

Memorandum

MIAMI-DADE
COUNTY

Date: March 2, 2010

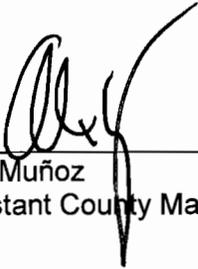
Agenda Item No. 1(F)2

To: Honorable Chairman Dennis C. Moss and
Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Sunset Review of County Boards for 2009 – Performing Arts Center Trust

In accordance with the provisions of Section 2-11.40 of the Code of Miami-Dade County, I am transmitting the 2009 Sunset Review of County Boards Report for the Performing Arts Center Trust. The Trust Board approved the attached report at its meeting of May 26, 2009 and has recommended the continuation of its board.



Alex Muñoz
Assistant County Manager

cmo14709

Date: February 23, 2009
To: George M. Burgess
County Manager
From: J. Ricky Arriola
Chairman, Performing Arts Center Trust
Subject: Sunset Review of County Boards for 2009 – Performing Arts Center Trust

Pursuant to Section 2-11.40 of the Code of Miami-Dade County, I am submitting the 2009 Sunset Review of County Boards Report for the (Insert Name of Board) for transmittal to the Board of County Commissioners (BCC). The Board approved the attached report at its meeting of (Add Date).

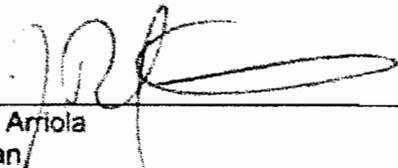
It is recommended that the BCC approve the continuation of the Performing Arts Center Trust.

BACKGROUND

The Performing Arts Center Trust was established in 1991 to oversee the planning, design, construction and operation of a world-class performing arts center in Miami-Dade County to meet the existing and future cultural and educational needs of this community. The Trust Board assumed this responsibility under the direct supervision of the County and has worked closely with local government officials over the years to guarantee the success of the project.

With the opening of the Center in October 2006, the Trust is now charged with the task of effectively operating the new theater arts complex and ensuring its success as a valuable community resource by showcasing quality entertainment, developing educational programs and hosting cultural events that appeal to the multicultural population of Miami-Dade County.

The Trust Board plays a vital role in advising and guiding Center leadership and staff to achieve these goals. Therefore, it must continue to serve as it has been as the overseer of the organization's management to ensure that the facility's potential is not only maximized, but that operational procedures are consistent with the policies and provisions established by the County.



J. Ricky Arriola
Chairman
Performing Arts Center Trust.

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2009**

I. GENERAL INFORMATION

1. Name of Board reporting: Performing Arts Center Trust

2. Indicate number of board members, terms of office, and number of vacancies:

There are 41 voting members and three ex-officio members. Currently we have seven vacancies. See Attachment A for terms of office.

3. Identify number of meetings and members' attendance (Attach records reflecting activity from Jan. 1, 2007 through December 31, 2008):

Board meetings are held every other month. Please see Attachment B for members' attendance.

4. What is the source of your funding?

1. Federal, State and local government funding
2. Private-sector contributions

5. Date of Board Creation: 1991

6. Attach a copy of the ordinance creating the Board (Please include all subsequent amendments).

See Attachment C

7. Include the Board's Mission Statement or state its purpose:

Serving as the hub of performing arts activity in Miami-Dade County, the Adrienne Arsht Center for the Performing Arts of Miami-Dade County showcases the finest in established and developing cultural programs. Beyond the critically acclaimed programs presented by its resident companies, the Center produces year-round programming that reflects Miami's rich cultural diversity. Built to welcome the South Florida community, the Center's campus of iconic buildings and world-class performance facilities has materialized as an anchor for revitalization in one of Miami-Dade County's most important neighborhoods. By offering a full range of cultural and learning experiences that enhance the community's quality of life, this vibrant institution serves as an invaluable community resource.

8. Attach the Board's standard operating procedures, if any.

See Attachment D

9. Attach a copy of the Board's By-Laws, if any.

See Attachment E

10. Attach a copy of the Board minutes approving the Sunset Review Questionnaire, including a vote of the membership.

See Attachment F (Board Minutes 05/26/09)

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2009**

II. EVALUATION CRITERIA

1. Is the Board serving the purpose for which it was created? (Please provide detailed information)

Yes. The purpose of the Trust is to oversee the operation and success of the Adrienne Arsht Center for the Performing Arts.

2. Is the Board serving current community needs? (Please provide detailed information)

Yes. Through its diverse programming the Adrienne Arsht Center is providing world-class cultural experiences for the multicultural population of Miami-Dade County. In addition through its various education and outreach partnerships it is developing new audiences and creating opportunities for local artists.

3. What are the Board's major accomplishments?

Last 24 months:

- Restructured PACT Board Committees
- Last year several vendor contracts were renegotiated which resulted in over a million dollars in savings in the buildings' occupancy costs. These savings are passed through to Miami-Dade County.
- In 2007, former Kennedy Center CEO, Lawrence Wilker, was hired as the Center's interim president.
- After leading a national search, in the fall 2008, twenty year performing arts industry veteran, M. John Richard, was hired as the Center's President and CEO.
- On January 10, 2008, national business leader and philanthropist, Adrienne Arsht, made a \$30 million donation to the performing arts center. In recognition of the gift, the former Carnival Center for the Performing Arts was renamed the Adrienne Arsht Center for the Performing Arts of Miami-Dade County.
- Last summer over 130,000 patrons enjoyed performances at the Center and ticket sales grossed nearly \$3.5 million
- Just two years after opening its doors, the Center finished the 2007-2008 fiscal year with a balanced budget. The Center expects to continue this trend as part of our operating policy.
- The Center's Foundation raised \$34 million in private-sector funds last year. \$30 million from Adrienne Arsht and \$4 million from various other sources.
- Nearly 500,000 patrons attended performances at the Center during the 2007-2008 season.

**SUNSET REVIEW QUESTIONNAIRE
MIAMI-DADE COUNTY BOARDS
2009**

Since established:

- Managed architectural selection process.
- Monitored construction process.
- Established procurement and operating policies for the Corporation.
- Opened a world-class performing arts center in a four-day series of events that attracted national and international media attention and thousands of patrons from all walks of life, including public officials and celebrities.
- Developed and implemented a comprehensive business plan for all departments of the Center.
- Established Center rental rates, performance schedules and business procedures.

4. Is there any other board, either public or private, which would better serve the function of this board?

No.

5. Should the ordinance creating the Board be amended to better enable the Board to serve the purpose for which it was created? (If "Yes", attach proposed changes)

No.

6. Should the Board's membership requirements be modified?

No. The Trust regularly reviews its governance structure and advises the County Commission in the event that any changes should be considered.

7. What is the operating cost of the Board, both direct and indirect? (Report on FY 2007 and FY 2008)

See Attachment G

8. Describe the Board's performance measures developed to determine its own effectiveness in achieving its stated goals.

An annual business plan and budget is developed by staff and approved by the Board of Directors. The objective is to achieve a balanced or surplus financial outcome. During the year, the President and CEO provides the Board with regular financial reports. If financial objectives cannot be achieved in an individual year, strategic planning for future years includes measures to restore balance.



ATTACHMENT A

PAUL BOARD TRACK		Feb-09									
NAME	APPOINTED BY	YEAR APPOINTED	EXPIRATION OF TERM	DATE REAPPOINTED	EXPIRATION OF TERM	DATE REAPPOINTED	EXPIRATION OF TERM	DATE REAPPOINTED	EXPIRATION OF TERM	DATE REAPPOINTED	EXPIRATION OF TERM
Parker D. Thomson	Mayor, Miami-Dade County	May, 2008	Mayor's Term (Nov. 08)								
T. Willard Fair	Mayor, Miami-Dade County	June-05	Mayor's Term (Nov. 08)								
Vaila Yedra	Board of County Commissioners-At-Large	December-03	June-09	January, 2001	Mayor's Term (Nov. 04)	March, 2005	Mayor's Term (Nov. 08)				
Felix Garcia	Board of County Commissioners-At-Large	June, 2009	June, 2009	February, 2007	February-10						
Carole Ann Taylor	Board of County Commissioners-At-Large	April-08	April-11								
Adriana Seblino	Board of County Commissioners-At-Large	April-08	April-11								
Matt Bower	Board of County Commissioners-At-Large	April-08	April-11								
Sergio Gonzalez	Board of County Commissioners-At-Large	April-08	April-11								
Magallie Desroches Aus	Commissioner Audrey Edmonson	December-07	Comm. Term (Nov. 08)								
Oscar Braynon II	Commissioner Barbara Jordan	April-05	Comm. Term (Nov. 08)								
Jorge Pizascua	Commissioner Bruno Barreto	July, 2007	Comm. Term (Nov. 08)								
David Wilson	Commissioner Dennis C. Moss	April, 2005	Comm. Term (Nov. 08)	January, 1999	Comm. Term (Nov. 06)	May, 2003	Comm. Term (Nov. 06)	April-07	Comm Term (Nov. 2010)		
Ronald Silver	Commissioner Dorin D. Rolle	June-05	Comm. Term (Nov. 2010)	February, 1999	October, 2002						
Sonia Burini	Commissioner Javier D. Soulo	June-05	June-08								
Alan Fain	Commissioner Carlos Gimenez	April-08	Comm. Term (Nov. 08)								
Jessie Ley F. Pons	Commissioner Joe A. Martinez	Nov. 9, 2000	Comm. Term (Nov. 04)	Nov. 2004	Comm. Term (Nov. 08)						
Mallide Aguirre	Commissioner Jose "Pepé" Diaz	January, 2003	Comm. Term (Nov. 06)	Feb. 2008	Comm. Term (Nov. 2010)						
Penny Thurer	Commissioner Katy Sorenson	June, 1998	December, 1998	January, 1999	Comm. Term (Nov. 08)	Feb, 2003	Comm. Term (Nov. 08)	January-07	Comm. Term (Nov. 2010)		
Suzie Krajsa	Commissioner Nalacha Sallas	April, 1998	Fall, 2000	June-02	Comm. Term (Nov. 04)	January-06	Comm. Term (Nov. 08)				
Gilbert Cabrera	Commissioner Rebecca Sosa	Jan. 2008	Comm Term (Nov. 2010)								
Scott Robins	City of Miami Beach Commission	Feb. 2008	Feb. 2011								
Richard Mistein	City of Miami Beach Commission	Feb. 2008	Feb. 2011								
Henry Klein	City of Miami Commission	July-08	July-11								
Ricky Antola	City of Miami Commission	January-04	January-07	April-07	April-10						
Marc Sarnoff	City of Miami Commission	June-08	March-11								
Judy Weiser	Concert Association of Florida	Tenure									
James Herron	New World Symphony	Tenure									
Mike Eldson	Florida Grand Opera	Tenure									
Evelyn Greer	Miami City Ballet	Tenure									
Fronza Lithcott Nichols	Miami-Dade School Board	Tenure									
Walter Ernesto Sanchez	African American Artistic Organization	June-05	June-05	January, 1999	January, 2002	Special reappointment 2003	June-05	Special reappointment 2003	June-05		
Emery Sheer	Hispanic American Artistic Organization	July, 1998	July, 2001								
Rosalia Gordon-Wallace	Performing Arts Center Trust	November-08	November-11								
Donald Graham	Performing Arts Center Trust	December-08	December-08								
Larry Rice	Performing Arts Center Trust	December-08	December-08								
Rep. Juen Zupata	Performing Arts Center Trust	December-08	December-08								
Ron Esserman	Performing Arts Center Trust	Ex-Officio									
	Miami-Dade Legislative Delegation	Ex-Officio									
	Department of Cultural Affairs	Ex-Officio									
	Performing Arts Center Foundation	Ex-Officio									

4.5 Term of Directors:

(a) Each of the thirteen (13) Directors appointed by individual Commissioners of Miami-Dade County shall serve a term which shall end concurrently with the last day of the term of the County Commissioner who appointed said Director. Individual County Commissioners who are reelected to office must officially appoint, or re-appoint if desired, a Director as his or her appointment for the new term following the process in section 4.2.a.vi.

(b) Each of the six (6) Directors appointed by the Board of Commissioners of Miami-Dade County At-Large shall be appointed for a three (3) year term and shall be permitted to serve up to two full consecutive three (3) year terms, and may be re-appointed to the Board of Directors after ceasing to be a Director for one (1) year.

(c) Each of the two (2) Directors appointed by the Mayor of Miami-Dade County shall serve a term which shall end concurrently with the last day of the term of the Mayor. In the event that the Mayor is reelected to office, he or she must officially appoint, or re-appoint if desired, each of the two (2) Directors as his or her appointments for the new term following the process in section 4.2.a.vi.

(d) Each of the six (6) Directors appointed by the City of Miami and City of Miami Beach Commissions shall be appointed for a three (3) year term and shall be permitted to serve up to two full consecutive three-year terms, and may be re-appointed to the Board of Directors after ceasing to be a Director for one (1) year following the process in section 4.2.a.vii.

(e) The Director appointed by the Miami-Dade County Public School Board shall serve at the will of the School Board, and shall serve until he/she resigns or is removed.

(f) The terms of the Community Representatives are specified in the Bylaws of the Corporation.

(g) Upon the expiration of a Director's term, that Director shall remain on the Board of Directors until such time as he or she is replaced or is re-appointed by the appropriate appointing authority.

4.6 Filling of Vacancies:

(a) Vacancies in expired or unexpired terms for Community Representatives to the Board of Directors caused by resignation, removal or death shall be filled according to the process provided in Section 4.8 of the Bylaws of the Corporation.

(b) For those Directors appointed by the County Commissioners, County Commission At-Large and Mayor, if a vacancy occurs prior to the expiration of the original appointing authority's term, the individual County commissioner, commission or the Mayor who appointed that Director shall appoint a new member to fill the vacancy following the process in section 4.2.a.vi.

(c) For those Directors appointed by the City of Miami Commission and City of Miami Beach Commission, if a vacancy occurs prior to the expiration of the Director's term,

the Commissions shall appoint a new member to fill the vacancy following the process in section 4.2.1.v1.

(d) In filling any vacancy to be filled by Local Governmental Authorities the replacement Director shall hold office for the unexpired term of his/her predecessor in office.

(e) The Miami-Dade County Public School Board shall appoint a person to fill any vacancy for their Director position.

