

Memorandum



Date: April 21, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

Subject: Supplement to Resolution Approving an Operating and Management Agreement
between Miami-Dade County and GableStage, Inc. for the Coconut Grove Playhouse
Theater

This memorandum is being provided to amend the subject item with the following two revised documents:

- Operating and Management Agreement between Miami-Dade County and GableStage, Inc.;
and
- Agreement Between The Florida International University Board of Trustees (FIU) and
GableStage, Inc.

The changes contained in these documents are a result of FIU's further review of the documents and do not constitute substantive revisions. The documents in marked-up format are being provided for ease of reference, along with the executed versions of the agreements.

A handwritten signature in black ink, appearing to read "Michael Spring".

Michael Spring
Senior Advisor, Office of the Mayor

**OPERATING AND MANAGEMENT AGREEMENT BETWEEN
MIAMI-DADE COUNTY AND
GABLESTAGE, INC.**

This Operating and Management Agreement (the "Agreement") is entered into this _____ day of _____, 2015 ("Effective Date"), by and between MIAMI-DADE COUNTY, FLORIDA, (the "County"), a political subdivision of the State of Florida, and GABLESTAGE, INC., a not for profit Florida corporation, ("GableStage" and jointly with the County referred to herein as "Parties").

WITNESSETH:

Whereas, Miami-Dade County ("County") and Florida International University ("FIU") have entered into a fifty (50) year lease ("Lease") for the Coconut Grove Playhouse property located at 3500 Main Highway, Miami, FL 33133 ("Property") with the State of Florida ("State"), with such initial term commencing on October 15, 2013 (Attachment A - Lease); and

Whereas, the Lease contained and incorporated the Coconut Grove Playhouse Business Plan ("Business Plan"), which called for the County to develop a regional theater facility ("the Theater") at the Property and designated GableStage as responsible for operating, programming and maintaining the Theater; and

Whereas, on June 12, 2013, FIU's Board of Trustees approved the Business Plan and a delegation of authority for FIU's President to execute the Lease; and

Whereas, on August 20, 2013, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the Florida Cabinet) approved the Lease and Business Plan; and

Whereas, on October 1, 2013, the Board of County Commissioners ("Board") approved the Lease and Business Plan, by Resolution R-797-13; and

Whereas, the Business Plan called for the County to enter into an operating agreement with GableStage that would cover among other things, operation and programming of the theater, development of educational and community programs with FIU, and responsibility by GableStage for fundraising necessary to ensure the success of the Theater; and

Whereas, pursuant to the Business Plan, the County intends to cause the Theater to be designed and built and intends to allow GableStage to operate and manage the Theater for the benefit of residents of and visitors to Miami-Dade County, and GableStage desires to operate and program the Theater for same; and

Whereas, the County will use \$5 million from Series 2005 of Convention Development Tax (CDT) bond proceeds and \$15 million from the Building Better Communities General Obligation Bond Program project number 299 - "Improvements to the Coconut Grove Playhouse," both approved specifically to implement the capital project for the Theater;

Whereas, it is contemplated that the State will own the permanent structures and the appurtenances on the Property, the County will own improvements to the Theater that it makes that are not intended to be permanent, and GableStage will own improvements to the Theater that it makes that are not intended to be permanent; (all improvements not intended to be permanent are included in the term "Theater" as used in this Agreement); and

Whereas, GableStage will operate the Theater 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 funds from FIU, Miami-Dade County or any agency or instrumentality thereof, except as may be provided through the County's annual competitive grants programs, subject to annual budget appropriations, and from parking revenues generated by the Property after the County covers any expenses that it may have related to the Property; and

Whereas, the terms and conditions of these professional management services and operating obligations to be provided and undertaken by GableStage to the County need to be defined and stated as set forth in this Agreement.

Now Therefore, in mutual consideration of the promises and obligations contained herein, the parties wish to enter into the terms and conditions of this Agreement as follows:

A. GENERAL TERMS

A.1 RECITATIONS INCORPORATED

The recitations stated above are incorporated into, and become a part of, this Agreement as if fully set forth herein.

A.2 PARTIES

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

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 GableStage to the County and the County's obligations to GableStage in connection with the design, construction, management and operations of the Theater on the Property. GableStage's obligations and rights under this Agreement shall be limited to the Theater building. GableStage shall have no responsibility, obligations or rights to use, operate, manage, maintain, occupy or otherwise possess the balance of the Property beyond the Theater (except to maintain the grounds immediately surrounding the Theater as set forth in Section C.2.4 herein).

A.4 TERM AND OPTIONS TO RENEW

The term of this Agreement is for a period of twenty-five (25) years, commencing with the Effective Date. This Agreement may be renewed for up to three additional terms; the first additional term to expire on October 14, 2063 and the second and third additional terms to be for 25 years each, all subject to mutual agreement by the County and GableStage. Any additional terms shall run consecutive from the prior term and in no event shall this Agreement extend beyond October 14, 2113. This Agreement may be terminated before the end of the initial or renewal terms pursuant to the provisions set forth herein.

A.5 THIRD PARTY BENEFICIARIES

This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties. This Agreement does not create nor establish any third party beneficiaries.

A.6 NON-DISCRIMINATION POLICY

GableStage shall abide by all applicable federal, state, and local mandates with regard to its employment hiring practices, promotions, use or rental of the Theater, or in any other respect; must provide equal access and equal opportunity in employment and services; and shall not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, gender expression, physical ability, or status as a victim of domestic

violence, dating violence, or stalking, all in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Chapter 11A of the Code of Miami-Dade County, Florida.

A.7 PUBLIC RECORDS

Documents pertaining to obligations and responsibilities of GableStage in carrying out the terms of this Agreement are subject to public records law. Pursuant to Florida Statutes 119.0701(2), GableStage agrees to comply with Florida's public records law, specifically to: (a) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service (use, operation and/or management of the Theater); (b) provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes Chapter 119.07, et seq., or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of GableStage upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

The County acknowledges that certain records of GableStage or information relating to the use, management or operation of GableStage and the Theater (including but not limited to artistic programming areas such as agreements with artists and arts organizations and for private sector philanthropic support and fundraising), may not be public records, may be considered trade secrets information that is proprietary and confidential, or may otherwise be exempt from disclosure under applicable public records' laws. The County shall notify GableStage if the County receives a request for disclosure of any information that GableStage has informed the County that it reasonably believes is trade secret information, or that is otherwise exempt from disclosure, so that GableStage may vigorously initiate or defend any claims or disputes arising from efforts by other entities to cause such information to be disclosed. The County shall have no liability for any disclosure (a) which the County determines in good faith is required by applicable law, or (b) of information the County had not been advised was trade secret or exempt information.

A.8 RECORDS

GableStage shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of GableStage, financial or otherwise, shall be kept in Miami-Dade County, Florida under the custody and control of GableStage. The County shall have a right to audit and inspect all books, records and accounts of GableStage relating to its use, operations and/or management of the Theater at all times during the term of this Agreement and for a period of three (3) years after the expiration of this Agreement. All bank accounts and deposits of GableStage shall be in institutions located within Miami-Dade County, Florida. Failure by GableStage to comply with any provision of this Section shall be cause for termination of this Agreement.

A.9 ASSIGNMENT, SUBCONTRACTING AND SUCCESSORS

GableStage shall not assign or subcontract this Agreement or any portion thereof, nor any property associated with this Agreement, without the prior written approval of the County, specifically through its Board. Any unapproved assignment or subcontract shall be grounds for immediate termination of this Agreement. To the extent that the County approves of any assignments and/or subcontracts, it is understood and agreed that all assignees and subcontractors shall be subject to all of the terms and conditions of this Agreement and that GableStage shall continue to remain responsible and liable for all obligations under this Agreement and for all actions of its assignees and/or subcontractors. This

provision shall not limit the authority of GableStage to enter into agreements that a non-profit theater company utilizes for the professional management of a theater, including but not limited to concession agreements, agreements with vendors for the maintenance and repair of the facility, rental or license agreements for the temporary use of space in the Theater, or agreements with FIU for FIU's use of the Theater.

