO. 96-3000AM-09**

DATE: May 20, 1997

Please attest the three (3) originals of the Magik Theatre Lease and return two (2) of the originals back to me for transmitting to the Magik Theatre people and the attorney. Also, please be sure to keep the "City's Original" for association with Ordinance No. 86014, passed and approved on May 8, 1997.

*DONE
5/20/97*


Warner F. Fassnidge
Warner F. Fassnidge
Assistant City Attorney III

WFF:rc

ATTACHMENTS