4.7 Removal of Directors:

Any Director may be removed for cause as determined by the Corporation, including violation of Board policy, by the affirmative vote of the majority of the Board of Directors, provided such Director has been given prior notice that the subject of his/her removal will be presented to the Board at a duly noticed meeting.

4.8 Financial Disclosure:

Directors shall file the same Florida Financial Disclosure Statements required of state officers. Other than compliance with Financial Disclosure requirements, the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall not apply to the Directors.

4.9 The Sunshine Law:

The Board of Directors shall comply with Florida Government in the Sunshine Law in the conduct of all its meetings to the same extent as if it were an elected body.

4.10 Public Records Act:

The Corporation's records will be open to public inspection in accordance with the Florida Public Records Act to the same extent as if it were a government agency.

ARTICLE V
COMMITTEES

The initial Standing Committees of the Board of Directors shall be the Executive Committee, Finance Committee, Audit Committee and Nominating and Governance Committee. The purposes and membership of the Standing Committees shall be set forth in the Bylaws of the Corporation. The Board of Directors may establish from time to time, such additional Standing or ad hoc Committees as shall be deemed appropriate, with such additional Committees to exercise such duties, powers and authorities as may be delegated by resolution of the Board of Directors.



ATTACHMENT B

PERFORMING ARTS CENTER TRUST ATTENDANCE RECORD

1/30/07 - 11/27/07 (12 month period - 6 regular meetings)

Meeting Number	1	2	3	4	5	6	Total # of Absences *
	1/30	3/27	5/29	7/31	9/25	11/27	
ME							
Altilde Aguirre	√	√	E	√	√	√	1
Armstrong	√	√	√	E	√	√	1
Alexy Arriola	E	√	√	√	√	√	1
Jeff Bartel	E	E	T	√	E	T	3
Robert Blumberg	√	√	NA	NA	NA	NA	0
William H. Bower	√	√	√	E	√	A	2
Richard Braynon	√	A	√	√	A	√	2
Anna Burini	√	E	√	√	√	√	1
Charles Conde	√	√	E	√	A	T	2
Alma Dulá	√	√	√	E	T	T	1
John Eidson	√	A	√	√	√	√	1
William Fair	A	A	√	√	A	√	3
John Garcia	√	A	A	√	A	√	3
George Gordon-Wallace	√	√	√	A	√	√	1
Donald Graham	√	√	√	√	√	√	0
John Greer	√	√	√	√	√	√	0
James Herron	√	√	√	√	√	√	0
Robert Ingram	√	A	A	A	NA	NA	3
Marie Krajsa	√	E	√	√	√	√	1
Stanley Levine	√	√	√	E	√	√	1
Henry Liebman	E	√	E	E	A	A	5
Gene Lithcut Nichols	√	A	√	√	√	√	1
John Loumiet	√	√	E	NA	NA	NA	1
George Plasencia	NA	NA	NA	√	√	√	0
John Pons	√	A	√	E	A	E	4
John Rice	√	√	√	√	A	E	2
Antonio Roca	A	√	A	A	A	√	4
Antonio Ernesto Sanchez	√	A	√	√	√	√	1
Donald A. Silver	NA	NA	NA	NA	√	√	0
Michelle Spence-Jones	NA	√	A	√	A	A	3
Alma Sugrañes	NA	NA	NA	NA	NA	NA	0
John Ann Taylor	√	√	√	E	√	√	1
Robert Thomson	√	√	√	√	√	√	0
John Thurer	√	√	√	E	E	√	2
John Weiser	E	√	E	E	√	√	3
David Wilson	√	√	√	A	√	E	2
Terica S. Wilson	A	√	E	A	A	A	5
John Yedra	√	√	√	√	√	√	0
John Zack	NA	NA	T	A	NA	NA	1
John Zilber	E	E	A	NA	NA	NA	3

√ = Excused Absence

• = Unexcused Absence

A = Attended via Teleconference

NA = not applicable

PERFORMING ARTS CENTER TRUST ATTENDANCE RECORD

1/22/08- 11/25/08 (12 month period - 5 regular meetings)

Meeting Number	1	2	3	4	5	6	Total # of Absences *
	1/22	3/25	5/27	7/29	9/23	11/18	
NAME							
Matilde Aguirre	√	√	√	NA	√	E	1
Bill Armstrong	√	A	√	NA	√	√	1
Ricky Arriola	√	√	√	NA	√	√	0
Maggie D. Austin	√	√	√	NA	√	√	0
Jeff Bartel	A	T	E	NA	A	E	4
Matti H. Bower	A	NA	A	NA	√	√	2
Oscar Braynon	A	A	√	NA	A	E	4
Sonia Burini	√	E	E	NA	√	√	2
Gilbert Cabrera	NA	√	A	NA	√	A	2
Cesar Conde	A	A	NA	NA	NA	NA	2
Sonia Dulá	A	A	A	NA	NA	NA	3
Mike Eidson	√	√	√	NA	√	√	0
T. Willard Fair	√	√	√	NA	√	√	0
Alan H. Fein	NA	NA	√	NA	√	√	0
Felix Garcia	E	√	E	NA	A	√	3
Dan Gelber	NA	NA	√	NA	√	E	1
Sergio M. Gonzalez	NA	NA	E	NA	T	√	1
Rose Gordon-Wallace	√	A	√	NA	√	A	2
Donald Graham	√	√	√	NA	√	A	1
Evelyn Greer	√	√	A	NA	√	√	1
James Herron	√	√	A	NA	√	√	1
Hank Klein	NA	NA	NA	NA	√	√	0
Susie Krajsa	√	√	√	NA	√	√	0
I. Stanley Levine	√	E	√	NA	A	E	3
Florene Litthcut Nichols	A	√	E	NA	√	√	2
Richard Milstein	NA	√	E	NA	√	√	1
Jorge Plasencia	E	√	A	NA	√	√	2
Jay Pons	E	E	A	NA	A	A	5
Larry Rice	√	T	A	NA	√	√	1
Scott Robins	NA	√	√	NA	√	√	0
Adriano Sabino	NA	NA	E	NA	√	√	1
Mario Ernesto Sanchez	E	√	√	NA	√	E	2
Marc D. Sarnoff	NA	NA	NA	NA	√	√	0
Emery Sheer	NA	NA	NA	NA	NA	√	0
Ronald A. Silver	√	√	√	NA	A	√	1
Michelle Spence-Jones	A	A	A	NA	NA	NA	3
Carol Ann Taylor	√	E	√	NA	√	√	1
Parker Thomson	√	E	E	NA	A	A	4
Penny Thurer	√	√	√	NA	T	√	0
Judy Weiser	E	√	√	NA	T	√	1
David Wilson	√	√	√	NA	√	√	0
Frederica Wilson	A	A	NA	NA	NA	NA	2
Velia Yedra	√	√	√	NA	√	E	1

7/29/08 Meeting was cancelled

- * E = Excused Absence
- A = Unexcused Absence
- T = Attended via Teleconference
- NA = not applicable



ATTACHMENT C

Exhibit B

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PERFORMING ARTS CENTER TRUST, INC.**

The undersigned officers, natural persons competent to contract, hereby file these Second Amended and Restated Articles of Incorporation of **PERFORMING ARTS CENTER TRUST, INC.**, pursuant to Section 617.1007 of the Florida Not For Profit Corporation Act, and hereby certify as follows: The original and present name of the Corporation is **PERFORMING ARTS CENTER TRUST, INC.** The original Articles of Incorporation were filed with the Department of State of the State of Florida on August 6, 1991, as amended by amendments to the original Articles of Incorporation filed with the Department of State on August 25, 1992 and September 2, 1993. The First Amended and Restated Articles of Incorporation were filed with the Department of State on January 2, 1998.

These Second Amended and Restated Articles of Incorporation were duly adopted pursuant to Section 617.1007 of the Florida Not For Profit Corporation Act upon the affirmative vote of at least two-thirds of the members of the Corporation at a meeting held on May 30, 2006 and a majority of the Board of Commissioners of Miami-Dade County, Florida on July 18, 2006. These amended and restated Articles of Incorporation shall be effective upon filing with the Department of State.

ARTICLE I
ORGANIZATION

1.1 **Name:**

This Corporation, formed under the Florida Not For Profit Corporation Act, shall be known as the Performing Arts Center Trust, Inc. (hereafter, the "Corporation").

1.2 **Seal:**

The seal of this Corporation shall contain the words "Performing Arts Center Trust, Inc., a corporation not-for-profit".

1.3 **Offices:**

The principal offices of the Corporation shall be located in the State of Florida at such place or places as the Board of Directors may from time to time, designate. The mailing address of the Corporation shall be located at the principal offices of the Corporation. On the date hereof, such principal offices are at 1444 Biscayne Boulevard, Suite 202, Miami, FL 33132. The Corporation's offices will relocate to the Performing Arts Center at 1300 Biscayne Boulevard, Miami FL 33132 on August 4, 2006.

ARTICLE II
PURPOSE

This Corporation is organized and shall operate exclusively for educational, cultural and charitable purposes as evidenced by conducting or supporting activities for the benefit of or to carry out the purposes of the Performing Arts Center Trust, Inc., but limited in all events to exempt purposes described in Section 501(c)(3) of the Internal Revenue Code of 1986; and this Corporation may engage in only such activities permitted under the laws of the State of Florida and the United States of America as shall constitute activities in furtherance of such exempt purposes. The Corporation is a non-profit corporation organized to provide a broad source of community support for the Performing Arts Center in the City of Miami, Florida (the "Performing Arts Center"). No part of the assets or the net earnings of the Corporation shall be distributed to any officer, director, member or any other private person.

ARTICLE III
FUNCTIONS

It is expected that the Corporation will provide the governing authority to design, construct, manage and operate the Performing Arts Center. The site on which the Performing Arts Center is located and the Performing Arts Center itself will be owned by Miami-Dade County. It is not contemplated that the Corporation will own either the land or buildings to be designed, constructed, managed and operated by the Corporation. The Corporation will have full authority to employ architect(s), acousticians and other consultants, approve design and employ construction and development managers or firms and supervise their work. The Corporation will employ a President who will be responsible for day-to-day carrying-out of the Corporation's work and such other employees as the Corporation shall deem appropriate. The Corporation may establish or enter into a contractual relationship with a leasing company. The Corporation is responsible for raising funds for various purposes and, to accomplish this, the Corporation may establish one or more foundations, subsidiary corporations, or affiliated organizations.

ARTICLE IV
BOARD OF DIRECTORS

The Board of Directors is responsible for the direction and control of all matters pertaining to the Corporation and the Performing Arts Center. The Board of Directors and the County Manager of Miami-Dade County shall select a President, who shall serve at the pleasure of the Board of Directors. The President shall establish personnel and management policies in accordance with applicable law and such policies as the Board of Directors may adopt. The term "Director" as used herein shall include Designated Directors unless otherwise indicated, but shall not include the President.

4.1 Members of Board of Directors:

The affairs of the Corporation shall be managed by the Board of Directors, all of whom shall serve without compensation. At all times there shall be no less than five (5) nor more than forty one (41) Directors.

4.2 Appointment of Directors:

The Board of Directors shall be appointed as follows:

(a) Local governmental authorities shall appoint twenty-eight (28) members, comprised of twenty-one (21) Miami-Dade County appointments with the remaining appointments apportioned between the City of Miami, City of Miami Beach and Miami-Dade County School Board as defined below:

(i) The Board of Commissioners of Miami-Dade County shall appoint nineteen (19) Directors, as follows: thirteen (13) Directors shall be appointed by individual County Commissioners and six (6) Directors shall be appointed by the Board of Commissioners of Miami-Dade County At-Large.

(ii) The Mayor of Miami-Dade County shall appoint two (2) Directors;

(iii) The City of Miami Commission shall appoint three (3) Directors subject to ratification by the Board of Directors;

(iv) The City of Miami Beach Commission shall appoint three (3) Directors subject to ratification by the Board of Directors;

(v) The Miami-Dade County Public School Board shall appoint one (1) Director.

(vi) For each appointment by the County Commissioners, County Commission At-Large, County Mayor, City of Miami Commission and City of Miami Beach Commission, the Trust shall advise the appointing authority of any special characteristics or professional skills that it is seeking in order to strengthen and balance the Trust board. In addition, the Trust may suggest potential nominees for consideration by the appointing authority. After consideration of these recommendations, the appointing authority shall select an appointee that, in its best judgment, will best serve the interests of the Trust and the governmental agency.

(b) Appointments made by the Corporation: In accordance with the Bylaws of the Corporation, the Corporation shall appoint Community Representative Directors, not to exceed thirteen (13) members, as follows:

(i) One (1) Director for each of the Designated Primary Artistic Organizations named in Section 4.3;

(ii) One (1) Director each from at least two (2) Miami Dade County-based non-profit performing arts organizations which reflect, in both their governance and programming, community ethnic cultural perspectives including at a minimum an Hispanic American artistic organization and an African American artistic organization; and

(iii) Additional Community Representative Directors who represent the interests and diversity of the community at large.

4.3 Designated Primary Artistic Organizations:

(a) Notwithstanding any other provision of these Articles, each of the following organizations shall be entitled to appoint one Designated Primary Artistic Director who may remain as Designated Primary Artistic Director at the pleasure of the organization so long as the organization is a Designated Primary Artistic Organization. The following named organizations have been designated as Primary Artistic Organizations and will constitute the four (4) Designated Primary Artistic Organizations:

- (i) Concert Association of Florida, Inc.
- (ii) Florida Grand Opera, Inc.
- (iii) Miami City Ballet, Inc.
- (iv) New World Symphony, Inc.

(b) The requirements for Designated Primary Artistic Organizations include:

(i) A Designated Primary Artistic Organization shall be any professional non-profit cultural organization, incorporated or not, which shall have been in existence for more than one (1) year, has an annual operating budget of more than \$500,000, and has displayed a long term financial and usage commitment to the Corporation, as determined by the Board of Directors.

(ii) Designated Primary Artistic Directors shall be those Directors appointed by a Designated Primary Artistic Organization.

4.4 Qualifications of Directors:

The Directors are expected to devote time, professional knowledge, personal influence, money and/or a combination thereof to attain the goals of the Corporation and shall be selected by reason of their abilities to do the following:

(a) To provide and secure financial support for the activities of the Corporation. The personal contributions of the Directors are key to the financial well-being of the Corporation. Also, Directors, because they have great standing in the community, can greatly influence individuals, corporations, foundations and government agencies to provide financial support.