B. DESIGN AND CONSTRUCTION OF THE THEATER

B.1 REDEVELOPMENT OF THE THEATER

GableStage understands and acknowledges that the County is in the process of planning for the redevelopment of the Theater and the Property. In accordance with the Lease and related agreements, the County is directing and overseeing the Business Plan and is entitled to all benefits related thereto and working with the State and FIU in such matters as contemplated by the Lease and Business Plan. The County anticipates awarding a contract to an architectural and/or engineering firm sometime in 2015 in order to commence the master planning, thereafter the design, and ultimately the solicitation of a construction contractor in order to undertake the construction of the Theater. The County has no obligation and/or duty to GableStage to construct and/or undertake any redevelopment of the Property including, specifically, the Theater. The County has sole and absolute discretion on whether, when and how it shall redevelop the Theater and the Property, subject to the Business Plan. To the extent that the County does not construct the Theater, renovate the Theater, and/or redevelop the Property, then the County shall have no liability to GableStage whatsoever. If the County has not completed the construction of the Theater on or before the maximum timeframe allowed in the Business Plan, then this Agreement shall be automatically terminated as of that date, be null and void and be deemed of no further force and effect, unless extended by mutual agreement of the Parties.

The County, and not GableStage, shall contract for and manage any design and construction of the Theater. The County shall select, in its sole and absolute discretion, any consultants, design professionals and/or contractors for any redevelopment of the Theater and the Property. Further, the County shall provide direction and shall decide, in its sole and absolute discretion, any master plan for the Property, any design parameters and specifications for the Theater, and any construction contracting method, cost and/or improvements for the Theater. The County shall consult with GableStage for its review and recommendations regarding any design and construction of the Theater but shall have no obligation to undertake or agree to any recommendations provided by GableStage. Subject to available financial resources, the County shall consider the facility needs of GableStage in order to develop the Theater in a manner in which GableStage can offer the scope and quality of programs and activities of a regional theater company as described in the Business Plan in the Lease. GableStage shall direct all communications regarding the redevelopment of the Theater and Property to the County, specifically to the Department of Cultural Affairs, and not directly to the consultants, design professionals and/or contractors hired by the County for the Theater project.

B.2 CHANGES OR ADDITIONS BY THE COUNTY

Provided the County provides GableStage with prior written notice, the County may, at any time, and from time and time, unilaterally: (a) make or permit changes or revisions to the structure of the Theater, the Property and/or the surrounding grounds, including but not limited to, parking, walkways, sidewalks, pathways, driveways, green space, and additions, expansions, alterations and/or rearrangements of the Theater; and (b) make or permit any changes to any sign affixed to the exterior of the Theater. Should, for any reason, the County elect to perform any repairs or alterations to the Theater, there shall be no allowance nor reimbursement to GableStage for any loss or diminution of its income and revenue arising from any interruption of its business nor shall there be any liability on the part of the County by reason of inconvenience, annoyance or injury to business arising from the County making repairs, alterations,

additions, improvements, restorations or replacements in or to the Theater, or to any portion thereof, or to the fixtures, appurtenances, or equipment thereto. The County agrees, however, that any such repairs, alterations, additions, improvements, restorations or replacements shall be made with a minimum amount of inconvenience to GableStage, and that the County will diligently proceed therewith to completion.

B.3 IMPROVEMENTS BY GABLESTAGE

B.3.1 County Approval

Any permanent improvements, changes, or alterations to the Theater or Property contemplated by GableStage shall be submitted in writing for review and approval by the County Mayor, or his designee, and are subject to the Lease and related agreements. GableStage agrees to provide the County with copies of any and all plans and specifications pertaining to such improvements at least sixty (60) days prior to seeking approval of such plans and specifications from the appropriate building department, and/or any other governmental permitting or regulatory entity or agency. GableStage further acknowledges and agrees that any and all construction must be competitively bid in accordance with, and/or required by, Section 255.20, Florida Statutes.

B.3.2 Quality of Improvements

GableStage shall cause any and all improvements to be performed competently and in a good and workmanlike manner by duly qualified and licensed person(s) or entities, using first grade materials, and performed to completion without unnecessary interference with, or disruption to the nearby property owners and/or neighbors.

B.3.3 Performance Bond

GableStage agrees that prior to commencing any construction, installation and/or repair work, including the purchase of supplies and/or materials from materialmen and suppliers, GableStage shall obtain and deliver to the County, at its sole cost and expense, a payment and performance bond, or such other alternate form of security, each which meets the requirements, as applicable, of Section 255.05, Florida Statutes, as set forth below, not less than ten (10) days prior to the anticipated purchase of supplies and/or materials, commencement of the construction, installation and/or repairs. Said payment and performance bond(s) shall name the County, FIU and the State of Florida as additional payees and obligees, the form of such bonds shall be as provided by Section 255.05, Florida Statutes and each shall be in the amount of the entire cost of the construction, installation, and/or repair project regardless of the source of funding. GableStage shall be responsible for recording the bonds in the public records of Miami-Dade County, Florida, and providing notice to subcontractors and suppliers, as required by Section 255.05 of the Florida Statutes. Said payment and performance bonds shall be maintained in full force and effect for the duration of any construction, installation, and/or repair work.

B.3.4 Payment for Improvements

GableStage shall implement County-approved improvements at its sole cost and expense and shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by GableStage and/or its contractor, and shall obtain and deliver to the County "releases" or waivers of liens from all parties doing work on or about the Theater and/or the Property, along with an affidavit from GableStage stating that all bills and/or invoices have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work.

B.4 FURNISHING, FIXTURES, AND EQUIPMENT INSTALLED BY GABLESTAGE

GableStage shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Theater that have not been installed by the County. All furnishings, fixtures and equipment acquired for the facility shall be of a high quality, and as good as or better than that what is found at similar facilities. GableStage shall afford the County the opportunity to review and comment upon in advance the

selection of all furnishings, fixtures and equipment for the Theater. GableStage shall obtain the written approval from the County for any alterations or modifications to the Theater necessary for the installation of any furnishings, fixtures, and/or equipment. Following the installation of any additional equipment, furnishing, fixtures, and improvements which the County shall review from time to time, GableStage shall provide to the County a statement setting forth a complete description of the specific equipment, furnishings, fixtures, and/or improvements and the date upon which the installation of such equipment, furnishings, fixtures, and/or improvements were installed and/or completed, and their respective costs. GableStage agrees that all equipment, furnishings, fixtures, and improvements provided shall meet or exceed the requirements of all applicable building, fire, pollution, and other related codes. Upon the expiration or early termination of this Agreement, GableStage reserves the right to remove the furnishings and equipment provided and paid for by GableStage with non-County funds, so long as the removal of such furnishings and equipment will not result in damage to the Property, and so long as the furnishings and equipment are not otherwise subject to any type of lien, encumbrance, and/or obligation under this Agreement.

B.5 SIGNS

GableStage shall maintain all signage in good condition and appearance. Any changes, additions, and/or alterations to permanent exterior sign(s) on the property, including, but not limited to, any monument sign, marquee, etc., must first be approved in writing by the County, and any cost of painting, production, and/or installation shall be paid by GableStage. Said permanent signage, including any decoration, lettering, advertising material, or any other thing of any kind or nature, must also be pre-approved by the County, in addition to any and all other governmental authorities having jurisdiction over the Property. The County's approval must be by the County Mayor, or the County Mayor's designee. Any damage or unsightly condition caused to the Property because of, or due to, said signs, shall be satisfactorily corrected or repaired by GableStage, to the County's satisfaction, at GableStage's sole cost and expense.

C. OPERATIONS AND MANAGEMENT OF THE THEATER

C.1 COUNTY RIGHTS AND OBLIGATIONS

C.1.1 County-funded Repairs

The County shall provide funding for structural repairs, as may be required, to the roof and exterior envelope of the Theater, subject to an annual budgeted allocation adopted by the Board of County Commissioners in the Board's sole and absolute discretion. Repairs required to the roof and/or the exterior envelope of the Theater required as a result of acts of GableStage, its employees, vendors, licensees, etc., or that are the result of GableStage's failure to perform routine maintenance of these building systems, shall be the responsibility of GableStage. GableStage shall provide the County with a recommended capital repair budget and necessary list of repairs as part of its annual budget submittal to the County as set forth in Section C.2.

