

**City of Carson City
Agenda Report**

Date Submitted: August 26, 2008

Agenda Date Requested: September 4, 2008

Time Requested: 5 minutes

To: Mayor and Supervisors

From: Lawrence A. Werner P.E., P.L.S., City Manager

Subject Title: Action to approve subleasing a portion of the Brewery Arts Center to Scotty's Family Restaurant to operate a café subject to the terms of the lease between Carson City and the Brewery Arts Center.

Staff Summary: The lease for the Brewery Arts Center allows for subleasing property as long as the Lessor provides written consent to sub-lease.

Type of Action Requested: (check one)

Resolution

Ordinance

Formal Action/Motion

Other (Specify)

Does this action require a Business Impact Statement: Yes No

Recommended Board Action: Action to approve subleasing a portion of the Brewery Arts Center to Scotty's Family Restaurant to operate a café subject to the terms of the lease between Carson City and the Brewery Arts Center.

Explanation for Recommended Board Action: This action will allow the Brewery Arts Center to sublease the space to be used for a café. The sublease agreement is and shall be at all times, subject to and subordinate to the terms of the master lease between Carson City and the Brewery Arts Center.

Applicable Statute, Code, Policy, Rule or Regulation: n/a

Fiscal Impact: n/a

Explanation of Impact: n/a

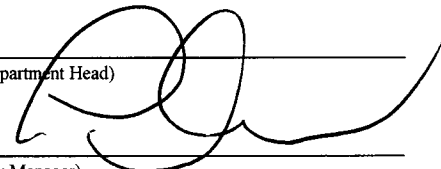
Funding Source: n/a


Alternatives: Approve, modify or deny.

Supporting Material: Lease Agreement and Sublease Agreement.

Prepared By: Janet Busse, Office Supervisor

Reviewed By: _____ Date: _____
(Department Head)

:  _____ Date: 8/26/08
(City Manager)

:  _____ Date: 8-26-08
(District Attorney)

:  _____ Date: 8-26-08
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____ _____

(Vote Recorded By)

August 5, 2008

Mr. Larry Werner

RE: Brewery Arts Center Sub-Lease

Dear Larry,

Please find enclosed an original sub-lease agreement between the BAC and Richard Hurzel to operate a café in the BAC. This sub-lease requires the city's approval. Please let me know if you need any further information, 721-7904.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Robertson', with a long horizontal flourish extending to the right.

Bruce Robertson

August 28, 2008 – The sub-lease agreement needed some minor modifications and will be submitted as late material. They are hoping to have it here by Tuesday. Sorry for any inconvenience.

LEASE OF MUNICIPAL PROPERTY

This Lease made June 24, 1977, between Carson City, a municipality organized under the laws of the State of Nevada, herein referred to as lessor, and Carson City Arts Alliance, Inc., a corporation organized under the laws of the State of Nevada, herein referred to as lessee.

WITNESSETH:

WHEREAS, lessee is desirous of obtaining a suitable location in Carson City for the establishment of a structure or building to house the Carson City Arts Alliance, and a facility within which to conduct arts and crafts programs, workshops, theater performances, meetings, lectures, educational classes, and the like; and

WHEREAS, lessor deems it beneficial to Carson City and the inhabitants thereof that such a facility be made available to the citizens of Carson City under the least financial burden placed upon said citizens; and

WHEREAS, lessee has purchased a suitable site and structure within which to house a facility as mentioned in the first recital paragraph above; and

WHEREAS, lessor and lessee have obtained funding through Title II of the Public Works Act of 1976 for the renovation and/or construction of a facility as described in the first recital paragraph herein; and

WHEREAS, it is a condition of the said Public Works Act that in order to obtain the said funding through the act, the property that is the subject of the expenditure of the public works funds be owned by a public entity, and Carson City Arts Alliance, Inc., has concurrently herewith dedicated certain property to Carson City for the purpose expressed herein;

NOW, THEREFORE, in consideration of mutual covenants contained herein, the parties agree as follows:

I. Description of Premises

Lessor leases to lessee the premises located at southwest corner of Division and King Street, Carson City, State of Nevada, and described more particularly as follows:

1 All of Lots 1, 2, 3, 4, 5, 6, 7, and 8, and the North Twenty-Five
2 Feet (25 ft.) of Lots 9 and 10, all in Block 9 of Sears, Thompson and
3 Sears Division, Carson City, Nevada, together with that certain
4 parcel of land located in the aforesaid Block 9 of said Sears, Thompson
5 and Sears Division of Carson City, Nevada, which parcel is
6 particularly described as follows, to wit:

7 Beginning at a point on the easterly line of Block 9,
8 Sears, Thompson and Sears Division to Carson City,
9 Nevada, which point is southerly Eighty Feet (80 ft.) from
10 the Northeast corner of said Block 9; running thence Southerly
11 along said easterly line of said Block 9, a distance of Ten Feet
12 (10 ft.); thence, a right angle westerly, One Hundred Seventy
13 Feet (170 ft.), more or less, to the westerly line of said Block
14 9; thence northerly along said westerly line, Ten Feet (10 ft.);
15 thence, at a right angle easterly, One Hundred Seventy
16 Feet (170 ft.), more or less, to the point of beginning; said
17 parcel being shown on the Original Plat of said Sears,
18 Thompson and Sears Division to Carson City, as an alley Ten
19 Feet (10 ft.) in width, running easterly and westerly through
20 said Block 9.

21 II. Rent

22 Lessee shall pay lessor the sum of [REDACTED] each year
23 as and for rent of the said premises, beginning on June 24, 1977.

24 III. Acknowledgement of Existing Trust Deed and Promissory Note 25 Securing the Property

26 The parties do hereby acknowledge that Donrey, Inc., is the
27 beneficiary of a Deed of Trust on the property, such Deed of Trust being
28 security for a promissory note from Carson City ArtsAlliance, Inc. to
29 Donrey, Inc., in the amount of [REDACTED]. Carson
30 City ArtsAlliance, Inc., agrees that in no way shall Carson City become
31 liable for such promissory note. Carson City ArtsAlliance, Inc., further
32 agrees to hold Carson City harmless from any action to collect the
above-mentioned promissory note or any foreclosure proceeding should
the note be in default.

33 IV. Term of Lease

34 The term of this lease shall be for ninety-nine (99) years to
35 commence on June 24, 1977, and terminate on June 24, 2076, unless sooner
36 terminated by a breach of the terms and conditions of this lease by
37 lessee, or by an abandonment of the premises by lessee. Lessee shall
38 surrender the premises to lessor immediately on the termination of the
39 lease term.

1 It is acknowledged by the parties hereto that the said premises
2 has been dedicated to Carson City by Carson City Arts Alliance, Inc., on
3 condition that Carson City lease said property to Carson City Arts Alliance,
4 Inc., on the terms contained herein.

5 Lessee and lessor do hereby acknowledge this property was dedicated
6 to Carson City and this lease was created between Carson City and Carson
7 City Arts Alliance, Inc., to facilitate the receiving of certain monies
8 from Title II of the Public Works Act of 1976, for the remodeling and
9 construction of an Arts Center in Carson City.

10
11 V. Use of Premises

12 Lessee shall use the premises only in conjunction with its purpose
13 stated in the Articles of Incorporation of Carson City Arts Alliance, Inc.,
14 as of June 24, 1977.

15 Lessor agrees and acknowledges that Carson City has no determination
16 in the operation, management, and control of the entire leased premises,
17 other than those terms stated in this lease.

18 VI. Restrictions on Use

19 Lessee shall not keep, use, or sell anything prohibited by any policy
20 of fire insurance covering the premises, and shall comply with all require-
21 ments of the insurers applicable to the premises necessary to keep in force
22 the fire and liability insurance.

23 VII. Waste, Nuisance, or Unlawful Activity

24 Lessee shall not allow any waste or nuisance on the premises, nor
25 use or allow the premises to be used for any unlawful purpose. Lessee
26 shall not use the premises for any purpose in violation of any federal, state,
27 or municipal statute or ordinance, or of any regulation, order, or directive
28 of a governmental agency, as such statutes, ordinances, regulations, orders,
29 or directives now exist or may hereafter provide, concerning the use and
30 safety of the demised premises. On the breach of any provision hereof
31 by lessee, lessor may at his option terminate this lease forthwith and
32 reenter and repossess the demised premises.

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VIII. Improvements

All additions, changes, and other improvements erected or placed on the demised premises shall remain thereon and shall not be removed therefrom, and at the expiration of this lease, all such improvements shall be the property of Carson City, lessor. This section shall not apply to trade fixtures.