(b) To volunteer their specialized business expertise, advice and guidance to working committees when needed.

(c) To spearhead and to reinforce all community and public relations work of the Corporation.

4.5 Term of Directors:

(a) Each of the thirteen (13) Directors appointed by individual Commissioners of Miami-Dade County shall serve a term which shall end concurrently with the last day of the term of the County Commissioner who appointed said Director. Individual County Commissioners who are reelected to office must officially appoint, or re-appoint if desired, a Director as his or her appointment for the new term following the process in section 4.2.a.vi.

(b) Each of the six (6) Directors appointed by the Board of Commissioners of Miami-Dade County At-Large shall be appointed for a three (3) year term and shall be permitted to serve up to two full consecutive three (3) year terms, and may be re-appointed to the Board of Directors after ceasing to be a Director for one (1) year.

(c) Each of the two (2) Directors appointed by the Mayor of Miami-Dade County shall serve a term which shall end concurrently with the last day of the term of the Mayor. In the event that the Mayor is reelected to office, he or she must officially appoint, or re-appoint if desired, each of the two (2) Directors as his or her appointments for the new term following the process in section 4.2.a.vi.

(d) Each of the six (6) Directors appointed by the City of Miami and City of Miami Beach Commissions shall be appointed for a three (3) year term and shall be permitted to serve up to two full consecutive three-year terms, and may be re-appointed to the Board of Directors after ceasing to be a Director for one (1) year following the process in section 4.2.a.vii.

(e) The Director appointed by the Miami-Dade County Public School Board shall serve at the will of the School Board, and shall serve until he/she resigns or is removed.

(f) The terms of the Community Representatives are specified in the Bylaws of the Corporation.

(g) Upon the expiration of a Director's term, that Director shall remain on the Board of Directors until such time as he or she is replaced or is re-appointed by the appropriate appointing authority.

4.6 Filling of Vacancies:

(a) Vacancies in expired or unexpired terms for Community Representatives to the Board of Directors caused by resignation, removal or death shall be filled according to the process provided in Section 4.8 of the Bylaws of the Corporation.

(b) For those Directors appointed by the County Commissioners, County Commission At-Large and Mayor, if a vacancy occurs prior to the expiration of the original appointing authority's term, the individual County commissioner, commission or the Mayor who appointed that Director shall appoint a new member to fill the vacancy following the process in section 4.2.a.vi.

(c) For those Directors appointed by the City of Miami Commission and City of Miami Beach Commission, if a vacancy occurs prior to the expiration of the Director's term,

the Commissions shall appoint a new member to fill the vacancy following the process in section 4.2.1.v1.

(d) In filling any vacancy to be filled by Local Governmental Authorities the replacement Director shall hold office for the unexpired term of his/her predecessor in office.

(e) The Miami-Dade County Public School Board shall appoint a person to fill any vacancy for their Director position.

4.7 Removal of Directors:

Any Director may be removed for cause as determined by the Corporation, including violation of Board policy, by the affirmative vote of the majority of the Board of Directors, provided such Director has been given prior notice that the subject of his/her removal will be presented to the Board at a duly noticed meeting.

4.8 Financial Disclosure:

Directors shall file the same Florida Financial Disclosure Statements required of state officers. Other than compliance with Financial Disclosure requirements, the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance shall not apply to the Directors.

4.9 The Sunshine Law:

The Board of Directors shall comply with Florida Government in the Sunshine Law in the conduct of all its meetings to the same extent as if it were an elected body.

4.10 Public Records Act:

The Corporation's records will be open to public inspection in accordance with the Florida Public Records Act to the same extent as if it were a government agency.

ARTICLE V
COMMITTEES

The initial Standing Committees of the Board of Directors shall be the Executive Committee, Finance Committee, Audit Committee and Nominating and Governance Committee. The purposes and membership of the Standing Committees shall be set forth in the Bylaws of the Corporation. The Board of Directors may establish from time to time, such additional Standing or ad hoc Committees as shall be deemed appropriate, with such additional Committees to exercise such duties, powers and authorities as may be delegated by resolution of the Board of Directors.

ARTICLE VI
MEMBERSHIP

6.1 Non-voting Members:

The Board of Directors may establish one or more types of nonvoting members of the Corporation by resolution. Non-voting membership shall be open to any person, family, corporation or other entity upon receipt of a written application for membership and payment of annual dues applicable to the class of membership specified in the application.

6.2 Creation of Non-voting Memberships:

The Corporation's Executive Committee shall, after consultation with the President, present recommendations to the Board regarding classes of nonvoting membership and the respective dues, and other benefits applicable to each class. The Board of Directors shall consider such recommendations, revise them as the Board deems necessary and proper, and promulgate a schedule of such classes, dues, rights and benefits. Such schedule may be amended from time to time by the Board of Directors, after consultation with the Executive Committee and the President. Nonvoting Membership shall terminate upon death (of an individual member), resignation of the member, upon the failure of a member to pay annual dues or as otherwise provided in the Bylaws of the Corporation.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1 Execution of Corporate Instruments:

The Board of Directors may designate the officers and agents who shall have authority to execute any instrument on behalf of the Corporation. When the execution of any contract, conveyance or other instrument arises in the ordinary course of the Corporation's activities, or has been authorized without specification of the executing officers, any two of the officers may execute the same in the name and behalf of the Corporation and may affix the corporate seal thereto. No person holding more than one office shall execute, acknowledge or verify an instrument in more than one capacity.

7.2 Depositories:

All moneys, securities and other valuables of the Corporation shall be deposited in the name of the Corporation in such banks trust companies, or corporate safe deposit vaults as the Board of Directors from time to time shall designate for such purposes, and shall be withdraw able only by check or orders signed by, the personal signature of such officers or agents as may be designated from time to time by the Board of Directors. At least two signatures shall be required on all such checks or orders.

7.3 Indemnification of Officers and Directors:

Each person who acts as a Director or Officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by law against any costs and expenses which may

be imposed upon or reasonably incurred by him/her in connection with any action, suit or proceeding in which he/she may be named as a party defendant by reason of his/her being or having been such Director or Officer, or by reason of an action alleged to have been taken or omitted by him/her in either such capacity; provided however, that the Corporation shall not indemnify any such person against any costs or expenses imposed upon or incurred by him/her in relation to matters as to which he/she shall be finally adjudged to be liable to the Corporation for negligence, misconduct or any other cause, or for any sum paid by him to the Corporation in settlement of an action, suit or proceeding based on his/her alleged dereliction of duty. This right of indemnification shall inure to each Director and officer whether or not he/she is such Director or officer at the time such costs or expenses are imposed or incurred, and whether or not the claim asserted against him/her is based on matters which antedate the adoption of these Articles of Incorporation; and in the event of his/her death shall extend to his/her legal representatives. Each person who shall act as Director or officer shall be deemed to be doing so in reliance upon such right or indemnification; and such right shall not be exclusive of any other right which he/she may have. The Corporation shall have power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such insurance is permitted by law.

7.4 Parliament:

Robert's Rules of Order Revised shall govern the proceedings of the Corporation, including its Board and Committees, to the extent applicable and consistent with these Articles of Incorporation and the Bylaws of the Corporation.

7.5 Advisor:

The President shall serve as an advisor to the Board of Directors and shall maintain full consultative relationships with the Board of Directors and all Committees thereof.

7.6 Corporate Records:

Corporate records shall be available for open review according to federal and state regulations.

ARTICLE VIII
AMENDMENT OF ARTICLES OF INCORPORATION

The Articles of Incorporation of this Corporation may, in any particular, be repealed, and new Articles of Incorporation, not inconsistent with any provision of law, may be adopted, either by (i) the affirmative vote of two-thirds of the voting members of the Corporation present at a duly-noticed annual or special meeting of the members at which a quorum is in attendance, or (ii) by the affirmative vote of two-thirds of the Directors present at any regular or special meeting of the Board at which there is a quorum; provided, however, that the Directors shall neither make nor alter any article regarding their qualifications, classifications, or term of office, nor relating to requirements of a quorum for any meeting of the members of the Corporation, and that at least ten (10) days' notice of such proposed amendment shall have been furnished to all of the Directors; provided further, that any such amendment adopted by the Board of Directors must be ratified by the affirmative vote of a majority of the Board of Commissioners of Miami-Dade County. Any proposed amendments must be approved by a majority of the Board of Commissioners of Miami-Dade County before becoming effective.

ARTICLE IX
DISSOLUTION

Upon dissolution, all of the Corporation's assets remaining after payment of all costs and expenses of such dissolution shall be distributed to the Board of Commissioners of Miami-Dade County and the City Commissioners for a public purpose.

ARTICLE X
REGISTERED OFFICE AND AGENT

The registered office of this Corporation is at 1111 Brickell Avenue, Miami, Florida 33131, and the registered agent of this Corporation at such office is Parker D. Thomson, who upon accepting this designation agrees to comply with the provisions of Sections 48-091, 617-023, 607.0501 and 607-0502, Florida Statutes, as amended from time to time, with respect to keeping an office open for service of process.

ARTICLE XI
INCORPORATORS

The Incorporator of the Corporation was Parker D. Thomson, whose address is 1111 Brickell Avenue, Miami, Florida 33131. The name and street address of the persons signing these Amended and Restated Articles of Incorporation are:

Name Address

Parker D. Thomson
1111 Brickell Avenue
Suite 1900
Miami, FL 33131

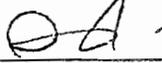
I. Stanley Levine
Levine & Associates
1110 Brickell Avenue, #700
Miami, FL 33131

[signatures on following page]

IN WITNESS WHEREOF, the undersigned, being the Chair and Secretary of the Corporation, have hereunto set their hands and seals this 30th day of May, 2006.



Parker D. Thomson, Chair



Stanley Levine, Secretary

Attest:



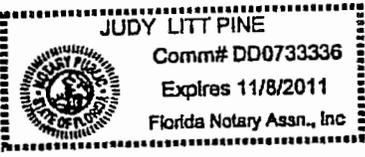
I. Stanley Levine, Secretary

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 30th day of May, 2006, by Parker D. Thomson, who is personally known to me (Yes) (No) and who did not take an oath.

Judy Litt Pine

Notary Public
State of Florida at Large

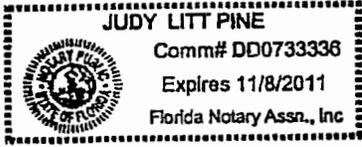


JUDY LITT PINE

Printed Name of Notary Public
My Commission Expires: 11/8/11

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 30th day of May, 2006, by I. Stanley Levine, who is personally known to me (Yes) (No) or who produced _____ as identification and who (did) (did not) take an oath.



Judy Litt Pine (SEAL)
Notary Public
State of Florida at Large
JUDY LITT PINE
Printed Name of Notary Public
My Commission Expires: 11/8/11

Adrienne Arsht Center
FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY



ATTACHMENT D

AMENDED AND RESTATED
AMENDMENT NUMBER 6
TO THE
OPERATING MANAGEMENT AGREEMENT BETWEEN
MIAMI- DADE COUNTY AND
PERFORMING ARTS CENTER TRUST, INC.

This Amendment Number 6 to the Operating Management Agreement (the "Agreement"), entered into this 28th day of MARCH, 2008, by and between MIAMI- DADE COUNTY, FLORIDA, (the "County"), a political subdivision of the State of Florida, and PERFORMING ARTS CENTER TRUST, INC., a not for profit Florida corporation, (the "Corporation") replaces the Operating Management Agreement originally approved on July 19, 1993 (Resolution R-860-93) and amended on March 19, 1996 (Resolution R-279-96), December 19, 2000 (Resolution R-1409-00), January 23, 2003 (Resolution R-099-03), July 27, 2004 (Resolution R-1018-04), and April 25, 2006 (Resolution R-480-06).

W I T N E S S E T H:

Whereas, it is contemplated that Miami- Dade County ("County") will accept a donation of land for the construction and operation of a Performing Arts Center; and

Whereas, it is also contemplated that Miami- Dade County will issue bonds or will otherwise incur debt backed by the revenues generated by the Convention Development Tax and by applicable revenues which may be generated by the Omni tax increment financing district (subject to approval by the City of Miami), all in accordance with the Financing Plan approved by the Board of County Commissioners on November 6, 1990, and in accordance with such future financing plans or bond ordinances as the Board may in its discretion adopt, to finance the construction of a publicly owned Performing Arts Center on land to be donated; and

Whereas, the Board of County Commissioners intends to cause a Performing Arts Center to be designed, built and operated directly or indirectly with public funds for the benefit of residents and visitors to Miami-Dade County; and

Whereas, it is contemplated that the County will own the site, the structures and the appurtenances of the Performing Arts Center and will be responsible for the repayment of the debt incurred to finance the initial construction of the Performing Arts Center; and

Whereas, the Board of County Commissioners has approved the Articles of Incorporation of the Performing Arts Center Trust, Inc. ("Corporation") as a not for profit corporation organized under the laws of the State of Florida and has appointed directors to the board of directors of the Corporation in accordance with the Corporation's Articles of Incorporation, to represent the full spectrum of community and performing arts interests; and

Whereas, the purpose of the Board of County Commissioners in approving the Articles of Incorporation of the Corporation and in appointing directors to the Corporation's board of directors is to obtain the benefit of professional management services from the Corporation in

connection with the design, construction and operation of the Performing Arts Center; and

Whereas, the Corporation has committed to provide the County with private funds, in the amount of \$43.583 million, for the design and construction of the Performing Arts Center and in addition agreed to fund an operating endowment in the amount of \$21 million so as to help ensure that the Performing Arts Center will be affordable and accessible to its resident companies which are the Designated Primary Artistic Organizations as defined in the Articles of Incorporation of the Corporation, approved by the Board of County Commissioners; and

Whereas, the Corporation will operate the Performing Arts Center with a balanced annual budget, utilizing earned revenue and contributed income, along with state, federal and private funds so that there can be no operational reliance on general funds from Miami- Dade County or any agency or instrumentality thereof; and

Whereas, the terms and conditions of these professional management services to be provided by the Corporation to the County need to be defined and stated; and

Whereas, this Management Agreement has been negotiated to define and state the terms and conditions of the management services to be provided by the Corporation to the County.