C.1.2 County Inspections and Right of Entry

The County shall have the authority to make periodic reasonable inspections of the Theater and its operations, along with any and all equipment, furnishings, fixtures and/or improvements during the normal operating hours thereof to determine whether GableStage is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Theater, and the Property to make emergency repairs, alterations, replacements, or improvements, as the County deems necessary, but the County assumes no obligation to make any such repairs, alterations, replacements, or improvements, other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with a minimum amount of inconvenience to GableStage, and that the County will diligently proceed therewith to completion.

C.2 GABLESTAGE RIGHTS AND OBLIGATIONS

C.2.1 Permitted Uses and Equal Access

The County grants to GableStage the exclusive rights to, and GableStage agrees to, use, manage, and operate the Theater as a facility primarily for the presentation of performing arts, cultural, recreational, and educational activities. GableStage acknowledges and agrees that the Theater shall be utilized for the benefit of the public and community interest and welfare. GableStage agrees to keep the Theater open and properly and safely maintained for all Miami-Dade County residents and to allow all Miami-Dade County residents equal access and use of the Theater and not discriminate when charging facility admission fees. GableStage shall not use, operate, manage, suffer the use of or permit the use of the Theater or any part thereof in any manner, or anything done therein or brought or kept therein, which would in any way: (i) violate any of the terms or conditions of the Lease and/or any agreements between the County and FIU regarding the Coconut Grove Playhouse; (ii) violate any legal requirement or insurance requirements; or (iii) impair any of the State's, County's or FIU's right or interest in the Theater or Property.

C.2.2 Commencement of Obligations

GableStage shall commence operations and management of the Theater upon the receipt by the County of a certificate of substantial completion of the construction of the Theater ("Commencement Date"). GableStage shall thereafter continuously and uninterruptedly use, operate and maintain the Theater for the purposes outlined in this Agreement until the expiration or earlier termination of this Agreement. GableStage shall not discontinue its operations for any consecutive period of thirty (30) days or more without the prior written consent of the County via its County Mayor or Mayor's designee. Any failure of GableStage to continue its operations, as set forth herein, shall be deemed an event of default and, as a result thereof, this Agreement may be terminated.

C.2.3 Quality of Services

GableStage shall operate and manage the Theater on behalf of the County using the highest degree of professionalism. GableStage shall have at the Theater adequately trained personnel and staff to provide services to customers, users, patrons, visitors and/or guests. GableStage shall have sole artistic control over its theater programming, educational and outreach activities and other events that it presents. If any governmental approvals, licenses or permits shall be required for the proper and/or lawful conduct, operations and/or management of the Theater, then GableStage shall, at its expense, duly procure and thereafter maintain such license or permit and shall at all times comply with the terms and conditions of such permit or license.

C.2.4 Maintenance and Utilities

All repairs, refurbishment and redecoration of the Theater shall be the obligation of GableStage, excepting those items outlined in Section C.1, which shall be the responsibility of the County. GableStage shall provide and shall be solely responsible for the cost and expense to use, keep, maintain, and repair the Theater, including its immediately surrounding grounds and excluding other structures that may be built on the Property, either simultaneously or in the future, which structures may include a parking garage and/or an additional theater. GableStage's obligations shall include, but not be limited to: maintenance, cleaning and upkeep of all building systems, janitorial services, pest extermination, sewer, trash and garbage collection services, utilities, electric, cable, phone, internet, and security services, etc.. Upon failure of GableStage to maintain the Theater as required by this Agreement, the County may, after thirty (30) days' written notice to GableStage from the County Mayor or Mayor's designee, or sooner if deemed an emergency, enter the Theater and perform any maintenance or repair necessary to safeguard the County's interest and shall bill the cost thereof to GableStage.

C.2.5 Pro-Forma and Annual Budget

GableStage will develop a full operating pro-forma as a 5-year operating forecast for the Theater in coordination with a management consulting firm hired by GableStage. GableStage shall consult with the County during the development of its pro-forma and the County, through its Department of Cultural Affairs, shall cooperate with and assist GableStage with developing its pro-forma. After the design for the Theater is complete and before the County receives its certificate of substantial completion for the Theater, GableStage shall prepare a detailed operating budget for the first year of operations of the Theater which shall be subject to the review by the County Mayor, or the Mayor's designee. GableStage shall maintain the same fiscal year as does the County such that its fiscal year will commence October 1st and end on September 30th of the following year. GableStage shall submit to the County by February 1st of each year the entire annual operating budget for the Theater, including all classes of revenues and expenditures, for the coming fiscal year, including a recommended capital repair budget and necessary list of repairs in accordance with Section C.1.1. GableStage shall submit to the County annual reports and annual independent audits conducted by a Certified Public Accountant on or before December 31st of each year for the fiscal year ending in the immediately prior September 30th. Annual reports shall consist of (a) a summary of the programming and marketing activities of GableStage; (b) a balance sheet; (c) a statement of revenues and expenditures; and (d) a statement of changes in fund balance since the prior submittal.

C.2.6 Gablestage Agreement with Florida International University (FIU)

GableStage will provide FIU with certain mutually agreed upon rights and benefits that take into account the goals of the Business Plan for FIU's students, faculty and the community. These benefits include, but are not limited to, joint marketing, signage and promotion; GableStage and FIU faculty and staff affiliations; workshops and master classes; and use of the Theater. The agreement reached between GableStage and FIU is attached hereto and is incorporated herein by reference (Attachment B).

C.2.7 Fees and Revenues

The County shall not be entitled to keep any revenues received by GableStage from the rental of spaces in, or use of, the Theater, the sale of tickets by GableStage, revenues from concession sales, and any other revenue generated by GableStage. Neither the County nor GableStage shall be entitled to any rental, management or operating fees from the other for the use, operation and management of the Theater, nor shall the County establish any admission charges or fees for the Theater. GableStage shall establish ticket prices, concession sales rates and all other fees and rates incidental to the operation of the Theater consistent with sound management practices and with the objectives of maintaining a balanced budget and presenting programs and activities that are affordable to the public.

C.2.8 Operational Responsibilities

GableStage shall provide all theater and property management, accounting, advertising, public relations and legal services required for the operations of the Theater. It is the intent of the Parties that GableStage will have authority and responsibility over the day-to-day operation of the Theater and all activities occurring there, and that it shall use the revenue generated by the use of the Theater to pay the expenses associated with the operations of the Theater. GableStage shall apply for available state, federal and private grant money to help pay for these expenses. GableStage shall have the exclusive authority to determine space allocation and scheduling within the Theater. All contracts, licenses and agreements entered into by GableStage in connection with the management of the Theater shall be in its own name.

C.2.9 Obligations and Debt

GableStage shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Theater and the County shall have no responsibility therefore. GableStage shall not cause any liens or encumbrances to be placed on the Theater or the Property and shall not be entitled to use the Theater, Property or any fixtures, furniture or equipment of the Theater provided and/or paid for

by the County as security for any loan or indebtedness.

C.2.10 Taxes

GableStage acknowledges and agrees that if at any time during the term of this Agreement, or any renewal or extension thereof, a tax, charge, levy, imposition, or excise is placed or otherwise imposed on the Theater, then GableStage shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition and/or excise. GableStage acknowledges and agrees that it shall be solely responsible for any and all applicable sales and use taxes arising out of performances or events at the Theater and all other applicable taxes relating to its operation and management of the Theater and it shall also be responsible for all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind or nature, owned by or placed in, upon or about the Theater by GableStage.

D. INSURANCE AND INDEMNIFICATION

D.1 ACTS OF OTHERS

The County shall not be responsible or liable to GableStage, or to those claiming by, through or under GableStage, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming to or upon the Theater or the surrounding grounds for any loss or damage resulting to such entity or to GableStage for themselves or for personal property from actions or activity by such person(s) or entities at the Theater and/or Property. Further, the County shall not be responsible or liable to GableStage, or to those claiming by, through or under GableStage, for any loss or damage which may be occasioned or caused by actions or inactions which are the direct or indirect cause of any breaking, bursting, stoppage, or leaking of water, gas, sewer, electrical, telephone or other utility pipes and/or lines.

D.2 INSURANCE REQUIREMENTS FOR GABLESTAGE

Throughout the term of this Agreement, GableStage shall maintain in force the following insurance and shall furnish to 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 GableStage as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis including products liability and 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 this Agreement, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- D. Property Insurance in the amount of \$5,000,000 for all perils excluding named windstorm covering the structure(s). Miami-Dade County shall be named as a loss payee with respect to this coverage. This limit may be adjusted at the sole discretion of Miami-Dade County as necessary to conform with the County's All Other Peril deductible.
- E. Property Insurance on a special causes of loss form for 100% of the replacement value of the contents and improvements owned by Gablestage. Miami-Dade County will

not be responsible for damage to contents owned by Gablestage or improvements to the Theater that Gablestage makes that are not intended to be permanent.