Any building or buildings hereafter built upon the demised premises by Lessee, shall be constructed and maintained in compliance with the laws of the State of Nevada, and the fire, building, and health ordinances and rules of Carson City, and shall be built under the inspection and subject to the lawful requirements of the building department of such municipality or of such other agency or office authorized by law to inspect or make rules covering the erection and inspection of buildings.

IX. Repairs and Maintenance

Lessee, at his own expense, shall maintain the demised premises and appurtenances thereto in good repair, and in at least as good condition as that in which they were delivered, allowing for ordinary wear and tear. Also, lessee shall maintain the demised premises in accord with the ordinances of Carson City and the direction of the appropriate public officers.

Should the demised premises be destroyed in whole or in part by fire or other casualty or by lessee's want of ordinary care, lessee shall, on receiving written notice from lessor, promptly rebuild or restore the premises to their like condition, or to construct a like facility. Such rebuilding or restoration shall be at lessee's expense, and lessee shall remain liable for any rent hereunder at all times during the lease term.

X. Utilities

Lessee shall initiate, contract for, and obtain, in its name, all utility services required on the demised premises, including, but not limited to, gas, electricity, telephone, water, and sewer connections and services, and lessee shall pay all charges for those services as they become due. If lessee fails to pay the charges, lessor may elect to forfeit or terminate this lease if lessee fails or refuses to pay the charges for utility services as assessed or incurred.

1 Lessor shall not be liable for any personal injury or property damage
2 resulting from the negligent operation or faulty installation of utility
3 services provided for use on the demised premises, nor shall lessor be
4 liable for any injury or damage suffered by lessee as a result of the failure
5 to make necessary repairs to the utility facilities.

6 Lessee shall be liable for any injury or damages to the equipment or
7 service lines of the utility suppliers that are located on the demised prem-
8 ises, resulting from the negligent or deliberate acts of lessee, or the
9 agents or employees of lessee.

10 XI. Taxes and Assessments

11 It is acknowledged that Carson City does not pay property taxes,
12 however, because of the term of this lease, should taxes or other assess-
13 ments be levied on the property, lessee shall pay and discharge when due,
14 as part of the rental of the demised premises all state, municipal, and
15 local taxes, assessments, levies and other charges, general and special,
16 ordinary and extraordinary, of whatever name, nature, and kind, that
17 are or may be during the term hereof, beginning on June 24, 1977, levied,
18 assessed, imposed, or charged on the land or the premises hereby demised,
19 or on the building or buildings and improvements now thereon or hereafter
20 to be built or made thereon.

21 XII. Insurance

22 Lessee shall indemnify and save harmless the lessor, its officers,
23 agents and employees, from and against any and all claims, demands,
24 loss or liability of any kind or nature which lessor, its officers, agents
25 and employees, or any of them, may sustain or incur or which may be
26 imposed upon them or any of them, for injury to or death of any persons
27 or damage to any property in the use of the premises leased herein.

28 As a condition precedent to the effectiveness of this Lease and in
29 partial performance of the lessee's obligations hereunder, the lessee
30 shall obtain and maintain in full force and effect during the term of this
31 Agreement, a policy or policies of liability insurance in carriers and in
32 a form satisfactory to lessor with minimum limits of \$100,000/\$300,000

1 bodily injury and \$100,000 property damage insurance, or equivalent. The
2 lessor shall be named as an additional insured in such policies.
3 Lessee shall maintain adequate fire and extended casualty insurance

4 on the premises to cover replacement costs.
5 The policy shall further provide that the same shall not be cancelled
6 or coverage reduced until a thirty (30) day written notice of cancellation
7 has been served upon the lessor.

8 Lessee shall deliver an acceptable certificates of insurance to lessor.
9 The procuring of such policies of insurance shall not be construed

10 to be a limitation upon the lessee's liability, or as a full performance
11 on its part of the indemnification provisions of this Lease, lessee's
12 obligation being, notwithstanding said policies of insurance, for the full
13 and total amount of any damage, injury or loss caused by negligence or
14 neglect connected with its operation under this lease.

15 XIII. Nonliability of Lessor for Damages

16 Lessor shall not be liable for liability or damage claims for injury
17 to persons or property from any cause relating to the occupancy of the
18 premises by lessees, including those arising out of damages or losses
19 occurring on sidewalks and other areas adjacent to the leased premises
20 during the term of this lease or any extension thereof. Lessee shall
21 indemnify lessor from all liability, loss, or other damage claims or
22 obligations resulting from any injuries or losses of this nature;

23 XIV. Nonliability of Lessor for Liens and Assessments

24 Lessee also shall indemnify lessor against all liens and charges
25 of any and every nature that may at any time be established against the
26 premises or any improvements thereon or any part thereof as a consequence,
27 direct or indirect, of any act or omission of lessee or as a consequence,
28 or indirect, of the existence of lessee's interest under this lease.