Whereas, this Management Agreement has been amended on March 21, 1996, December 19, 2000, January 23, 2003, July 27, 2004, and April 25, 2006, and in mutual consideration of the promises and obligations contained herein, the parties wish to amend this Management Agreement as follows:

A. GENERAL TERMS

A. 1. RECITATIONS INCORPORATED.

The recitations stated above are incorporated into the terms of this Agreement.

A.2. PARTIES.

The parties to this Agreement are Miami- Dade County, a political subdivision of the State of Florida, ("County") and the Performing Arts Center Trust, Inc., a not for profit Florida corporation, "Corporation").

A.3. SCOPE OF AGREEMENT.

This Agreement shall encompass all matters relating to the services to be provided and the obligations to be performed by the Corporation to the County and the County's obligations to the Corporation in connection with the planning, design, construction, furnishing and operations of the proposed performing arts facilities on County owned property ("Facility") consisting of one or more structures, all owned by the County, as may be established in the Building Program which will be recommended by the Corporation and is subject to the approval of the Board of County Commissioners of Miami-Dade County, Florida (the "Board").

A.4. TERM



The initial term of this Agreement shall be 10 years, beginning March 1, 1993. This initial term shall be extended by a period of three years for an initial term totaling 13 years, beginning March 1, 1993. This Agreement may be terminated before the end of the initial or renewal terms pursuant to the provisions herein. In Amendment Number 5 this Agreement was extended for twenty (20) years beginning March 1, 2006. Six months prior to the expiration of this extension the County may exercise its option, in its sole discretion, to extend this Agreement for an additional ten (10) year term. This Amendment Number 6 supersedes the term of any renewal period otherwise in effect as of the date of its adoption.

A.5. CLAIMS.

a. Third Party Claims. In the event of third party claims brought against either the County or the Corporation in connection with matters arising under this Agreement, each party will be responsible for its own acts and omissions. The Corporation agrees to indemnify the County for any loss which the County incurs as a result of the acts or omissions of the Corporation.

b. Claims Between the Parties. Both parties agree to waive all rights to file any lawsuit against the other arising out of the subject matter of this Agreement, except as specifically provided herein; providing however, that if the Corporation has by the act or omission of its employees or agents caused damage to County property which damage is covered by insurance, then the County shall have the right to sue the Corporation, but only to the extent of that insurance coverage.

A.6. PRESIDENT.

The Corporation and the County shall jointly select a chief executive officer ("the President & CEO"), who shall be an employee of the Corporation. The salary and other employment benefits of the President shall be determined and paid by the Corporation. The President shall report directly to the Board of Directors of the Corporation.

A.7. CORPORATION PERSONNEL.

No employee of the Corporation shall be an employee of the County. The Corporation shall abide by all applicable federal, state, and local mandates with regard to its employment practices. The Corporation shall not discriminate in hiring or promotions on the basis of race, sex, national origin, religion, creed, age or disability.

A. 8. CORPORATION BUDGET AND RECORDS.

The Corporation shall maintain the same fiscal year as does the County. The Corporation shall submit to the County by May 1st of each year the entire annual operating budget, including all classes of revenues and expenditures, for the coming fiscal year, for inspection by the County. The Corporation shall not develop nor submit a budget that includes revenues from the general fund of the County. The Corporation shall submit to the County annual reports and annual independent audits. Annual reports shall consist of (a) a summary of the programming and marketing activities of the Corporation; (b) a balance sheet; (c) a statement of revenues and expenditures; and (d) a statement of

changes in fund balance since the prior submittal. The annual and audit reports shall be submitted to the County by December 31 of each year. The Corporation shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of the Corporation shall be kept in Miami-Dade County, Florida in accounts owned by the Corporation. Failure to submit such reports at the time required or in the form as required herein shall be a material failure and cause for termination under Section G. All bank accounts and deposits of the Corporation shall be in institutions located within Miami-Dade County, Florida. The County shall have the right to inspect, to copy or to audit any and all books and records of the Corporation during the term of this Agreement and for a period of 3 years after the expiration of this Agreement. Failure to comply with any provision of this Section shall be cause for termination under Section G.

A.9. DEBT.

At no time may the Corporation incur any aggregate outstanding debt in excess of 20% of the Corporation's annual operating budget without the consent of the County. The above limitations shall include lease-purchase agreements. The Facility and its contents owned by the County may not be used to secure any debt. County consent required under this Paragraph may be withheld for any reason within the sole discretion of the Board of County Commissioners. The Corporation will not incur any debt that requires funding support from the County's general fund.

A. 10. ANTI-LOBBYING.

- a. No Corporation Director as presently defined in the Articles of Incorporation of the Corporation, *as they may be amended from time to time*, shall discuss any pending solicitation for commodities, services or construction in connection with the Facility with any County commissioner, officer or employee, except at a public meeting which satisfies the requirements of the Florida Government in the Sunshine Law. All communications regarding pending solicitations shall occur through the Corporation staff.
- b. The bid, proposal or submission of any bidder or proposer who, itself or through its representative, discusses any pending solicitation for commodities, services or construction in connection with the Facility with any Corporation director, officer or employee or with any County commissioner, officer or employee, except at a public meeting which satisfies the requirements of the Florida Government in the Sunshine Law, may be rejected as non-responsive. This Section shall not preclude the submission in writing to the County or the Corporation staff, by a potential bidder or proposer of questions related to factual matters concerning the bid/proposal or bid/proposal process.
- c. The provisions of this Section shall be included in the specifications for each solicitation for goods or services issued by the Corporation in



connection with the Facility.

A. 11. RECOMMENDATION AND APPROVAL.

Where this document provides for approval by the County upon the recommendation of the Corporation, it shall be understood that the procedure shall be as follows. The Corporation shall formulate its recommendation at a duly noticed meeting. Upon consideration of that recommendation, the Board of County Commissioners (i) may accept the recommendation, or (ii) may reject the recommendation and request that the Corporation furnish a new recommendation for it to consider. This process shall continue until the Board of County Commissioners approves a recommendation.

A.12. ASSIGNMENT, SUBLETTING AND DELEGATION.

The Corporation was selected to perform the services set forth in this Agreement because the composition of the Board of Directors of the Corporation was carefully selected to balance a variety of community interests. The Corporation shall not assign or subcontract any portion of its obligations under this Agreement. The Board of Directors of the Corporation shall not delegate its authority under this Agreement to any committee or to any other person or entity; provided that the Corporation may authorize individuals or committees to take actions, always subject to approval or ratification by the Corporation Board and without relieving the Corporation Board of full responsibility for any action taken by such individual or committee; further provided however, that the Construction Committee described in Article D shall have full discretion as described in that Article. This provision shall not limit the authority of the Corporation to enter into concession agreements, leases of space in the Facility pursuant to this Agreement, or agreements for the use of space in the Facility pursuant to the Booking Policy provided herein.

B. PLANNING PHASE

The Planning Phase of this Agreement shall commence upon the execution of this Agreement and shall continue until the award of a professional design services agreement for the architectural and engineering design for the Facility.

B.1. COUNTY RIGHTS AND OBLIGATIONS DURING PLANNING PHASE

B.1.1. The County shall contract with qualified professional theater and acoustical consultants upon the recommendation of the Corporation.

B.1.2. Upon the Corporation's recommendation, the County shall designate a suitable site or sites, on land already owned by the County, and/or on land that has already been formally offered to the County to be conveyed in fee simple title, free of charge with suitable amenities and on such terms and conditions which the County at its sole discretion deems acceptable for the construction of the Facility and for the staging area for the Contractor or Construction Management Firm ("CM") engaged to construct the Facility. Under no circumstances shall the County be obliged to spend funds to purchase a site. The Corporation shall also make recommendations in connection with improvements to and programs for

A

certain existing facilities and for the appropriate funding thereof.

B.1.3. The result of the Planning Phase shall be a building program and an existing facilities program to be approved by the Board of County Commissioners.

B.2. CORPORATION RIGHTS AND OBLIGATIONS DURING PLANNING

B.2.1. The Corporation in conjunction with the theater and acoustical consultants shall prepare the Building Program for the Facility. The County shall only be obligated to proceed to the design phase if the cost of the design and construction of the Facility as contemplated by the Building Program is less than the construction funds provided by bonds to be issued by the County; except that the Corporation shall have the option of supplementing that amount with its own resources; provided however, that at the time the County is called upon to approve any contract in connection with the planning, design, furnishing or construction of the Facility, the full amount of the Corporation's contribution to that contract must be then on-hand in the County's account, and the full amount of County's portion must be then on hand in the County's account or the ability to pay for such contract must have been budgeted by the Board of County Commissioners.

B.2.2. The Corporation shall recommend to the County a competitive architectural selection process which shall be subject to the approval of the Board of County Commissioners. The architectural selection process for the Architect shall be consistent with the requirements of Section 287.055 Florida Statute and Section 2-10.4 Code, Miami-Dade County. The County Manager will appoint a sufficient number of the Corporation directors to the selection committee so as to constitute a majority of the committee. The Architect and/or engineer shall be recommended by the selection committee which shall not only evaluate qualifications but shall rank the proposers. The County Manager will recommend a firm from the ranked list to the Board of County Commissioners. The Board of County Commissioners (i) may accept the recommendation presented to it, or (ii) may reject the recommendation and request that the selection committee furnish a new recommendation to the County Manager for the Board to consider.

C. DESIGN PHASE

The Design Phase of this Agreement shall commence upon the execution of a professional design services agreement for the architectural and engineering design for the Facility and shall continue until execution of a contract for the construction of the Facility.

C.I. COUNTY RIGHTS AND OBLIGATIONS DURING DESIGN PHASE.

C.1.1. The County shall contract with an experienced architectural firm ("the Architect") selected by the competitive selection process set forth in Article B.2.2. for the design and construction supervision of the Facility in accordance with the Building Program prepared and recommended by the Corporation and approved by the County. Facility acoustics will be a primary design consideration.

70

- C.1.2. The County shall allocate and pay the architectural, engineering, and other reasonable and necessary fees for the architectural and engineering design of the Facility, as provided in this Agreement.
- C.1.3. After acceptance by the Corporation and the County of the architectural, engineering and acoustical design plans prepared by the Architect, the County shall issue an invitation for bids for the construction of the Facility. The invitation for bids will be upon specifications for a complete structure or structures, usable for its intended purpose. The County shall contract with the lowest responsible and responsive Contractor or CM submitting a bid to construct the Facility in accordance with the plans and specifications prepared by the Architect and approved by the County.
- C.1.4. The County shall provide the construction management services for its own benefit. The cost of these services shall be reimbursed from the bond proceeds to be issued by the County, and shall be considered part of the County's cost of the Facility.
- C.1.5. The County shall insure that the total compensation due to the Architect and to the Contractor or CM does not exceed available funds. The County may reduce the scope of the Building Program or the Facility plans and specifications in order to keep the costs within available funds; provided however, that as a prerequisite to any such modification, the County shall first provide the Corporation with a reasonable opportunity to recommend the appropriate modifications or to provide sufficient additional funds to build the Facility as proposed.
- C.1.6. The County shall only be obligated to proceed to the Construction Phase if the cost of the design and construction of the Facility as shown on the winning bid together with the Planning and Design Phase costs is less than the construction funds provided by bonds issued by the County and other non-bond sources in addition to the Corporation's contributions provided in cash to the County to that date; except that the Corporation shall have the option of supplementing that amount with its own additional resources, provided however that at the time the County is called upon to award the contract for the construction of the Facility, the full amount of the Corporation's contribution and the County's portion to that contract must be in the form of a financing plan approved by the Board of County Commissioners.

C.2. CORPORATION RIGHTS AND OBLIGATIONS DURING DESIGN PHASE

- C.2. 1. The Corporation shall provide \$ 42.2 million to the County to supplement the County's budget for the architectural fees and construction cost of the Facility. \$3.33 million in cash shall be provided to the County prior to

execution of the contract with the Architect but in no event shall it be required earlier than March 21, 1996; the County shall use these monies provided by the Corporation and the County's public funds to make the payments to the Architect in proportionate shares based on the Corporation's and the County's contributions for the Architect's contract. \$18.87 million in cash shall be provided to the County prior to execution of a contract with the Contractor or CM but in no event shall it be required earlier than March 1, 1999. The County shall use the \$18.87 million provided by the Corporation and the County's public funds to make the payments to the Contractor or CM in proportionate shares based on the Corporation's and the County's contributions for the Contractor or CM's contract. An additional \$20.0 million in cash shall be provided to the County during the Construction Phase as described in Section D.2. 1.

- C.2.1.A. In addition, \$21 million in cash, less any credit to the Foundation by reason of its payments to the Corporation as set forth below, shall be paid into an endowment fund controlled by the Corporation, with \$15.75 million provided the later of September 1, 2005 or completion of construction and the remaining \$5.25 million provided the later of September 1, 2006 or one year after the completion of construction. The Corporation shall use the interest from the endowment fund for a portion of operating expenses in accordance with its budget. Any of the Corporation's contributions not used for the Architect's and/or Contractor or CM's contracts shall be returned to the Corporation if the project is permanently abandoned or terminated.

The Foundation will advance up to a maximum Five Million Dollars (\$5,000,000) for the operation of the Corporation prior to the Facility's opening. All sums so advanced shall be credited against the Endowment Fund (\$21,000,000) of Private Funds which the Foundation has agreed to raise. The amount so advanced shall be deducted from the \$15,750,000 payment due to the Corporation on September 1, 2005 or completion of construction, whichever is later.

- C.2.2 The Corporation shall appoint a committee which shall meet with the County construction management staff and with appropriate representatives of the Architect on a regular basis.

D. CONSTRUCTION PHASE

The Construction Phase shall commence upon the execution of a contract for the construction of the Facility and shall continue until the construction of the Facility is substantially complete. The Construction Phase shall also include the procurement and installation by the County of fixtures, furnishings and equipment identified in the Building Program, even if such installation occurs after substantial completion of the Facility. These

fixtures, furnishings and equipment may be procured under the construction contract or under separate contracts at the discretion of the County, and all such items procured by the County shall be the property of the County.

D. 1. COUNTY RIGHTS AND OBLIGATIONS DURING CONSTRUCTION PHASE

D.1.1. The County shall have no financial obligation in connection with the design, construction and furnishing of the Facility in excess of the amount identified in the Final Financing Plan, to be adopted by the Board of County Commissioners as contemplated in the project bond documents. Unless the Corporation exercises its option to increase the available funding, the County shall have the right to take necessary steps to modify the Building Program or the approved plans and specifications of the Facility required, in the discretion of the County, in order to keep the cost of the Facility within the available funds; provided however, that as a prerequisite to any such modification, the County shall first provide the Corporation with a reasonable opportunity to recommend the appropriate modifications.