F. Business Interruption Insurance in an amount sufficient to adequately cover continuing expenses.

All Policies must be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by Miami-Dade County.

All Policies must include a Waiver of all Rights of Subrogation against Miami-Dade County.

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 "A-" as to management, and no less than "Class VII" as to financial strength, 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 Financial Services and are members of the Florida Guaranty Fund.

D.3 INDEMNIFICATION

GableStage shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by GableStage or its employees, agents, servants, partners, principals or subcontractors. GableStage shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. GableStage expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by GableStage shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The County does hereby agree to indemnify and hold harmless GableStage to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a person injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify GableStage from any liability or claim arising out of the negligent performance or failure of performance of GableStage or any unrelated third party.

E. GABLESTAGE EVENTS OF DEFAULT

Any of the following situations shall be an event of Default:

- (1) A material failure to observe any provision of this Agreement;
- (2) Failure to properly or adequately maintain and secure the Theater;

- (3) Failure to remedy any condition posing a threat to the health or safety of the public;
- (4) Failure to operate, program and market the Theater as a regional theater and failure to provide annual seasons of quality theatrical and performing arts events and education and outreach activities for the benefit of the residents of and visitors to Miami-Dade County; provided, however, that GableStage shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots;
- (5) Failure of GableStage to remain solvent or to operate the Theater in a fiscally responsible manner; and/or
- (6) Failure of GableStage to observe any other covenant or obligation set forth in this Agreement or to operate and manage the Theater in compliance with all federal, state, and local laws.

F. TERMINATION

F.1 TERMINATION FOR CONVENIENCE

GableStage may terminate this Agreement for its convenience upon two-hundred and seventy (270) days' prior written notice to the County at any time after the Effective Date. The County, through the Mayor or the Mayor's designee, may terminate this Agreement for its convenience upon two-hundred and seventy (270) days' prior written notice to GableStage at any time after the Effective Date, provided that the date of termination is to take place before the Commencement Date.

F.2 COUNTY TERMINATION FOR DEFAULT BY GABLESTAGE

If an event of Default as set forth in Article B has occurred and GableStage has not begun to cure the default within fifteen (15) days after the County furnishes written notice of the Default, then the County shall institute the Dispute Resolution Procedure described in Section F.3. If a resolution satisfactory to the County Mayor is not achieved as a result of the Dispute Resolution Procedure, then the County may terminate this Agreement upon sixty (60) days prior written notice to GableStage. GableStage may appeal this termination, within fifteen (15) days, to the Chief Judge of the 11th Circuit Court.

F.3 DISPUTE RESOLUTION PROCEDURE

In the event the County and GableStage are unable to resolve their differences concerning any dispute or claim arising under or relating to the Agreement, except those that may arise pursuant to the provisions of Section A.7 of this Agreement relating to public records, (referred to as a "Dispute"), either GableStage or the County may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder. Pending final decision of a Dispute hereunder, GableStage shall proceed diligently with the performance of the Agreement.

Any and all Disputes shall be decided by a designee ("Hearing Officer") appointed by the Director of the Department of Cultural Affairs, or successor County Department ("Director"). The designee can be any individual selected by the Director, including but not limited to the Director himself, another County employee, an expert in the subject area of the Dispute, an attorney experienced in arbitrations, or a retired judge. The Director shall select and appoint the Hearing Officer upon a timely request made under this Section for the initiation of the Dispute.

As soon as practicable, the Hearing Officer shall adopt a schedule for GableStage and the County to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within 20 working days of the date on which such written submissions are filed, the Hearing Officer shall afford each party an opportunity to present a maximum of one hour of argument. The Hearing Officer may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the party is

entitled to a favorable resolution pursuant to the terms of this Agreement. As part of such decision, the Hearing Officer shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Hearing Officer shall have the authority to rule on questions of law, including disputes over Agreement interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Officer is authorized by both parties to strike elements of claims seeking relief or damages not available under the Agreement (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

In the event that the Hearing Officer determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Hearing Officer at his reasonable discretion.

No formal discovery shall be allowed in connection with any proceeding under this Section. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this Agreement shall remain in force and effect throughout the proceeding. The Hearing Officer shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this Agreement shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

The Hearing Officer shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial is conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or claims. The decision of the Hearing Officer shall be conclusive, final and binding on the parties, subject only to the limited right of review specified in paragraph F.3.7 below.

If either party wishes to contest the decision of the Hearing Officer, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

F.4 EFFECT OF TERMINATION

Upon termination, the Theater 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 GableStage shall be removed by GableStage from the Theater upon termination.

G. INSPECTOR GENERAL

G.1 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63,

Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews on all County contracts, throughout the duration of said contracts. Upon written notice from the County, GableStage shall make available to the IG, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IG services, and under no circumstance shall GableStage's costs or expenses, be inclusive of any charges relating to these IG services. Any reasonable and necessary copies required by the IG shall be made at the IG's expense. The terms of this provision herein, apply to GableStage, its officers, agents, and employees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of GableStage in connection with this Agreement. The terms of this Article shall not impose any liability on the County by GableStage or any third party.

G.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. The IPSIG may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Parties in connection with this Agreement.

H. MISCELLANEOUS PROVISIONS

H.1 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: County Mayor
Miami-Dade County
111 N.W. 1 Street, Suite 2920
Miami, Florida 33128

copy to: County Attorney

To GableStage: Chair/President, GableStage, Inc.

H.2 INDEPENDENT CONTRACTOR RELATIONSHIP

The County and GableStage acknowledge and agree that they are independent entities and neither GableStage nor any of its employees or officers shall be considered employees, agents or officers of the County.

H.3 COUNTY AS SOVEREIGN

The Parties understand and expressly hereby agree that the Theater and the Property may be subject to various governmental considerations and approvals that are outside of the terms and conditions of this Agreement. Such considerations and approvals may be processed or considered by one or various agencies and/or departments of the County in the normal course of business for those agencies and/or departments. The parties agree that the County shall not be liable in any manner, whatsoever, to any other party or person for the exercise of its governmental authority, regulatory powers and/or police powers.

H.4 RULES AND REGULATIONS

GableStage will observe, obey, and comply with all rules and regulations adopted and/or implemented by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to GableStage's operations under this Agreement. Failure to do so will constitute a breach of this Agreement.

H.5 HEADINGS

The headings of the various paragraphs and sections, and the references to paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context, or intent of this Agreement, or any part or parts of this Agreement.

H.6 ENTIRETY OF AGREEMENT

This Agreement along with the documents referenced herein constitute the entire, fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the Parties with respect thereto. This Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida without application of conflict of laws principles.

H.7 AMENDMENT

This Agreement may be amended by written document approved by the Board of Directors of GableStage and approved by the Board of County Commissioners by Resolution duly adopted and executed by the County Mayor or Mayor's designee.

H.8 NO WAIVER OF RIGHT TO ENFORCE

The waiver by the County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by the County, unless such waiver is in writing by the County, and there shall not be any accord and satisfaction unless expressed in writing and signed by both the County and GableStage. Any waiver of any portion of this Agreement shall be evidenced in writing by the party that made such waiver.

H.9 SAVINGS CLAUSE

In the event any term or provision of this Agreement is determined by an arbitration panel, or appropriate judicial authority, to any extent, to be illegal, ineffective, unenforceable or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

H.10 CHOICE OF VENUE

Any litigation between the County and GableStage relating in any way to this Agreement shall be brought and presented exclusively in a court located in Miami-Dade County, Florida.

H.11 SURVIVAL

The parties acknowledge that many of the obligations in this Agreement will survive the term, termination and/or cancellation hereof. Accordingly, the respective obligations of GableStage and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

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.

(corporate seal)

GABLESTAGE, INC.