29 XV. Partial Destruction of Premises

30 Partial destruction of the leased premises shall not render this lease
31 void or voidable, nor terminate it.
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XVI. Encumbrance, Assignment, Sublease, or License

Lessee shall not encumber, or assign the lease or premises, or any right or privilege connected therewith without first obtaining the written consent of lessor. A consent by lessor shall not be a consent to a subsequent encumbrance, or assignment. An unauthorized encumbrance, or assignment, by lessee shall be void and shall terminate the lease at the option of lessor. The interest of lessee in this lease is not assignable by operation of law without the written consent of lessor. The subleasing of the premises shall be determined by lessee in connection with its rights under paragraph V., page 3 hereof.

XVII. Breach

The failure of lessee to comply with each and every term and condition of this lease shall constitute a breach of this lease. Lessee shall have ten (10) days after receipt of written notice from lessor of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the ten (10) day period, lessee shall have a reasonable time to correct the default if action is commenced by lessor within ten (10) days after receipt of the notice.

Upon breach of this lease by lessee, lessor may terminate the lease on giving thirty (30) days' written notice of termination to lessee. On termination lessor may recover from lessee all damages proximately resulting from the breach, including the cost of recovering the premises.

XVIII. Sale of Property by Lessor

Carson City, lessor, agrees not to sell the property during the term of this lease or any extension thereof.

XIX. Succession

Each and all of the covenants, terms, agreements and conditions herein contained intended to and do bind the successors and assigns of the respective parties hereto.

XX. Entire Agreement

This document contains the entire agreement of the parties hereto.

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XII. Employees of Lessee

The parties hereto agree that the agents and employees or anyone else connected with or in any manner working for lessee shall in no way be considered employees of lessee. It is acknowledged that lessee is an independent contractor.

IN WITNESS WHEREOF, the said parties have executed this instrument the day and year first above written.

LESSOR:
CARSON CITY
A Consolidated Municipality

Harold Jacobsen
Harold Jacobsen
Mayor

ATTEST:

Vaughn L. Smith
Vaughn L. Smith, Clerk

LESSEE:
CARSON CITY ARTS ALLIANCE, INC.

By *[Signature]*
Title: *[Signature]*

Filed for Record at Request of
CARSON CITY
AUG 8 1977 at 20
Min. Past 1 o'clock P.M.
Recorded in Book 213
of Official Records
Page 562
[Signature]
Carson City Recorder
By *[Signature]*
File No. 72771
Fee n/c

Exhibit B

Note that expanding the theater stage area to the south is contingent upon one of the following conditions:

1. the existing gym could be expanded (so as to preserve a full court gym) or,
2. the creation of a new recreation center that includes two full-size gyms so as not to lose overall gym capacity)

Additional theater improvements to consider include:

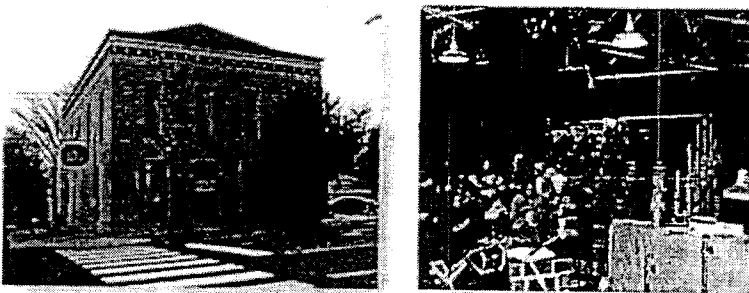
- Retrofit the Sierra Room to become a loading zone for the theater,
- Adding a balcony to increase the seating capacity of the theater,
- Constructing a sculpture garden/arts plaza around the entrance to the Community Center
- Adding parking on the west side of the Community Center.
- Replace the antiquated, outdoor facility reader board with an electronic reader board capable of high resolution color pictures and video.