D.1.2. The County shall provide construction management services for its own benefit to ensure that the construction of the facility is in accordance with the plans and specifications prepared by the Architect. The cost of these services shall be reimbursed from the bond proceeds and other non-bond sources of funds to be issued by the County and shall be considered part of the County's cost of the Facility. No changes above the construction contract contingency allowance will be made to the plans and specifications without the prior reasonable opportunity for review and recommendation by the Corporation or its designated committee, however, no such review shall delay changes or change orders such that the County incurs additional cost of construction.

D.2. CORPORATION RIGHTS AND OBLIGATIONS DURING CONSTRUCTION PHASE

D.2. 1. a) The Corporation shall further provide, during the Construction Phase, an additional \$5 million to the County in one installment within twenty (20) days of Board of County Commissioners approval, time being of the essence and an additional \$20 million to the County in one installment, at any time after the commencement of the Construction Phase, but in no event later than August 4, 2006, (or the date on which the Facility obtains a temporary certificate of occupancy for the use for which it is intended, whichever is later) time being of the essence. However, if the County receives additional funding as defined in Section D.2. 1.13 before August 4, 2006, from the State of Florida and/or the Federal Government, excluding Miami-Dade County Government ("Additional Governmental Funds"), the Corporation shall be relieved of its responsibility to remit to the County, to the extent of such Additional Governmental Funds, these additional payments.

TJ

b)The Corporation shall also provide, during the Construction Phase, an additional \$1.383 million ("Additional Donor Funds") to the County for the following Owner Scope Additions to the construction of the Facility: 1) installation of compensating stage lifts for the Ballet/Opera House (\$1.135 million); and 2) the curved donors' walls at both the Ballet/Opera House and the Concert Hall (\$248,000). A payment of \$1.383 million in cash shall be provided to the County in one installment, on or before October 1, 2004, time being of the essence. However, if the County receives additional funding on or before October 1, 2004, from the State of Florida and/or the Federal Government, excluding Miami-Dade County Government ("Additional Governmental Funds"), the Corporation shall be relieved of its responsibility to remit to the County, to the extent of such Additional Governmental Funds, the Additional Donor Funds (originally in the amount of \$1.383 million).

c)The County shall use the additional \$25 million provided by the Corporation and the County's public funds to make the payments to the Contractor or CM in proportionate shares calculated from the remaining balance to be paid in the Contractor or the CM's contract, at the time the \$25 million is delivered to the County, and the County shall use the \$1.383 million provided by the Additional Donor Funds remitted by the Corporation and/or the Additional Governmental Funds to make payments to the Contractor or CM for the following change orders resulting from the Owner Scope Additions: 1) installation of compensating stage lifts for the Ballet/Opera House (\$1.135 million) and 2) the curved donors' walls at both the Ballet/Opera House and the Concert Hall (\$248,000). The County shall be obligated to initiate the change orders in a time frame consistent with the requirements of the construction schedules.

d) In the effort to complete the construction project and obtain an occupancy certificate by August 4, 2006, the Corporation has agreed to provide the County \$1.5 million per year beginning October 1, 2007 and continuing for a period of twenty (20) years. These payments shall be received by the County no later than October 1 of each year, time being of the essence, beginning October 1, 2007. The Corporation may elect to pay these annual payments from the Corporation's Endowment Fund, which shall be maintained at a minimum level of \$16 million during the term of this Agreement. In accordance with the County's Fiscal Year 2005-2006 Adopted Budget, the County has budgeted operational support to the Trust for its Annual Operating Budget in an estimated amount equal to \$5.344 million. The County Manager has recommended that the County provide operational support to the Trust for its Operating Budget in the amount of approximately \$11.054 million (THIS NEEDS TO BE UPDATED)for Fiscal Year 2006-07 through Fiscal Year 2009-10. The County and the Corporation are jointly and mutually committed to the success and

14

financial stability of the future operations of the Performing Arts Center. To ensure this financial stability and operational success, the County, in consultation with the Corporation, will annually recommend funds to be set aside in a trust to be used solely for payment of operating expenses of the Corporation. These recommendations will be reviewed annually based on the operational needs of the Trust. All such recommendations are subject to approval by the Miami-Dade County Board of County Commissioners.

D.2.1.A. For purposes of this Agreement Additional Donor Funds shall mean cash, or cash equivalents (cash equivalents are wire transfers or cashiers checks or any similar instruments that are treated by the banking industry as "cash equivalents" for purposes of receiving immediate credit for the deposit being made), equal to not less than One Million Three Hundred and Eighty-Three Thousand Dollars (\$1,383,000) for the following Owner Scope Additions to the construction of the Facility: 1) installation of compensating stage lifts for the Ballet/Opera House (\$1.135 million) and 2) the curved donors' walls at both the Ballet/Opera House and the Concert Hall (\$248,000).

D.2.1.B. Additional Governmental Funds shall mean (i) cash or cash equivalents (cash equivalents are wire transfers or cashiers checks or any similar instruments that are treated by the banking industry as "cash equivalents" for purposes of receiving immediate credit for the deposit being made) received by Miami-Dade County Performing Arts Center Management Office on or before August 4, 2006 (or the date on which the Facility obtains a temporary certificate of occupancy for the use for which it is intended, whichever is later), or (ii) an approved and budgeted allocation of funds to the County in relation to the Facility made on or before August 4, 2006 (or the date on which the Facility obtains a temporary certificate of occupancy for the use for which it is intended, whichever is later), in each case from or by from the State of Florida and/or the Federal Government, excluding Miami-Dade County Government, that is not specifically restricted from being applied to the above Owner Scope Additions and additional payments referred to in Section D.2.1(a) of this Agreement. Furthermore, if these Additional Governmental Funds are received for application to other items included in the currently approved construction contract with the Contractor or the CM, the Project funds that are currently allocated for those items will be given as a credit against the Foundation's otherwise applicable obligations for the Additional Donor Funds (\$1,383,000) or additional payments referred to in Section D.2.1(a) of this Agreement. However, if Additional Governmental Funds are received for items not currently included in the approved construction contract with the Contractor or the CM, then those Additional Governmental Funds cannot be used as a credit against the Foundation's otherwise applicable obligations for the Additional Donor Funds

15

(\$1,383,000) or additional payments referred to in Section D.2.1(a) of this Agreement.

- D.2.2 The Corporation shall appoint a committee called the "Construction Committee", which shall meet with the County construction management staff and with appropriate representatives of the Architect and the Contractor or CM on a regular monthly basis. The Corporation's participation in the construction process of the Facility shall not increase the cost of design and construction beyond the amount identified in the Final Financing Plan and shall not delay the construction schedule.
- D.2.3. The County will include in the contract with the Contractor or CM a 5% contingency allowance. Changes within the contingency allowance will be subject to the sole approval of a committee designated by the Corporation, upon the recommendation of the Architect and the County's Project Director through a process that shall be outlined by the Corporation's Construction Committee and approved by the Corporation's Board of Directors. The above Owner Scope Additions in the amount of One Million Three Hundred and Eighty-Three Thousand Dollars (\$1,383,000) will not increase the above contingency allowance and will be subject to the requirements stipulated above in Section D.2.3.

E. OPERATIONS PHASE

The Operations Phase shall commence upon substantial completion of the Facility and the completion of the installation of fixtures, furnishings and equipment identified in the Building Program and shall continue until termination of this Agreement.

- E. 1. COUNTY RIGHTS AND OBLIGATIONS DURING OPERATIONS PHASE
- E.1.1 The County shall at all times be the sole owner of the Facility and shall make structural repairs to the roof, structural skeleton and exterior walls of the Facility within an annual budgeted allocation recommended by the Corporation and adopted by the Board of County Commissioners in its sole discretion.
- E.1.2 The County, acting through the County Manager and the Commission Auditor or their designees, shall have the right to oversight of the Corporations' operations.
- E.2. CORPORATION RIGHTS AND OBLIGATIONS DURING OPERATIONS PHASE
- E.2.1. The Corporation shall operate and manage the Facility on behalf of the County on an exclusive basis using the highest degree of professionalism. In connection with its management of the Facility, the Corporation shall conduct its business in accordance with the same requirements which are imposed by law upon the County by County or local charter or ordinance, or by state or federal statute, or by any rule, regulation or order; provided,

however, that where any applicable provision of law for procurement or leasing would require action by the Board of County Commissioners or the County Manager, these responsibilities are hereby delegated to the Corporation. The Corporation shall not rely upon revenues from the County's general fund to operate and manage the Facility.

- E.2.2. The Corporation shall establish uniform rates for rental of spaces within the Facility, for temporary licenses to use spaces or equipment within the Facility, and for services to be performed within the Facility. Various classes of rates may be established, so long as the rates are assessed in a non-discriminatory manner within each class so as to provide access to the Facility for a wide spectrum of Miami-Dade County based performing arts groups. The Corporation shall make the Facility available to Miami-Dade County community-based arts groups at reduced rates. The County shall not be entitled to keep any revenues received by the Facility from the rental of spaces therein, the sale of tickets by the Corporation, revenues from concession sales, and any other revenue generated by the Corporation. The County shall not be entitled to any rental fees from the Corporation, nor shall the County establish any admission charges or fees. The Corporation shall establish ticket prices, concession sales rates, parking fees in facilities controlled by the Corporation and all other fees and rates incidental to the operation of the Facility consistent with sound management practice.
- E.2.3. The Corporation shall establish a booking policy in which various classes of rates, priorities and procedures may be established, so long as these rates, priorities and procedures are assessed in a non-discriminatory manner within each class. This booking policy will govern the priorities and procedures for the use of space and services within the Facility. In accordance with its booking policy, the Corporation shall establish a standard procedure for allocation of rehearsal and performance spaces among the Designated Artistic Organizations, as defined in the Articles of Incorporation of the Corporation. In accordance with its booking policy, the Corporation shall establish a standard procedure for allocation of space for other potential occupants or licensees of spaces within the Facility. The Corporation shall retain a master set of booking records.
- E.2.4. The Corporation shall schedule the spaces within the Facility, and establish policies for collecting and retaining rents, admissions, and fees, all in accordance with its uniform box office policy. The Corporation shall select vendors and concessionaires in accordance with the procedures imposed upon the County by County Ordinance, Charter or by state or Federal statute, rule, regulation or order. The Corporation shall provide all theater and property management, accounting, advertising, public relations and legal services required by the operations of the Facility; it shall obtain and pay all costs for utilities, water, sewer, trash and garbage collection, as

well as all maintenance, security and janitorial services required by the Facility. It is the intent of the parties that the Corporation will have authority and responsibility over the day-to-day operation of the Facility and all activities occurring there, and that it shall use the revenue generated by the use of the Facility to pay the expenses associated with the operations of the Facility. The Corporation shall not rely upon revenues from the County's general fund to operate and manage the Facility. The Corporation shall apply for available state, federal and private grant money to help pay for these expenses. The Corporation shall have the exclusive authority to determine space allocation and scheduling within the Facility. All contracts, licenses and agreements entered into by the Corporation in connection with the management of the Facility shall be in its own name.

- E.2.5. The Corporation shall establish a procedure for handling ticket sale revenues and other box office receipts which it may receive in contemplation of or arising from an event at the Facility in order to protect the ticket purchasers, the performers, the County and the Corporation. The Corporation shall provide insurance, a bond or other evidence of security for ticket sale revenues, if required by the County.
- E.2.6. The Corporation shall establish and shall follow a marketing plan to enhance and encourage use of the Facility. The marketing plan shall contain specific long and short-term goals for attracting audience support. At least once each year the Corporation shall present its then current marketing plan to the County and shall report on the results of its past marketing plans.
- E.2.7. The Corporation shall establish and shall follow a program plan to maximize the Corporation's ability to meet its goals and objectives for the use of the Facility. At least once each year the Corporation shall present its then current program plan to the County and shall report on the results of its past program plans.
- E.2.8. The Corporation shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Facility and the County shall have no responsibility therefore.
- E.2.9. The Corporation shall indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of the Agreement. The Corporation shall pay all claims and losses of any nature whatever in connection therewith, and shall defend all suits, in the name of the County when applicable, and shall pay all costs and judgments which may issue thereon.

The Corporation shall maintain in force the following insurance and shall furnish to

18

Miami- Dade County, Department of Cultural Affairs, 111 N.W. 1st Street, Suite 625, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Corporation as required by Florida Statute 440.
- B. Public Liability Insurance on a comprehensive basis including products liability and host liquor liability, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami- Dade County must be shown as an additional insured with respect to this coverage.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Corporation.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division. OR

The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and be members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

The Corporation shall require that all users of the facility provide proof of insurance as agreed upon in advance by the County and the Corporation. The Corporation will be responsible for obtaining the required certificates of insurance from the user and insuring that all required coverages are maintained throughout the term of the agreement.

The Corporation shall also require all users of the facility to execute an indemnification agreement containing an obligation to pay and to defend claims, running in favor of both the Corporation and the County, on a form acceptable to the County's Director of Risk Management.

14

- E.2.10. The Corporation shall not rely upon revenues from the County's general fund to help pay for the programming, marketing, operation and improvement of the Facility. The Corporation shall apply for available state, federal and private grant money to help pay for these expenses.
- E.2.11. The Corporation shall not discriminate in the allocation of space, in the charges imposed or in any other respect arising out of this Agreement, on the basis of race, sex, national origin, religion, creed, age, or disability.
- E.2.12. The Corporation shall recommend appropriate repairs to the County as needed, within the scope of the County's obligation to repair and its budget. All other repairs and refurbishment and redecoration shall be the obligation of the Corporation. The Corporation may not alter or reconfigure the performance spaces or modify the structure without the approval of the County Manager.
- E.2.13. The Corporation shall be responsible for compliance with the requirements of copyright law and the requirements of all applicable sales and use taxes arising out of performances or events at the Facility and all other applicable taxes.