By: [Signature]
Chair/President

ATTEST:

By: [Signature]
Secretary

Approved as to form and
Legal sufficiency

County Attorney

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

By: _____
County Mayor

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

(SEAL)

**OPERATING AND MANAGEMENT AGREEMENT BETWEEN
MIAMI-DADE COUNTY AND
GABLESTAGE, INC.**

This Operating and Management Agreement (the "Agreement") is entered into this _____ day of _____, 2015 ("Effective Date"), by and between MIAMI-DADE COUNTY, FLORIDA, (the "County"), a political subdivision of the State of Florida, and GABLESTAGE, INC., a not for profit Florida corporation, ("GableStage" and jointly with the County referred to herein as "Parties").

WITNESSETH:

Whereas, Miami-Dade County ("County") and Florida International University ("FIU") have entered into a fifty (50) year lease ("Lease") for the Coconut Grove Playhouse property located at 3500 Main Highway, Miami, FL 33133 ("Property") with the State of Florida ("State"), with such initial term commencing on October 15, 2013 (Attachment A - Lease); and

Whereas, the Lease contained and incorporated the Coconut Grove Playhouse Business Plan ("Business Plan"), which called for the County to develop a regional theater facility ("the Theater") at the Property and designated GableStage as responsible for operating, programming and maintaining the Theater; and

Whereas, on June 12, 2013, FIU's Board of Trustees approved the Business Plan and a delegation of authority for FIU's President to execute the Lease; and

Whereas, on August 20, 2013, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the Florida Cabinet) approved the Lease and Business Plan; and

Whereas, on October 1, 2013, the Board of County Commissioners ("Board") approved the Lease and Business Plan, by Resolution R-797-13; and

Whereas, the Business Plan called for the County to enter into an operating agreement with GableStage that would cover among other things, operation and programming of the theater, development of educational and community programs with FIU, and responsibility by GableStage for fundraising necessary to ensure the success of the Theater; and

Whereas, pursuant to the Business Plan, the County intends to cause the Theater to be designed and built and intends to allow GableStage to operate and manage the Theater for the benefit of residents of and visitors to Miami-Dade County, and GableStage desires to operate and program the Theater for same; and

Whereas, the County will use \$5 million from Series 2005 of Convention Development Tax (CDT) bond proceeds and \$15 million from the Building Better Communities General Obligation Bond Program project number 299 - "Improvements to the Coconut Grove Playhouse," both approved specifically to implement the capital project for the Theater;

Whereas, it is contemplated that the State will own the permanent structures and the appurtenances on the Property, the County will own improvements to the Theater that it makes that are not intended to be permanent, and GableStage will own improvements to the Theater that it makes that are not intended to be permanent; (all improvements not intended to be permanent are included in the term "Theater" as used in this Agreement); and

Whereas, GableStage will operate the Theater 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 funds from FIU, Miami-Dade County or any agency or instrumentality thereof, except as may be provided through the County's annual competitive grants programs, subject to annual budget appropriations, and from parking revenues generated by the Property after the County covers any expenses that it may have related to the Property; and

Whereas, the terms and conditions of these professional management services and operating obligations to be provided and undertaken by GableStage to the County need to be defined and stated as set forth in this Agreement.

Now Therefore, in mutual consideration of the promises and obligations contained herein, the parties wish to enter into the terms and conditions of this Agreement as follows:

A. GENERAL TERMS

A.1 RECITATIONS INCORPORATED

The recitations stated above are incorporated into, and become a part of, this Agreement as if fully set forth herein.

A.2 PARTIES

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

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 GableStage to the County and the County's obligations to GableStage in connection with the design, construction, management and operations of the Theater on the Property. GableStage's obligations and rights under this Agreement shall be limited to the Theater building. GableStage shall have no responsibility, obligations or rights to use, operate, manage, maintain, occupy or otherwise possess the balance of the Property beyond the Theater (except to maintain the grounds immediately surrounding the Theater as set forth in Section C.2.4 herein).

A.4 TERM AND OPTIONS TO RENEW

The term of this Agreement is for a period of twenty-five (25) years, commencing with the Effective Date. This Agreement may be renewed for up to three additional terms; the first additional term to expire on October 14, 2063 and the second and third additional terms to be for 25 years each, all subject to mutual agreement by the County and GableStage. Any additional terms shall run consecutive from the prior term and in no event shall this Agreement extend beyond October 14, 2113. This Agreement may be terminated before the end of the initial or renewal terms pursuant to the provisions set forth herein.

A.5 THIRD PARTY BENEFICIARIES

This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties. This Agreement does not create nor establish any third party beneficiaries.

A.6 NON-DISCRIMINATION POLICY

GableStage shall abide by all applicable federal, state, and local mandates with regard to its employment hiring practices, promotions, use or rental of the Theater, or in any other respect; must provide equal access and equal opportunity in employment and services; and shall not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, gender expression, physical ability, or status as a victim of domestic

violence, dating violence, or stalking, all in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Chapter 11A of the Code of Miami-Dade County, Florida.

A.7 PUBLIC RECORDS

Documents pertaining to obligations and responsibilities of GableStage in carrying out the terms of this Agreement are subject to public records law. Pursuant to Florida Statutes 119.0701(2), GableStage agrees to comply with Florida's public records law, specifically to: (a) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service (use, operation and/or management of the Theater); (b) provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes Chapter 119.07, et seq., or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of GableStage upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

The County acknowledges that certain records of GableStage or information relating to the use, management or operation of GableStage and the Theater (including but not limited artistic programming areas such as agreements with artists and arts organizations and for private sector philanthropic support and fundraising), may not be public records, may be considered trade secrets information that is proprietary and confidential, or may otherwise be exempt from disclosure under applicable public records' laws. The County shall notify GableStage if the County receives a request for disclosure of any information that GableStage has informed the County that it reasonably believes is trade secret information, or that is otherwise exempt from disclosure, so that GableStage may vigorously initiate or defend any claims or disputes arising from efforts by other entities to cause such information to be disclosed. The County shall have no liability for any disclosure (a) which the County determines in good faith is required by applicable law, or (b) of information the County had not been advised was trade secret or exempt information.

A.8 RECORDS

GableStage shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of GableStage, financial or otherwise, shall be kept in Miami-Dade County, Florida under the custody and control of GableStage. The County shall have a right to audit and inspect all books, records and accounts of GableStage relating to its use, operations and/or management of the Theater at all times during the term of this Agreement and for a period of three (3) years after the expiration of this Agreement. All bank accounts and deposits of GableStage shall be in institutions located within Miami-Dade County, Florida. Failure by GableStage to comply with any provision of this Section shall be cause for termination of this Agreement.

A.9 ASSIGNMENT, SUBCONTRACTING AND SUCCESSORS

GableStage shall not assign or subcontract this Agreement or any portion thereof, nor any property associated with this Agreement, without the prior written approval of the County, specifically through its Board. Any unapproved assignment or subcontract shall be grounds for immediate termination of this Agreement. To the extent that the County approves of any assignments and/or subcontracts, it is understood and agreed that all assignees and subcontractors shall be subject to all of the terms and conditions of this Agreement and that GableStage shall continue to remain responsible and liable for all obligations under this Agreement and for all actions of its assignees and/or subcontractors. This

provision shall not limit the authority of GableStage to enter into agreements that a non-profit theater company utilizes for the professional management of a theater, including but not limited to concession agreements, agreements with vendors for the maintenance and repair of the facility, rental or license agreements for the temporary use of space in the Theater, or agreements with FIU for FIU's use of the Theater.

B. DESIGN AND CONSTRUCTION OF THE THEATER

B.1 REDEVELOPMENT OF THE THEATER

GableStage understands and acknowledges that the County is in the process of planning for the redevelopment of the Theater and the Property. In accordance with the Lease and related agreements, the County is directing and overseeing the Business Plan and is entitled to all benefits related thereto and working with the State and FIU in such matters as contemplated by the Lease and Business Plan. The County anticipates awarding a contract to an architectural and/or engineering firm sometime in 2015 in order to commence the master planning, thereafter the design, and ultimately the solicitation of a construction contractor in order to undertake the construction of the Theater. The County has no obligation and/or duty to GableStage to construct and/or undertake any redevelopment of the Property including, specifically, the Theater. ~~While the County intends to develop the Theater and the Property in accordance with the Business Plan and this Agreement,~~ The County has sole and absolute discretion on whether, when and how it shall redevelop the Theater and the Property, subject to the Business Plan. To the extent that the County does not construct the Theater, renovate the Theater, and/or redevelop the Property, then the County shall have no liability to GableStage whatsoever. If the County has not completed the construction of the Theater on or before the maximum timeframe allowed in the Business Plan, then this Agreement shall be automatically terminated as of that date, be null and void and be deemed of no further force and effect, unless extended by mutual agreement of the Parties.