It is important that the theater facility remain in the downtown for overall central access of the community as well as to contribute to the vitality of the downtown. However, if improvements to the existing Bob Boldrick Theater are not possible (i.e. relocating non-theater uses) or financially feasible, the City may consider:

1. Providing additional parking through joint parking agreement with neighboring businesses;
2. Developing theater/special event/meeting space in the existing undeveloped property west of the Community Center;
3. Using other City space that may become available through relocation of uses (e.g. if the Library were to relocate);
4. Jointly developing a new theater facility in partnership with the School District³ or WNCC; and
5. Partnering with Douglas or Lyon County, the State of Nevada, corporate sponsors and/or private donors to create a new regional theater arts facility in a convenient location.

6.9.2 BREWERY ARTS CENTER

The Brewery Arts Center (BAC) is operated by a non-profit corporation located in downtown Carson City. Constructed in the 1970s, the BAC contains two theaters, classrooms, meeting rooms, offices, a studio, an art gallery and an artisan's store. The BAC provides art and cultural classes and presents music, dance, and theatrical performances. The BAC is funded through memberships, grants, donations and facility rental fees. The BAC Master Plan calls for the construction of an additional 60,000 square feet, including a 20,000 square foot theater. The City may wish to consider partnering with the BAC to expand the BAC facility, in order to meet the demand for additional theater/performance usage.



The Brewery Arts Center contains two theaters, classrooms, meeting rooms, offices, a studio, an art gallery and an artisan's store.

³ This option could include a facility shared by multiple school districts as a regional school for the arts.

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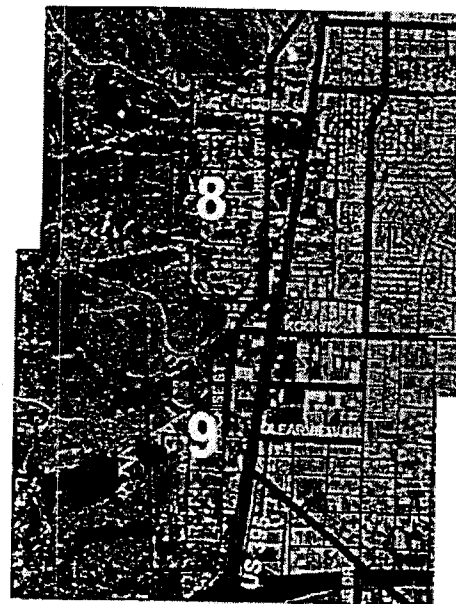
PARK:	None
TYPE:	N/A
SIZE:	N/A
NOTES:	0% of population within walking distance of park
SCHOOL:	Bordewick/Bray Elementary School 20% of population within walking distance of school



OBSERVATIONS:	This neighborhood is largely built-out and has no parks. Its only open area/recreation is provided by Bordewick/Bray Elementary, which appears to be meeting the needs of neighborhood youth at least. Carson Middle School is across King Street. There appears to be a need for additional passive recreation amenities, especially for adults and seniors. The adjacent open land to the south and west is relatively steep for providing easy trail access. Associated with the planned improvements to the Brewery Arts Center, there is an opportunity for a public plaza (closing the street).
SURVEY:	Q19: The neighborhood is evenly divided (50%) on the need for an additional neighborhood park. Q17: 65% of respondents supported the general need for more neighborhood parks in the City with 58% supporting more Natural parks.
IMPLEMENTATION STRATEGIES:	1. Investigate further the neighborhood perceptions of school grounds as parks. If appropriate, explore ways to improve access and usability of school grounds as neighborhood parks. 2. Support the Brewery Center for the Arts improvements and take advantage of the plaza (street closure) development to provide a passive urban recreation area that will have features that appeal to adults and seniors.

8/9

PARK:	None
TYPE:	N/A
SIZE:	N/A
NOTES:	0% of population within walking distance of Park
SCHOOL:	None



OBSERVATIONS:	These neighborhoods are long and linear, with no schools or parks. Further, they are cut off from parks and schools to the east by heavily traveled Carson Street. The neighborhood is bounded on the west by relatively steep hillsides, but there are vacant lots and tracts on the relatively little flat land that could be used for park development.
SURVEY:	Q19: Although there were only a few surveys returned from these neighborhoods, the respondents strongly supported (67% and 80%) the need for a Neighborhood park. Q17: The respondents also generally supported providing Neighborhood parks in the City (67% and 80%) and Natural parks (100% and 60%).
IMPLEMENTATION STRATEGIES:	Do a detailed search for a neighborhood park site, including consideration of vacant lots and multi-use development of trail heads as small, natural neighborhood parks. Collaborate with the Washoe Tribe for park sites on tribal lands.