F. COVENANTS OF CORPORATION

The Corporation agrees that during the term of this Agreement it will abide by all of the following covenants:

- (a) Corporation will not discriminate in either its operations or employment practices and procedures on the basis of race, creed, national origin, religion, sex, or disability.
- (b) Corporation will conduct its meetings in accordance with the Florida Government in the Sunshine Statute to the same extent as if it were a government agency.
- (c) The Corporation's records will be open to public inspection in accordance with the Florida Public Records Act to the same extent as if it were a government agency.
- (d) Corporation's Board of Directors shall reflect the ethnic and cultural diversity of the Miami-Dade County community as provided in its Articles of Incorporation.
- (e) Corporation's Board of Directors shall each file annual Financial Disclosure Statements with the Clerk of the Board of County Commissioners on the same forms and at the same times as are required of County Commissioners by Florida Law.



- (f) Corporation will conduct its affairs in accordance with all applicable law, statutes, ordinances and regulations of Miami-Dade County, the State of Florida and the United States, as they may be enacted or amended from time to time.
- (g) Corporation will not include the words "Knight-Ridder" or "Miami Herald" in the name of the Facility.

G. CORPORATION EVENTS OF DEFAULT

Any of the following situations shall be an event of Default

- (1) Failure to comply with the covenants set forth in Article F.
- (2) Failure to pay the sums required in Section C.2.1 by the times required.
- (3) A material failure to observe any other provision of this Agreement.
- (4) Failure to properly or adequately maintain and secure the Facility.
- (5) Failure to operate and market the Facility so as to appropriately maximize use of the Facility, including but not limited to, failure to book a sufficient number of events at the Facility and failure to provide adequate access to a wide spectrum of Miami-Dade County based performing arts organizations; provided, however, that the Corporation shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots.
- (6) Failure of the Corporation to remain solvent or to operate the Facility in a fiscally responsible manner.

H. TERMINATION

H. 1. CORPORATION TERMINATION FOR CONVENIENCE.

The Corporation may terminate this Agreement for its convenience upon 180 days prior written notice to the COUNTY.

H.2. COUNTY TERMINATION FOR DEFAULT BY THE CORPORATION.

- H.2.1. If an event of Default as set forth in Article G has occurred and the Corporation has not begun to cure the default within 15 days after the County furnishes written notice of the Default, then the County shall institute the Dispute Resolution Procedure described in the following paragraph. If a resolution satisfactory to the County Manager is not achieved as a result of the Dispute Resolution Procedure, then the County

may terminate this Agreement upon 60 days prior written notice to the Corporation. The Corporation may appeal this termination, within fifteen days, to the Chief Judge of the 11th Circuit Court.

H.2.2. Notwithstanding any other provision of this Agreement, the County Manager may terminate the Agreement upon 15 calendar days prior written notice, without any liability or obligations to the Corporation if the Corporation fails to provide the County with \$22.2 million prior to execution of a contract for construction of the Facility as required in Section C.2.1.

H.3. DISPUTE RESOLUTION PROCEDURE.

There is hereby created a committee to be called the Miami-Dade County Performing Arts Center Trust Liaison Committee (the "Committee") consisting of an individual designated by the County Manager and the Chairperson of the Corporation. In the event the County sends to the Corporation notice of breach (other than a breach under H.2.2. above) or at the request of the Corporation, these two individuals will select a third person to join the Committee to resolve the dispute. The Committee will undertake such fact finding as it deems appropriate and shall mediate the dispute as it deems appropriate, making a recommendation within 20 days of the initial referral of the dispute to the Committee. This time limitation may be extended by a majority of the Committee, but in no event may it be extended beyond 180 days of the initial referral. The Committee shall act by a majority of its members.

H.4. EFFECT OF TERMINATION.

H.4.1. Upon termination, the Facility and all its fixtures, furnishings and equipment belonging to the County shall be returned to the care and custody of the County. All personal property and assets of the Corporation shall become the property of the County, solely upon the election of the County, in which case the County will assume all debts and obligations of the Corporation which were incurred in connection with the Corporation's obligations under this Agreement which comply with the requirements of Section A.9. and which are in effect on the date of termination; however, the County may not exercise its right under this section if its assumption of Corporation debt would require support from the County's general fund. All booking commitments made in accordance with the established booking policy of the Corporation and existing on the effective date of the termination shall be honored by the County following termination under this paragraph unless the County determines to close the Facility.

H.4.2. The County agrees that upon termination, the County will assume all rights, obligations and duties of the Corporation as a party to the Cooperation Agreement between the Corporation and the Performing Arts Center Foundation of Greater Miami (a copy of which Cooperation Agreement is attached hereto and incorporated herein as Exhibit "A") until the expiration of the then current term of this Agreement or of the Cooperation Agreement, whichever happens first, provided, however, that

the County shall, at its sole discretion, determine appropriate mechanisms as it deems necessary to assume the responsibilities of the Corporation and its Committees, as set forth in the Cooperation Agreement. The County shall have the sole right to determine such mechanisms by which the Facility is to be operated, including but not limited to the right to operate the Facility itself, the right to engage the services of a management company for a fee to be paid to the County, or otherwise. The County may only close the Facility if the County cannot reasonably operate the Facility for reasons including, but not limited to, damage, destruction or other circumstances caused by weather, flooding, fire, riots, civil insurrection or Acts of God.

I. NOTICES

When any notice is required to be given by this Agreement, it shall be delivered by certified mail, return receipt requested to the parties at the addresses listed below, or such other address as is furnished in writing to the other party:

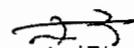
To the County: George Burgess, County Manager
Attn: Alex Munoz, Assistant County Manager
Miami Dade County
111 N.W. 1 Street, Suite 2920
Miami, Florida 33128

copy to: County Attorney

To the Corporation: Chair, the President, and the Secretary; Performing Arts Center Trust, Inc.
Performing Arts Center Trust, Inc.
1300 Biscayne Boulevard
Miami, Florida, 33132

J. ENTIRETY OF AGREEMENT

This Agreement along with the documents referenced herein is the entire agreement between the parties. No other documents or statements may modify the terms of this Agreement except for amendments adopted pursuant to the terms of this Agreement.



K. AMENDMENT

This Agreement may be amended by written document approved by the Corporation at a duly noticed and constituted meeting of its Board of Directors and approved by the Board of County Commissioners by Resolution duly adopted.

Furthermore, the parties agree to assure the greatest participation of minorities, local workers, and minority and local business in the construction and operation of the Facility.

IN WITNESS WHEREOF, the parties have set their hands and seals, and such of them as are corporations have caused these presents to be signed by their duly authorized officers as of the date first set forth above.

PERFORMING ARTS CENTER TRUST, INC.

(corporate seal)

By: [Signature]
Chair

ATTEST:
By: [Signature]
Secretary

Approved as to form and
Legal sufficiency

[Signature]
County Attorney

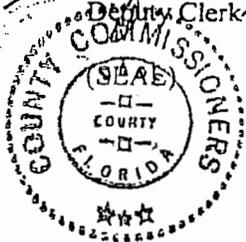
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
County Mayor or Designee

ATTEST:

HARVEY RUVIN, CLERK

By: [Signature]
Deputy Clerk



24
50



ATTACHMENT E

BYLAWS

PERFORMING ARTS CENTER TRUST, INC., a Florida Corporation Not-for-Profit

ARTICLE 1. PURPOSES

Section 1.1 Purposes. This Corporation will have the purposes stated in its Articles of Incorporation, as they now exist or are hereafter amended.

ARTICLE 2. NOT FOR PROFIT

Section 2.1 No Shareholders. The Corporation shall not have shareholders.

Section 2.2 No Stock. The Corporation shall not issue shares of stock.

Section 2.3 Nonprofit Operations. The Corporation is a Florida not-for-profit corporation. No dividend will be paid, and no part of the income or assets of this Corporation will be distributed, to its Directors or Officers. However, the corporation may contract in due course of business with its Officers or Directors for services rendered to the extent permissible under the Articles of Incorporation, under law and under Section 501(c)(3) of the United States Internal Revenue Code of 1986 (hereinafter "Code").

Section 2.4 No Loans to Directors or Officers. This Corporation will loan no money to any of its Directors or Officers.

Section 2.5 No Vested Rights. No Director or Officer of this Corporation has any vested right, interest, or privilege of, in, or to the rights, property, assets, functions, or affairs of the Corporation.

ARTICLE 3. BOARD OF DIRECTORS

Section 3.1 Appointment of the Board of Directors.

3.1.2. 3.1.1 Twenty-eight (28) Directors shall be appointed by local governmental authorities as provided in the Articles of Incorporation, and will serve as provided therein. Up to thirteen (13) Directors shall be Community Representative Directors appointed by either the Designated Primary Artistic Organizations, future designated Primary Artistic Organizations (if any), the Organizations selected pursuant to Section 3.1.2.(ii), or the Corporation. The Community Representative Directors shall consist of three categories:

(i) The Designated Primary Artistic Organizations named in Section 4.3 of the Articles of Incorporation shall each appoint one (1) Director (hereinafter referred to as a "Designated Primary Artistic Director"). In case additional Designated Primary Artistic Organizations shall come into existence, such organizations shall be entitled to appoint one (1) Designated Primary Artistic Director each.

(ii) The Corporation shall select two (2) Miami-Dade County based non-profit performing arts organizations which reflect, in both their governance and programming, community ethnic cultural perspectives; one of these should be principally an Hispanic American artistic organization and one should be principally an African American artistic organization, which artistic organizations shall each make a long range commitment to the Corporation acceptable to the Board. Each of these two performing arts organizations shall appoint one (1) Director.

(iii) The remaining Community Representative Directors will be appointed by the Corporation from time to time as determined by the Board to represent the interests and diversity of the community at large.

Section 3.2 Terms of Directors.

- 3.2.1 The terms of the Directors appointed by governmental authorities are specified in the Articles of Incorporation; such Directors are subject to removal under sections 3.6 and 6.12.
- 3.2.2 Each Designated Primary Artistic Director shall serve at the will of the Designated Primary Artistic Organization which appointed him/her, and shall serve until he/she resigns or is removed either by the respective Designated Primary Artistic Organization, or by the Corporation as provided in Sections 3.6 and 6.12. Upon the occurrence of any vacancies of a Designated Primary Artistic Director, the corresponding Designated Primary Artistic Organization shall designate a replacement to fill such vacancy.
- 3.2.3 Each of the Directors appointed by the Designated African American and Hispanic American Artistic Organizations shall serve renewable terms of three (3) years, subject to removal under sections 3.6 and 6.12. At the conclusion of each three (3) year term, the Nominating and Governance Committee shall meet to review the status of the respective Designated African American or Hispanic Artistic Organization. With the approval of the Board, the Nominating and Governance Committee may: (i) continue the designation of the previously designated organization, or (ii) may select a new Designated African American or Hispanic Artistic Organization through a public nominations process. In the event of a vacancy which occurs prior to the expiration of a Director's term, the then Designated African American or Hispanic American Artistic Organization (as the case may be) shall fill such vacancy for the balance of the vacated three (3) year term.

3.2.4 The Corporation appointed Community Representative Directors shall be appointed for a three (3) year term and shall be permitted to serve up to two consecutive three (3) year terms, and may be re-appointed to the Board after ceasing to be a Director for one (1) year.

Section 3.3 Professional Advisors to the Board of Directors. The Board shall form an advisory group comprised of the Executive Directors or Presidents (or their equivalent) of the Designated Primary Artistic Organizations specified in Section 4.3 of the Articles of Incorporation whom shall be invited to attend such Board and Committee meetings as shall be determined by the Board.

Section 3.4 Compensation of Directors. Individuals serving on the Board shall not receive any stated salaries for their services; provided, however that nothing contained herein shall preclude any individual on the Board from serving the Corporation in any other capacity and receiving compensation therefore.

Section 3.5 Resignation. Any Director may resign from his/her office at any time by delivering his/her resignation in writing to the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.6 Removal of Directors. Any Director may be removed as provided in Section 6.12 or for cause as determined by the Corporation, including violation of Board policy, by the affirmative vote of the majority of the Board, provided such Director has been given prior notice that the subject of his/her removal will be presented to the Board at a duly noticed meeting.

ARTICLE 4. COMMITTEES

Section 4.1 Committees. In addition to the Standing Committees set forth in the Articles of Incorporation, the Management Committee, as defined in the Cooperation Agreement between the Corporation and the Performing Arts Center Foundation, shall be a Standing Committee. In addition thereto, the Chairperson may from time to time create such ad hoc Committees as he/she may deem appropriate in consultation with the President of the Corporation.

Section 4.2 Committee Members. Except for the Executive Committee and the Management Committee, Committees may include persons who are not Directors. Except for the Executive Committee and, to the extent provided in the Cooperation Agreement, the Management Committee, the members of each committee and the committee chairperson thereof shall be appointed by the Chairperson, unless otherwise provided herein.

Section 4.3 Minutes. Minutes of the proceedings of each Committee of the Corporation shall be kept and shall be submitted to the Executive Committee and to the Board at its next meeting.

Section 4.4 Executive Committee. The Executive Committee shall consist of not less than eight (8) nor more than eleven (11) members, and shall be composed of the Officers of the Corporation, (excluding the President), the chairs of the Standing Committees who are not Officers, with the exception of the Audit Committee, and up to three (3) at large Directors

appointed by the Chairperson. It shall possess and exercise all powers of the Board between meetings thereof, subject only to such limitations as the Board may from time to time specify or as imposed by law. Such Committee shall transact its affairs in accordance with the same rules as govern the Board, except that an affirmative vote of a majority of the Committee shall be required for the adoption of any resolution which binds the Board.

Section 4.5 Finance Committee. The Finance Committee shall oversee the financial affairs of the Corporation. The Committee shall limit the Corporation's investments to those which are permitted under the laws of the State of Florida and which are not prohibited by the terms of any gift to the Corporation. No gift in kind shall be accepted by the Corporation without the prior approval of the Finance Committee and the Board. The Finance Committee shall prepare and present budget proposals to the Board for approval. The Treasurer shall serve as chairperson of the Finance Committee.

Section 4.6 Audit Committee. The Audit Committee shall be responsible for periodically reviewing the Corporation's books and records and its internal and external accounting procedures and controls. At least once per year the Audit Committee shall render a report to the Board regarding the condition of such books, records and procedures, together with such recommendations as the Audit Committee may deem advisable. This report shall also be submitted to any government agency or funding source as required. The Audit Committee shall consist of three (3) or more members, of which at least three (3) shall then be Directors, none of whom shall be serving on the Finance Committee.