The County, and not GableStage, shall contract for and manage any design and construction of the Theater. The County shall select, in its sole and absolute discretion, any consultants, design professionals and/or contractors for any redevelopment of the Theater and the Property. Further, the County shall provide direction and shall decide, in its sole and absolute discretion, any master plan for the Property, any design parameters and specifications for the Theater, and any construction contracting method, cost and/or improvements for the Theater. The County shall consult with GableStage for its review and recommendations regarding any design and construction of the Theater but shall have no obligation to undertake or agree to any recommendations provided by GableStage. Subject to available financial resources, the County shall consider the facility needs of GableStage in order to develop the Theater in a manner in which GableStage can offer the scope and quality of programs and activities of a regional theater company as described in the Business Plan in the Lease. GableStage shall direct all communications regarding the redevelopment of the Theater and Property to the County, specifically to the Department of Cultural Affairs, and not directly to the consultants, design professionals and/or contractors hired by the County for the Theater project.

B.2 CHANGES OR ADDITIONS BY THE COUNTY

Provided the County provides GableStage with prior written notice, the County may, at any time, and from time to time, unilaterally: (a) make or permit changes or revisions to the structure of the Theater, the Property and/or the surrounding grounds, including but not limited to, parking, walkways, sidewalks, pathways, driveways, green space, and additions, expansions, alterations and/or rearrangements of the Theater; and (b) make or permit any changes to any sign affixed to the exterior of the Theater. Should, for any reason, the County elect to perform any repairs or alterations to the Theater, there shall be no allowance nor reimbursement to GableStage for any loss or diminution of its income and revenue arising from any interruption of its business nor shall there be any liability on the part of the County by reason of

inconvenience, annoyance or injury to business arising from the County making repairs, alterations, additions, improvements, restorations or replacements in or to the Theater, or to any portion thereof, or to the fixtures, appurtenances, or equipment thereto. The County agrees, however, that any such repairs, alterations, additions, improvements, restorations or replacements shall be made with a minimum amount of inconvenience to GableStage, and that the County will diligently proceed therewith to completion.

B.3 IMPROVEMENTS BY GABLESTAGE

B.3.1 County Approval

Any permanent improvements, changes, or alterations to the Theater or Property contemplated by GableStage shall be submitted in writing for review and approval by the County Mayor, or his designee, and are subject to the Lease and related agreements. GableStage agrees to provide the County with copies of any and all plans and specifications pertaining to such improvements at least sixty (60) days prior to seeking approval of such plans and specifications from the appropriate building department, and/or any other governmental permitting or regulatory entity or agency. GableStage further acknowledges and agrees that any and all construction must be competitively bid in accordance with, and/or required by, Section 255.20, Florida Statutes.

B.3.2 Quality of Improvements

GableStage shall cause any and all improvements to be performed competently and in a good and workmanlike manner by duly qualified and licensed person(s) or entities, using first grade materials, and performed to completion without unnecessary interference with, or disruption to the nearby property owners and/or neighbors.

B.3.3 Performance Bond

GableStage agrees that prior to commencing any construction, installation and/or repair work, including the purchase of supplies and/or materials from materialmen and suppliers, GableStage shall obtain and deliver to the County, at its sole cost and expense, a payment and performance bond, or such other alternate form of security, each which meets the requirements, as applicable, of Section 255.05, Florida Statutes, as set forth below, not less than ten (10) days prior to the anticipated purchase of supplies and/or materials, commencement of the construction, installation and/or repairs. Said payment and performance bond(s) shall name the County, FIU and the State of Florida as an additional payees and obligees, the form of such bonds shall be as provided by Section 255.05, Florida Statutes and each shall be in the amount of the entire cost of the construction, installation, and/or repair project regardless of the source of funding. GableStage shall be responsible for recording the bonds in the public records of Miami-Dade County, Florida, and providing notice to subcontractors and suppliers, as required by Section 255.05 of the Florida Statutes. Said payment and performance bonds shall be maintained in full force and effect for the duration of any construction, installation, and/or repair work.

B.3.4 Payment for Improvements

GableStage shall implement County-approved improvements at its sole cost and expense and shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by GableStage and/or its contractor, and shall obtain and deliver to the County "releases" or waivers of liens from all parties doing work on or about the Theater and/or the Property, along with an affidavit from GableStage stating that all bills and/or invoices have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work.

B.4 FURNISHING, FIXTURES, AND EQUIPMENT INSTALLED BY GABLESTAGE

GableStage shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Theater that have not been installed by the County. All furnishings, fixtures and equipment acquired for the facility shall be of a high quality, and as good as or better than that what is found at similar

facilities. GableStage shall afford the County the opportunity to review and comment upon in advance the selection of all furnishings, fixtures and equipment for the Theater. GableStage shall obtain the written approval from the County for any alterations or modifications to the Theater necessary for the installation of any furnishings, fixtures, and/or equipment. Following the installation of any additional equipment, furnishing, fixtures, and improvements which the County shall review from time to time, GableStage shall provide to the County a statement setting forth a complete description of the specific equipment, furnishings, fixtures, and/or improvements and the date upon which the installation of such equipment, furnishings, fixtures, and/or improvements were installed and/or completed, and their respective costs. GableStage agrees that all equipment, furnishings, fixtures, and improvements provided shall meet or exceed the requirements of all applicable building, fire, pollution, and other related codes. Upon the expiration or early termination of this Agreement, GableStage reserves the right to remove the furnishings and equipment provided and paid for by GableStage with non-County funds, so long as the removal of such furnishings and equipment will not result in damage to the Property, and so long as the furnishings and equipment are not otherwise subject to any type of lien, encumbrance, and/or obligation under this Agreement.

B.5 SIGNS

GableStage shall maintain all signage in good condition and appearance. Any changes, additions, and/or alterations to permanent exterior sign(s) on the property, including, but not limited to, any monument sign, marquee, etc., must first be approved in writing by the County, and any cost of painting, production, and/or installation shall be paid by GableStage. Said permanent signage, including any decoration, lettering, advertising material, or any other thing of any kind or nature, must also be pre-approved by the County, in addition to any and all other governmental authorities having jurisdiction over the Property. The County's approval must be by the County Mayor, or the County Mayor's designee. Any damage or unsightly condition caused to the Property because of, or due to, said signs, shall be satisfactorily corrected or repaired by GableStage, to the County's satisfaction, at GableStage's sole cost and expense.

C. OPERATIONS AND MANAGEMENT OF THE THEATER

C.1 COUNTY RIGHTS AND OBLIGATIONS

C.1.1 County-funded Repairs

The County shall provide funding for structural repairs, as may be required, to the roof and exterior envelope of the Theater, subject to an annual budgeted allocation adopted by the Board of County Commissioners in the Board's sole and absolute discretion. Repairs required to the roof and/or the exterior envelope of the Theater required as a result of acts of GableStage, its employees, vendors, licensees, etc., or that are the result of GableStage's failure to perform routine maintenance of these building systems, shall be the responsibility of GableStage. GableStage shall provide the County with a recommended capital repair budget and necessary list of repairs as part of its annual budget submittal to the County as set forth in Section C.2.

C.1.2 County Inspections and Right of Entry

The County shall have the authority to make periodic reasonable inspections of the Theater and its operations, along with any and all equipment, furnishings, fixtures and/or improvements during the normal operating hours thereof to determine whether GableStage is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Theater, and the Property to make emergency repairs, alterations, replacements, or improvements, as the County deems necessary, but the County assumes no obligation to make any such repairs, alterations, replacements, or improvements, other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with a minimum amount of inconvenience to GableStage, and that the County will diligently proceed therewith to completion.

C.2 GABLESTAGE RIGHTS AND OBLIGATIONS

C.2.1 Permitted Uses and Equal Access

The County grants to GableStage the exclusive rights to, and GableStage agrees to, use, manage, and operate the Theater as a facility primarily for the presentation of performing arts, cultural, recreational, and educational activities. GableStage acknowledges and agrees that the Theater shall be utilized for the benefit of the public and community interest and welfare. GableStage agrees to keep the Theater open and properly and safely maintained for all Miami-Dade County residents and to allow all Miami-Dade County residents equal access and use of the Theater and not discriminate when charging facility admission fees. GableStage shall not use, operate, manage, suffer the use of or permit the use of the Theater or any part thereof in any manner, or anything done therein or brought or kept therein, which would in any way: (i) violate any of the terms or conditions of the Lease and/or any the agreements between the County and FIU regarding the Coconut Grove Playhouse; (ii) violate any legal requirement or insurance requirements; or (iii) impair any of the State's, County's or FIU's right or interest in the Theater or Property.

C.2.2 Commencement of Obligations

GableStage shall commence operations and management of the Theater upon the receipt by the County of a certificate of substantial completion of the construction of the Theater ("Commencement Date"). GableStage shall thereafter continuously and uninterruptedly use, operate and maintain the Theater for the purposes outlined in this Agreement until the expiration or earlier termination of this Agreement. GableStage shall not discontinue its operations for any consecutive period of thirty (30) days or more without the prior written consent of the County via its County Mayor or Mayor's designee. Any failure of GableStage to continue its operations, as set forth herein, shall be deemed an event of default and, as a result thereof, this Agreement may be terminated.

C.2.3 Quality of Services

GableStage shall operate and manage the Theater on behalf of the County using the highest degree of professionalism. GableStage shall have at the Theater adequately trained personnel and staff to provide services to customers, users, patrons, visitors and/or guests. GableStage shall have sole artistic control over its theater programming, educational and outreach activities and other events that it presents. If any governmental approvals, licenses or permits shall be required for the proper and/or lawful conduct, operations and/or management of the Theater, then GableStage shall, at its expense, duly procure and thereafter maintain such license or permit and shall at all times comply with the terms and conditions of such permit or license.

C.2.4 Maintenance and Utilities

All repairs, refurbishment and redecoration of the Theater shall be the obligation of GableStage, excepting those items outlined in Section C.1, which shall be the responsibility of the County. GableStage shall provide and shall be solely responsible for the cost and expense to use, keep, maintain, and repair the Theater, including its immediately surrounding grounds and excluding other structures that may be built on the Property, either simultaneously or in the future, which structures may include a parking garage and/or an additional theater. GableStage's obligations shall include, but not be limited to: maintenance, cleaning and upkeep of all building systems, janitorial services, pest extermination, sewer, trash and garbage collection services, utilities, electric, cable, phone, internet, and security services, etc.. Upon failure of GableStage to maintain the Theater as required by this Agreement, the County may, after thirty (30) days' written notice to GableStage from the County Mayor or Mayor's designee, or sooner if deemed an emergency, enter the Theater and perform any maintenance or repair necessary to safeguard the County's interest and shall bill the cost thereof to GableStage.

C.2.5 Pro-Forma and Annual Budget

GableStage will develop a full operating pro-forma as a 5-year operating forecast for the Theater in coordination with a management consulting firm hired by GableStage. GableStage shall consult with the County during the development of its pro-forma and the County, through its Department of Cultural Affairs, shall cooperate with and assist GableStage with developing its pro-forma. After the design for the Theater is complete and before the County receives its certificate of substantial completion for the Theater, GableStage shall prepare a detailed operating budget for the first year of operations of the Theater which shall be subject to the review by the County Mayor, or the Mayor's designee. GableStage shall maintain the same fiscal year as does the County such that its fiscal year will commence October 1st and end on September 30th of the following year. GableStage shall submit to the County by February 1st of each year the entire annual operating budget for the Theater, including all classes of revenues and expenditures, for the coming fiscal year, including a recommended capital repair budget and necessary list of repairs in accordance with Section C.1.1. GableStage shall submit to the County annual reports and annual independent audits conducted by a Certified Public Accountant on or before December 31st of each year for the fiscal year ending in the immediately prior September 30th. Annual reports shall consist of (a) a summary of the programming and marketing activities of GableStage; (b) a balance sheet; (c) a statement of revenues and expenditures; and (d) a statement of changes in fund balance since the prior submittal.

C.2.6 Gablestage Agreement with Florida International University (FIU)

GableStage will provide FIU with certain mutually agreed upon rights and benefits that take into account the goals of the Business Plan for FIU's students, faculty and the community. These benefits include, but are not limited to, joint marketing, signage and promotion; GableStage and FIU faculty and staff affiliations; workshops and master classes; and use of the Theater. The agreement reached between GableStage and FIU is attached hereto and is incorporated herein by reference (Attachment B).

C.2.7 Fees and Revenues

The County shall not be entitled to keep any revenues received by GableStage from the rental of spaces in, or use of, the Theater, the sale of tickets by GableStage, revenues from concession sales, and any other revenue generated by GableStage. Neither the County nor GableStage shall be entitled to any rental, management or operating fees from the other for the use, operation and management of the Theater, nor shall the County establish any admission charges or fees for the Theater. GableStage shall establish ticket prices, concession sales rates and all other fees and rates incidental to the operation of the Theater consistent with sound management practices and with the objectives of maintaining a balanced budget and presenting programs and activities that are affordable to the public.

C.2.8 Operational Responsibilities

GableStage shall provide all theater and property management, accounting, advertising, public relations and legal services required for the operations of the Theater. It is the intent of the Parties that GableStage will have authority and responsibility over the day-to-day operation of the Theater and all activities occurring there, and that it shall use the revenue generated by the use of the Theater to pay the expenses associated with the operations of the Theater. GableStage shall apply for available state, federal and private grant money to help pay for these expenses. GableStage shall have the exclusive authority to determine space allocation and scheduling within the Theater. All contracts, licenses and agreements entered into by GableStage in connection with the management of the Theater shall be in its own name.

C.2.9 Obligations and Debt

GableStage shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Theater and the County shall have no responsibility therefore. GableStage shall not cause any liens or encumbrances to be placed on the Theater or the Property and shall not be entitled to

use the Theater, Property or any fixtures, furniture or equipment of the Theater provided and/or paid for by the County as security for any loan or indebtedness.

C.2.10 Taxes

GableStage acknowledges and agrees that if at any time during the term of this Agreement, or any renewal or extension thereof, a tax, charge, levy, imposition, or excise is placed or otherwise imposed on the Theater, then GableStage shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition and/or excise. GableStage acknowledges and agrees that it shall be solely responsible for any and all applicable sales and use taxes arising out of performances or events at the Theater and all other applicable taxes relating to its operation and management of the Theater and it shall also be responsible for all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind or nature, owned by or placed in, upon or about the Theater by GableStage.

D. INSURANCE AND INDEMNIFICATION

D.1 ACTS OF OTHERS

The County shall not be responsible or liable to GableStage, or to those claiming by, through or under GableStage, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming to or upon the Theater or the surrounding grounds for any loss or damage resulting to such entity or to GableStage for themselves or for personal property from actions or activity by such person(s) or entities at the Theater and/or Property. Further, the County shall not be responsible or liable to GableStage, or to those claiming by, through or under GableStage, for any loss or damage which may be occasioned or caused by actions or inactions which are the direct or indirect cause of any breaking, bursting, stoppage, or leaking of water, gas, sewer, electrical, telephone or other utility pipes and/or lines.

D.2 INSURANCE REQUIREMENTS FOR GABLESTAGE

Throughout the term of this Agreement, GableStage shall maintain in force the following insurance and shall furnish to 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 GableStage as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis including products liability and 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 this Agreement, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- D. Property Insurance in the amount of \$5,000,000 for all perils excluding named windstorm covering the structure(s). Miami-Dade County shall be named as a loss payee with respect to this coverage. This limit may be adjusted at the sole discretion of Miami-Dade County as necessary to conform with the County's All Other Peril deductible.
- E. Property Insurance on a special causes of loss form for 100% of the replacement

value of the contents and improvements owned by Gablestage. Miami-Dade County will not be responsible for damage to contents owned by Gablestage or improvements to the Theater that Gablestage makes that are not intended to be permanent.

F. Business Interruption Insurance in an amount sufficient to adequately cover continuing expenses.

All Policies must be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by Miami-Dade County.

All Policies must include a Waiver of all Rights of Subrogation against Miami-Dade County.