Section 4.7 Management Committee. The composition and purpose of the Management Committee shall be as defined in the Cooperation Agreement Between the Performing Arts Center Foundation and the Performing Arts Center Trust, Inc., as amended in May 2006, or as it may be amended in the future.

Section 4.8 Nominating and Governance Committee.

4.8.1 **Composition of Committee.** The Nominating and Governance Committee shall be chaired by the Immediate Past Chairperson or, if there is at the time no Immediate Past Chairperson, by the Secretary, and consist of at least five (5) Directors. The Nominating and Governance Committee may consist of a Nominations sub-committee and a Governance sub-committee, with the chair of each sub-committee appointed by the chair of the Committee. The sub-committees may make recommendations in their respective areas to the full committee which shall approve or amend their recommendations for the further consideration of the Executive Committee and the Board.

4.8.2 **Nominating Procedures.**

4.8.2 (i) For Local Governmental Authority Board positions, at least thirty (30) days prior to each annual meeting of the Corporation, and as frequently as is necessary to fill vacancies in unexpired terms of Directors, the Nominating and Governance Committee, upon the approval of the Board, shall notify the appropriate appointing authority as provided in Section 4.2 of the Articles of

Incorporation and shall prepare and submit to that authority any special characteristics or professional skills that it is seeking in order to strengthen and balance the Board, as well as any suggestions for potential nominees for consideration by the appointing authority.

4.8.2 (ii) For each vacancy of the Corporation appointed Community Representative Directors, the Board shall determine from time to time, whether to direct the Nominating and Governance Committee to request the names of candidates from the President, the Board and the public-at-large to fill one or more of the vacancies. From the names received through this process, the Nominating and Governance Committee shall, in a timely fashion, submit its recommendation(s) for Community Representative Directors to the Board.

4.8.2 (iii) For all Officer positions whose terms have expired or are about to expire, the Nominating and Governance Committee shall recommend to the Board a slate of Officers, after first polling the Board for expressions of interest. For any Officer position(s) which become vacant during the elected term and where succession is not otherwise specifically provided for in these Bylaws, the Nominating and Governance Committee shall recommend to the Board, the nominee(s) for the unexpired term of the Office, after first polling the Board for expressions of interest.

4.8.2 (iv) When the Nominating and Governance Committee presents its recommendations to the Board for Community Representative Directors or Officers, the Chairperson shall then call for other nominations from the floor. A nomination from the floor must receive a second and then, without debate, be voted on by the Board. If the floor nominee receives a majority vote the floor nominee shall be added to the slate of candidates for the position(s) to be filled. After all Directors have had a reasonable opportunity to nominate, and not before, the nominations shall be closed. When nominations are closed the Chairperson shall proceed to put the nominations to a vote, the results of which shall be determined by a majority vote of the Directors present. If, in an instance where there are multiple candidates for a position the vote does not result in a majority, the Chairperson shall call for a runoff vote between the candidates receiving the highest number of votes until a majority vote is achieved.

4.8.3 Quorum. A majority of the members of the Nominating and Governance Committee shall constitute a quorum, which shall be required for the following acts of the Committee: (i) recommendations to the Board for the Officers and the Corporation appointed Community Representative Directors, (ii) the selection process of the Designated African American and Hispanic American Artistic Organizations as stated in Section 3.2.3, (iii) recommendations for proposed amendments to the Bylaws, and (iv) for Committee suggestions for the Local Governmental Authority Board positions as stated in Section 4.8.2 (i).

Section 4.9 Action by Committee Without a Meeting. Action required or permitted to be taken at a committee meeting may be taken without a meeting if the action is taken by all of the committee members. The action must be evidenced by one or more written consents describing the action taken and signed by each committee member. Any such written consent shall be filed with or entered upon the records of the Corporation. A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Action taken under this section is effective when the last committee member signs the consent, unless the consent specifies a different effective date.

**ARTICLE 5.
OFFICERS**

Section 5.1 Election of Officers. At each annual meeting of the Board, the Board shall hold an election for all Officers whose positions are vacant or whose terms have expired or are about to expire (except for the position of Immediate Past Chairperson). The Officers to be elected by the Board are the Chairperson, Chairperson Elect, Secretary, Assistant Secretary, Treasurer, and Assistant Treasurer. The Office of the Immediate Past Chair shall be automatically filled by the elected Chairperson whose term is expiring. Officers of the Corporation shall serve without compensation.

5.1.1 Selection of the President. The Board and the County Manager of Miami-Dade County shall select the President of the Corporation, who shall serve as Chief Executive Officer of the Corporation at the pleasure of the Board. The President shall establish personnel and management policies in accordance with applicable law and such policies as the Board may adopt. The President will not be a Director.

Section 5.2 Duties and Terms of Other Officers:

5.2.1 Chairperson and Immediate Past Chairperson. The Chairperson shall be the chief volunteer officer of the Corporation. Unless absent, he/she shall preside at all meetings of the Executive Committee and the Board of Directors. The Chairperson, when elected, shall be elected for a two (2) year term, to be followed by a two (2) year term as Immediate Past Chairperson. The Immediate Past Chairperson shall serve as chair of the Nominating and Governance Committee. If there is no then serving Immediate Past Chairperson, the Secretary of the Corporation shall fulfill the responsibilities of the Office, and the Office of Immediate Past Chairperson shall remain vacant for the balance of term of such office.

5.2.2 Chairperson Elect. The Chairperson Elect shall perform such duties as directed by the Chairperson to prepare him/her for the future role of Chairperson. The Chairperson Elect shall be elected for a two year term of office. It is anticipated that the Chairperson Elect will succeed to the role of Chairperson, provided he/she is elected by the Board or succeeds to the Office as provided below. In the event that the Chairperson is unable to serve for the full two (2) year term of his/her office, then the Chairperson Elect shall automatically

succeed to the office of Chairperson and shall serve for the unexpired term of the previous Chairperson.

5.2.3 Treasurer. The Treasurer shall have the responsibility for the custody and investment of all funds and assets of the Corporation and shall hold and disburse them in accordance with the instructions of the Board; provided, however, that with regard to the investment of funds of the Corporation, the Treasurer shall be governed by the decisions of the Finance Committee as provided in Section 4.5 hereof. The Treasurer shall insure that all moneys belonging to the Corporation are deposited in such banks as the Board shall designate, said moneys to be deposited to the account of the Performing Arts Center Trust, Inc. The Treasurer shall insure that true books of accounts are kept and shall make such reports as are required by the Board or the Chairperson. Said books shall at all times be open to inspection by any of the Directors. The Treasurer shall be bonded. The Treasurer shall serve as Chairman of the Finance Committee. The Treasurer will serve a two (2) year term and may be re-elected for one successive two (2) year term.

5.2.4 Assistant Treasurer. The Assistant Treasurer shall perform such duties as may assist the Treasurer, including chairing the Finance Committee in the absence of the Treasurer. The Assistant Treasurer will serve a two (2) year term and may be re-elected for one successive two (2) year term.

5.2.5 Secretary. The Secretary shall keep a record in permanent form of all meetings of the Board and shall send out notices of all meetings of the Board of Directors. The Secretary may also serve the responsibilities in accordance with Sections 4.8.1 and 5.2.1. The Secretary will serve a two (2) year term and may be re-elected for one successive two (2) year term.

5.2.6 Assistant Secretary. The Assistant Secretary shall perform such duties as may assist the Secretary. The Assistant Secretary will serve a two (2) year term and may be re-elected for one successive two (2) year term.

5.2.7 Terms of Office: Any officer who has served his/her maximum term(s) shall be ineligible to hold that office again until at least one year has passed.

Section 5.3 Removal. Any officer may be removed with or without cause by the majority vote of the Board by notice in writing delivered to the person at his/her address maintained by the Corporation for this purpose. Such removal shall be effective upon such delivery of such notice.

Section 5.4 Resignation. Any officer may resign at any time by giving written notice to the Board, and such resignation shall take effect at the time specified therein or, if no such time is specified, upon acceptance by the Board.

Section 5.5 Vacancies. A vacancy in any office due to death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term unless otherwise specifically provided herein.

ARTICLE 6.
MEETINGS OF DIRECTORS

Section 6.1 Meetings of Board of Directors. Every meeting of persons who are Directors of the Corporation at which there is a quorum shall be a meeting of the Board, and except as otherwise provided herein or in the Articles of Incorporation, any action taken at such meeting shall be the action of the Board in so far as such action is authorized by law. Meetings shall be chaired by the Chairperson or, in his/her absence, the Chairperson Elect (if one is serving) or another officer designated by the Chairperson.

Section 6.2 Annual Meetings. An annual meeting of the Directors for the election of Officers and for the transaction of such other business as may properly come before the Board shall be held each year in the month of September, or as soon as may be practical thereafter.

Section 6.3 Regular Meetings. Regular meetings shall be held on such days, and at such times, and places, as the Board shall determine.

Section 6.4 Special Meetings. Special meetings shall be called at any time by the Secretary, upon the request of the Chairperson or upon the written demand of any three Directors.

Section 6.5 Telephonic Meetings. Subject to compliance with the provisions of the Florida Government in the Sunshine Law which would apply to a government agency, any one or more Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment allowing all persons participating in a meeting to hear each other at the same time. Participation by such means shall constitute presence at a meeting.

Section 6.6 Time and Place of Meetings. All meetings shall be held at such time and within such place within Miami-Dade County as may from time to time be determined by the Board or the Chairperson, and as may be designated in the respective notices thereof.

Section 6.7 Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting, and in the case of a special meeting, the primary purpose or purposes for which the meeting is called, shall be delivered personally, or by mail (or by facsimile or electronic notice) as soon as may be practical prior to the meeting and shall also be published as required by law. Notice shall be given to each Director by or at the direction of the Chairperson or the Secretary or the persons calling the meeting. If mailed, such notice shall be deemed to have been delivered when deposited in the United States mail addressed to the Director at his/her address as it appears on the records of the Corporation with postage thereon prepaid.

Section 6.8 Waiver of Notice. A written waiver of notice signed by a Director, whether before or after a meeting, shall be equivalent to the provision of such notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 6.9 Quorum and Voting. A majority of the Directors shall constitute a quorum for the transaction of business by the Directors, and whenever any corporate action is to be taken by vote of the Directors, it shall, except as otherwise required herein or by law, be authorized by a

majority of the votes cast at a meeting of Directors. Except as otherwise provided by law or by these Bylaws, the vote of a majority of the Directors present at a meeting at the time of a vote, if a quorum is present at such time, shall be the act of the Board. In the absence of a quorum those present at the time and place set for the meeting may take an adjournment, from time to time, until a quorum shall be present.

Section 6.10 Presumption of Assent. No Director may abstain from voting except for an asserted conflict of interest, which must be stated on the record. A Director who is present at a meeting of the Board at which action on any matter is taken shall be presumed to have assented to the action taken unless he/she votes against such action or abstains from voting because of an asserted conflict of interest.

Section 6.11 Minutes. Action taken at meetings of the Board or any Committee shall be recorded in minutes.

Section 6.12 Attendance Requirements. The Secretary shall maintain a record of attendance of the Directors at the regularly scheduled Board meetings. At any time the Secretary finds that a Director has failed to attend three consecutive regularly, scheduled meetings, or half of all regular meetings in a twelve-month period, the Secretary shall so advise the Chairperson and the Board. The Directors (other than the Director reported for such failure to attend meetings) may remove such non-attending Director from the Board by the affirmative vote of a majority of all such Directors other than the non-attending Director.

ARTICLE 7. FINANCIAL AFFAIRS

Section 7.1 Audit and Bookkeeping. All books of the Corporation, shall be audited annually by a certified public accountant.

Section 7.2 Fiscal Year. The fiscal year of the Corporation shall be from October 1 through September 30 of each year.

ARTICLE 8. RULES OF ORDER

“Roberts Rule of Order”, as revised, shall be the parliamentary authority for all matters of procedure not specifically covered by these Bylaws.

ARTICLE 9. AMENDMENTS

These Bylaws may be amended, revised, repealed, or rescinded by a majority vote of the Board at any meeting of the Board.

ARTICLE 10.
INDEMNIFICATION

Each person who acts as a Director or Officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by law against any costs and expenses which may be imposed upon or reasonably incurred by him/her in connection with any action, suit or proceeding in which he/she may be named as a party defendant by reason of his/her being or having been such Director or Officer, or by reason of a legal action alleged to have been taken or omitted by him/her in either such capacity; provided, however, that the Corporation shall not indemnify any such person against any costs or expenses imposed upon or incurred by him/her in relation to matters as to which he/she shall be finally adjudged by a court of competent jurisdiction to be liable for gross negligence or willful misconduct. The Corporation shall advance the reasonable legal costs and expenses incurred by the Director or Officer as they are incurred, subject to recoupment as aforesaid in the event of such final adjudication. This right of indemnification shall inure to each Director and Officer whether or not he/she is such a Director or an Officer at the time such costs or expenses are imposed or incurred, and whether or not the claim asserted against him/her is based on matters which antedate the adoption of these Bylaws; and in the event of his/her death shall extend to his/her legal representatives. Each person who shall act as Director or Officer shall be deemed to be doing so in reliance upon such right of indemnification; and such right shall not be exclusive of any other right which he/she may have. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such insurance is permitted by law.

ARTICLE 11.
CORPORATE SEAL

The Corporate Seal shall bear the words “**PERFORMING ARTS CENTER TRUST, INC.**” which shall be between two concentric circles, and on the inside of the inner circle shall be the words “Florida”, “CORPORATION NOT FOR PROFIT” and the figures “1991”, an impression of such seal appearing below.

ARTICLE 12.
TRANSITIONAL PROVISIONS

Section 12.1 **Effective date of Bylaws.** After adoption by the Board, these Bylaws shall become effective on the date of the Board meeting at which the first election of Officers (“First Election”) contemplated hereunder takes place, which meeting shall occur prior to December 31, 2006.

Section 12.2 **First Election.** All of the Officers elected at the First Election shall serve for a term expiring at the next annual meeting of the Board (scheduled for September 2007). Such Officers, with the exception of the Chairperson and the Chairperson-Elect, shall then remain eligible to serve for additional terms as Officers, as defined in these Bylaws. The Chairperson and the Chairperson-Elect elected at the First Election will be ineligible to succeed themselves.

Section 12.3 Previously Serving Officers. No individual shall be precluded from serving in any capacity as an Officer of the Corporation by virtue of having served in the same capacity, for any period of time, prior to the effective date of these amended Bylaws. Any term limits contained in these Bylaws shall be computed without regard to such prior service.

Section 12.4 Candidates for First Election. Pending the effective date of these Bylaws, the Nominating and Governance Committee shall convene and proceed with the nominating process contemplated by these Bylaws, and shall make recommendations to the Board for the First Election consistent with the provisions of these Bylaws.

Section 12.5 Conflict. In the event of any conflict between the provisions of this Article 12, and other provisions of these Bylaws, the provisions of Article 12 shall govern.

Adrienne Arsht Center
FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY



ATTACHMENT F

Adrienne Arsht Center

FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY



1300 Biscayne Boulevard
Sanford and Dolores Ziff Ballet Opera House
B. and Donald Carlin Room

Performing Arts Center Trust Board of Directors Meeting
Tuesday, May 26, 2009
8:30 a.m.

Members of the Board In Attendance:

Patricia Aguirre
Ricky Arriola
Honorable Oscar Braynon II
Albert Cabrera
John Eidson
Millard Fair
John H. Fein
Mario M. Gonzalez
Honorable Donald L. Graham (*Via Phone*)
Marylyn Greer
Christie Gordon-Wallace
Mark Klein
Christie Krajsa
Gene Litthcut-Nichols
Richard C. Milstein
George Plasencia
Thomas "Jay" Pons
Gary Rice
Liana Sabino
Mario Ernesto Sanchez
Richard A. Silver
Mary Sheer
Dorothy Ann Taylor
Mark D. Thomson
Mary Thurer
Mary Weiser
Richard L. Wilson
Ana Yedra

Others in Attendance:

Adrienne Arsht
Noel Aranha – Miami Dade County
H. Bert Gonzalez – City of Miami
Aaron Gordon – Schwartz Media
Hubert Harriman
Tadd Schwartz – Schwartz Media
Leo Zabezhinsky – Miami DDA

Arsht Center Staff in attendance:

John Richard
Trish Brennan
John Burnett
Suzette Espinosa
Andrew Goldberg
Valerie Gomez
Ken Harris
Chantal Honoré
Bill McKenna
Valerie Riles
Scott Shiller
Doris Sipos
Louis Tertocha
James Thomson
Liz Wallace

Absent Board Members:

Julie Desroches Austin
Tim H. Bower
Lia Burini
Alex Garcia
Les M. Herron
Matt Robins
Honorable Marc D. Sarnoff
Honorable Juan C. Zapata

The meeting of the Board of Directors of the Performing Arts Center Trust was held at the Adrienne Arsht Center for the Performing Arts of Miami-Dade County in the B. and Donald Carlin Room of the Ziff Ballet Opera House located at 1300 Biscayne Boulevard.

The meeting was called to order at 8:45 AM by Chairman J. Ricky Arriola.

- A motion was made by Donald Graham for approval of the minutes from the meetings of January 27 and March 31. The motion was seconded by Carole Ann Taylor and unanimously approved.
- A motion was made by Donald Graham to approve the Requests for Excused Absences. The motion was seconded by Richard Milstein and unanimously approved.
- A motion was made by Richard Milstein for adoption of resolutions honoring and thanking Former PACT Board Members I. Stanley Levine and Bill Armstrong for their many years of service to the Performing Arts Center Trust. The motion was seconded by Judy Weiser and unanimously approved.
- A motion was made by Velia Yedra to elect Board Member Emery Sheer Treasurer of the Performing Arts Center Trust. The motion was seconded by Matilde Aguirre. Chairman Arriola called for other nominations from the floor. Hearing none, the Board members present unanimously elected Mr. Sheer.
- A motion was made by Mario Ernesto Sanchez for acceptance of the March and April 2009 Financial Statements. The motion was seconded by Oscar Braynon.
- A motion was made by Richard Milstein for approval of the 2009 Sunset Review of County Boards Submission, which recommends the continuation of the Performing Arts Center Trust Board. The motion was seconded by Emery Sheer and unanimously.

Welcome and Introduction

Chairman Arriola welcomed all to the meeting. Recent accomplishments since the last meeting have included record attendance at the Center's performances of *Alvin Ailey Dance Theater* and *Free Gospel Sunday* (including the Center's millionth attendee) and the renaming of the Omni Metromover station as Adrienne Arsht Center Metromover Station.

Approval of Minutes

- A motion was made by Donald Graham for approval of the minutes from the meetings of January 27 and March 31. The motion was seconded by Carole Ann Taylor and unanimously approved.

Requests for excused absence

The following requests were submitted:

- Board Members Matti Bower (Out of Town), James Herron (Out of Town) and Marc Sarnoff (In Session) requested excused absences for this meeting.
- Additionally Board Members James Herron (Out of the Country) requested a retroactive absence for May 27, 2008.

- Matti Bower (Out of Town), Felix Garcia (Out of Town), Jorge Plasencia (Out of Town), Scott Robins (Out of Town) Gilbert Cabrera (Illness) and Matilde Aguirre (Illness) requested retroactive absences for the meeting on March 31, 2009.
- A motion was made by Donald Graham to approve the Requests for Excused Absences. The motion was seconded by Richard Milstein.

Resolutions Honoring Former PACT Board Members I. Stanley Levine and Bill Armstrong

- A motion was made by Richard Milstein for adoption of resolutions honoring and thanking Former PACT Board Members I. Stanley Levine and Bill Armstrong for their many years of service to the Performing Arts Center Trust. The motion was seconded by Judy Weiser and unanimously approved.

Finance Committee Report

Vice President of Finance and CFO John Burnett's report highlighted the following:

- Occupancy costs through April are \$564,000 below budget.
- *Arsht Center Presents* shows have sold at 71% for the year compared to 60% budgeted.
- April was the highest single month in attendance since the Center's Grand Opening in October 2006. Almost 18,000 guests attended 14 *Arsht Center Presents* performances.
- In April, *Arsht Center Presents* shows sold at 84%.
- A motion was made by Mario Ernesto Sanchez for acceptance of the March and April 2009 Financial Statements. The motion was seconded by Oscar Braynon and unanimously approved.

Executive Committee Report

Chairman Ricky Arriola delivered the following report:

- The Center is organizing a classical music society to help in the classical endeavors being considered to replace the programming lost due to the disbandment of the Concert Association of Florida.
- In order for the PACT to keep conducting business on behalf of the Trust, a completed Sunset Review questionnaire must be submitted to Miami-Dade County.

Approval of Sunset Review

Vice President of Board and Government Relations Valerie Riles informed the Board of Directors that the 2009 Sunset Review of County Boards, which occurs every two years is due. Under the Sunset Review, the Board of County Commissioners evaluates the Trust Board and its report to determine whether to abolish, continue, consolidate or modify the board. The Trust Board must vote to continue the Board in order for the Sunset Review report to be submitted to the County.

- A motion was made by Richard Milstein for approval of the 2009 Sunset Review of County Boards Submission, which recommends the continuation of the Performing Arts Center Trust Board. The motion was seconded by Emery Sheer and unanimously approved.

Development Committee Report

Chairman Arriola updated the board on the following:

- The Development Committee has had several productive meetings with the Development Department. Additionally, the Center is actively searching for a Vice-President of Development. Board members are encouraged to submit names of potential qualified candidates.
- The Center has received grants to fund next season's educational program *Rock Odyssey*.
- Proposals are being submitted to fund *AileyCamp Miami* which is scheduled for August of this year.
- The Center is actively seeking sponsors for *Fuerza Bruta*.

Ms. Arsht informed the Board that the Center's annual gala will be held on November 13, 2009. The Gala will be coordinated by the development committee and will be a joint collaborative effort to benefit the Center and its Resident Companies.

Nominating and Governance Committee Report

Committee Chairman Parker Thomson reported that:

- In April, the Nominating Committee convened to discuss vacancies on the Trust Board of Directors. The board vacancies were advertised in various Miami-Dade County newspapers. The deadline is May 26, 2009. The committee's next meeting is scheduled for May 27, 2009.
- The Committee has received 18 resumes to date.
- The committee will have recommendations for the board at the September meeting.
- **A motion was made by Velia Yedra to elect Board Member Emery Sheer Treasurer of the Performing Arts Center Trust. The motion was seconded by Matilde Aguirre. Chairman Arriola called for other nominations from the floor. Hearing none, the Board members present unanimously elected Mr. Sheer.**

President's Report

President and CEO, M. John Richard, introduced new employees Valerie Gomez (Marketing Assistant) and Bill McKenna (Accountant). He also introduced Doris Sipos, who has been retained as the Center's Interim Vice President of Development until the position is filled permanently; Ms. Sipos headed the Kessler Foundation in New Jersey and spearheaded fundraising for the Joe DiMaggio Children's Hospital in Broward. Mr. Richard also reported that:

- Since the Board last met in March, the Center was awarded the *South Florida Business Journal Non-Profit of the Year Award*.
- On April 16th the Center celebrated its one millionth patron, Ms. Toya LaRenn. Ms. LaRenn was an attendee of an *Alvin Ailey American Dance Theater* performance
- On April 19th, the Center hosted a thank you breakfast honoring its corps of volunteers.
- Also on April 19th, approximately 4,500 people attended performances of the *Alvin Ailey Dance Theater* and *Free Gospel Sundays*.
- On April 21st, the Center launched its weekly electronic newsletter entitled *P.O.V.*
- Earlier this month, the Omni Metromover station was renamed the *Adrienne Arsht Center Metromover Station*. The event was attended by Ms. Arsht, Commissioner Audrey Edmonson, Chairman Arriola and several board members and Center staff.
- Senior Management has met twice and is in the process of developing the Center's Strategic Plan which it will be presented to the Board at a future meeting.
- Barton G. is developing a specialty lounge for *Fuerza Bruta* which will be the first element of the *Fuerza Bruta* experience.

Marketing Report

Vice President of Marketing Andrew Goldberg's report highlighted the following:

- The first Season of Jazz Roots ended on April 18th with the performance of saxophone legend Sonny Rollins. The season boasted 6 sold-out concerts, more than 10,000 tickets sold for the entire series and 611 subscribers.
- *Cirque Dreams Jungle Fantasy* was the best-selling Broadway show this season to date with more than 13,000 tickets sold for 8 performances of which more than 30% were first time patrons. Additionally, a local high school student was chosen to participate in and sing the first bilingual number ever in the history of *Cirque Dreams*.
- When the Center took over Concert Association of Florida's *Alvin Ailey American Dance Theater* presentations, only 300 tickets had been sold for 5 performances six weeks before the engagement. The Center sold over 10,000 tickets with 2 sold-out performances and 70% first-time attendees. Media covered all events associated with the performances including the presentation of the Key to the City to Ms. Judith Jamison, an Opening Night Cast Party and the Master Classes for the community.

Programming Report

Executive Vice President Scott Shiller updated the Board on the following summer programming:

- Great buzz has been surrounding *Chicago* (May 26 – 31, 2009) for which tickets are still available and which is expected to sell out.
- City Theater's short play festival summer offerings: *Signature Shorts* and *Undershorts* (May 28 – June 21, 2009); *Shorts for Kids* (May 30 – June 21, 2009)
- *Celia: The Life and Music of Celia Cruz* (June 2 – 21, 2009) returns to Miami with a more lavish production for a 3-week run.
- *Fuerza Bruta* (June 9 – July 5, 2009) will feature a showcase like no other. The show will begin at the loading dock and continue on the stage. The Ziff Ballet Opera House was the only US venue with the technical capabilities to present this show besides its current venue in New York City. The show will be in Miami for 4-weeks.
- Teatro Avante returns to the Center with the XXIV International Hispanic Theatre Festival (July 8 – 26, 2009.)
- *The Harder They Come*, a musical based on the Jimmy Cliff movie, will be at the Center August 29 through September 13.
- The Center will host its first summer camp, *AileyCamp Miami* (July 13 – August 8, 2009) as a direct result of the success of the *Alvin Ailey Dance Theater* in Miami. This camp will be at no-cost to the children. The Center is currently looking for sponsors and underwriters for this endeavor.
- The Center's Broadway line-up includes: *The Color Purple* (October 27 – November 2, 2009), *101 Dalmations* (December 30, 2009 – January 3, 2010), *Wicked* (March 3 – 10, 2010), *Mamma Mia* (March 30 – April 4, 2010), *Spring Awakening* (May 11 – 16, 2010), Brian Stokes Mitchell (December 12, 2009) and *The Walworth Farce* (November 1 – 8, 2009).
- Cabaret Series 2009 - 2010 will include performances by Alan Cummings, Megan Mullally, Raul Esparza, Jane Krakowski, Karen Akers and Christine Andreas.
- Classical Series 2009 – 2010 will feature performances by three orchestra concerts with great guest soloist(s); one soloist recital, three dance companies and three distinctive pop concerts.

Operations Report

Harris, Vice President of Operations, reported that the Center hosted several major events over the past year.

- The US Mayors Conference on April 27, 2009.
- The annual *Herald Hunt* on May 17, 2009 in which an estimated 6,000 came through the Center throughout the day.
- The closing event of the International Pow Wow on May 20, 2009 which was attended by over 4,000 people.

New Business

Board Members congratulated fellow-member Mario Ernesto Sanchez and Teatro Avante who will receive on October 30, 2009 the *Decimo Premio del Festival Internacional de Teatro en Cadiz*, Spain.

With no further items on the agenda, the meeting adjourned.

Reported by Chantal C. Honoré

Adrienne Arsht Center
FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY



ATTACHMENT G

Board Related Expenses 2007

Accounts	Amount
Salaries	\$ 152,068.88
Advertising	\$ 375.00
Printing	\$ 4,123.15
Tickets	\$ 6,435.80
Rental	\$ 2,736.63
Meals	\$ 16,960.27
Suplies	\$ 810.00
Postage	\$ 1,024.90
Telephone	\$ 3,649.85
Total Expenses	<u>\$ 188,184.48</u>

Board Related Expenses 2008

Accounts	Amount
Salaries	\$ 157,212.28
Advertising	\$ 659.44
Printing	\$ 1,970.52
Professional Fees	\$ 71,280.75
Tickets	\$ 15,393.00
Meals	\$ 9,613.81
Suplies	\$ 775.70
Postage	\$ 2,067.24
Telephone	\$ 1,817.08
Total Expenses	<u>\$ 260,789.82</u>