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 "A-" as to management, and no less than "Class VII" as to financial strength, 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 Financial Services and are members of the Florida Guaranty Fund.

D.3 INDEMNIFICATION

GableStage shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by GableStage or its employees, agents, servants, partners, principals or subcontractors. GableStage shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. GableStage expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by GableStage shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The County does hereby agree to indemnify and hold harmless GableStage to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a person injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify GableStage from any liability or claim arising out of the negligent performance or failure of performance of GableStage or any unrelated third party.

E. GABLESTAGE EVENTS OF DEFAULT

Any of the following situations shall be an event of Default:

- (1) A material failure to observe any provision of this Agreement;

- (2) Failure to properly or adequately maintain and secure the Theater;
- (3) Failure to remedy any condition posing a threat to the health or safety of the public;
- (4) Failure to operate, program and market the Theater as a regional theater and failure to provide annual seasons of quality theatrical and performing arts events and education and outreach activities for the benefit of the residents of and visitors to Miami-Dade County; provided, however, that GableStage shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots;
- (5) Failure of GableStage to remain solvent or to operate the Theater in a fiscally responsible manner; and/or
- (6) Failure of GableStage to observe any other covenant or obligation set forth in this Agreement or to operate and manage the Theater in compliance with all federal, state, and local laws.

F. TERMINATION

F.1 TERMINATION FOR CONVENIENCE

GableStage may terminate this Agreement for its convenience upon two-hundred and seventy (270) days' prior written notice to the County at any time after the Effective Date. The County, through the Mayor or the Mayor's designee, may terminate this Agreement for its convenience upon two-hundred and seventy (270) days' prior written notice to GableStage at any time after the Effective Date, provided that the date of termination is to take place before the Commencement Date.

F.2 COUNTY TERMINATION FOR DEFAULT BY GABLESTAGE

If an event of Default as set forth in Article E has occurred and GableStage has not begun to cure the default within fifteen (15) days after the County furnishes written notice of the Default, then the County shall institute the Dispute Resolution Procedure described in Section F.3. If a resolution satisfactory to the County Mayor is not achieved as a result of the Dispute Resolution Procedure, then the County may terminate this Agreement upon sixty (60) days prior written notice to GableStage. GableStage may appeal this termination, within fifteen (15) days, to the Chief Judge of the 11th Circuit Court.

F.3 DISPUTE RESOLUTION PROCEDURE

In the event the County and GableStage are unable to resolve their differences concerning any dispute or claim arising under or relating to the Agreement, except those that may arise pursuant to the provisions of Section A.7 of this Agreement relating to public records, (referred to as a "Dispute"), either GableStage or the County may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder. Pending final decision of a Dispute hereunder, GableStage shall proceed diligently with the performance of the Agreement.

Any and all Disputes shall be decided by a designee ("Hearing Officer") appointed by the Director of the Department of Cultural Affairs, or successor County Department ("Director"). The designee can be any individual selected by the Director, including but not limited to the Director himself, another County employee, an expert in the subject area of the Dispute, an attorney experienced in arbitrations, or a retired judge. The Director shall select and appoint the Hearing Officer upon a timely request made under this Section for the initiation of the Dispute.

As soon as practicable, the Hearing Officer shall adopt a schedule for GableStage and the County to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within 20 working days of the date on which such written submissions are filed, the Hearing Officer shall afford each party an opportunity to present a maximum of one hour of argument. The Hearing Officer may decide the Dispute on the basis of the affidavits

and other written submissions if, in his opinion, there is no issue of material fact and the party is entitled to a favorable resolution pursuant to the terms of this Agreement. As part of such decision, the Hearing Officer shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Hearing Officer shall have the authority to rule on questions of law, including disputes over Agreement interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Officer is authorized by both parties to strike elements of claims seeking relief or damages not available under the Agreement (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

In the event that the Hearing Officer determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Hearing Officer at his reasonable discretion.

No formal discovery shall be allowed in connection with any proceeding under this Section. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this Agreement shall remain in force and effect throughout the proceeding. The Hearing Officer shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this Agreement shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

The Hearing Officer shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial is conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or claims. The decision of the Hearing Officer shall be conclusive, final and binding on the parties, subject only to the limited right of review specified in paragraph F.3.7 below.

If either party wishes to contest the decision of the Hearing Officer, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

F.4 EFFECT OF TERMINATION

Upon termination, the Theater 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 GableStage shall be removed by GableStage from the Theater upon termination.

G. INSPECTOR GENERAL

G.1 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews on all County contracts, throughout the duration of said contracts. Upon written notice from the County, GableStage shall make available to the IG, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IG services, and under no circumstance shall GableStage's costs or expenses, be inclusive of any charges relating to these IG services. Any reasonable and necessary copies required by the IG shall be made at the IG's expense. The terms of this provision herein, apply to GableStage, its officers, agents, and employees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of GableStage in connection with this Agreement. The terms of this Article shall not impose any liability on the County by GableStage or any third party.

G.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. The IPSIG may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Parties in connection with this Agreement.

H. MISCELLANEOUS PROVISIONS

H.1 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: County Mayor
Miami-Dade County
111 N.W. 1 Street, Suite 2920
Miami, Florida 33128

copy to: County Attorney

To GableStage: Chair/President, GableStage, Inc.

H.2 INDEPENDENT CONTRACTOR RELATIONSHIP

The County and GableStage acknowledge and agree that they are independent entities and neither GableStage nor any of its employees or officers shall be considered employees, agents or officers of the County.

H.3 COUNTY AS SOVEREIGN

The Parties understand and expressly hereby agree that the Theater and the Property may be subject to various governmental considerations and approvals that are outside of the terms and conditions of this Agreement. Such considerations and approvals may be processed or considered by one or various agencies and/or departments of the County in the normal course of business for those agencies and/or departments. The parties agree that the County shall not be liable in any manner, whatsoever, to any other party or person for the exercise of its governmental authority, regulatory powers and/or police powers.

H.4 RULES AND REGULATIONS

GableStage will observe, obey, and comply with all rules and regulations adopted and/or implemented by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to GableStage's operations under this Agreement. Failure to do so will constitute a breach of this Agreement.

H.5 HEADINGS

The headings of the various paragraphs and sections, and the references to paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context, or intent of this Agreement, or any part or parts of this Agreement.

H.6 ENTIRETY OF AGREEMENT

This Agreement along with the documents referenced herein constitute the entire, fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the Parties with respect thereto. This Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida without application of conflict of laws principles.

H.7 AMENDMENT

This Agreement may be amended by written document approved by the Board of Directors of GableStage and approved by the Board of County Commissioners by Resolution duly adopted and executed by the County Mayor or Mayor's designee.

H.8 NO WAIVER OF RIGHT TO ENFORCE

The waiver by the County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by the County, unless such waiver is in writing by the County, and there shall not be any accord and satisfaction unless expressed in writing and signed by both the County and GableStage. Any waiver of any portion of this Agreement shall be evidenced in writing by the party that made such waiver.

H.9 SAVINGS CLAUSE

In the event any term or provision of this Agreement is determined by an arbitration panel, or appropriate judicial authority, to any extent, to be illegal, ineffective, unenforceable or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

H.10 CHOICE OF VENUE

Any litigation between the County and GableStage relating in any way to this Agreement shall be brought and presented exclusively in a court located in Miami-Dade County, Florida.

H.11 SURVIVAL

The parties acknowledge that many of the obligations in this Agreement will survive the term, termination and/or cancellation hereof. Accordingly, the respective obligations of GableStage and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

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.

GABLESTAGE, INC.

(corporate seal)

By: _____
Chair/President

ATTEST:

By: _____
Secretary

Approved as to form and
Legal sufficiency

County Attorney

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

By: _____
County Mayor

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

(SEAL)

AGREEMENT BETWEEN THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES (FIU) AND GABLESTAGE, INC.

This Agreement ("FIU-GS Agreement") is entered into this 10th day of April, 2015 ("Effective Date") by and between The Florida International University Board of Trustees ("FIU") and GableStage, Inc. ("GableStage" or "GS") (each a "Party" and collectively, the "Parties").

WITNESSETH:

Whereas, FIU, GS and Miami-Dade County (the "County") submitted a proposal to the State of Florida for the development and use of the property owned by the State of Florida and known as the Coconut Grove Playhouse property ("Property") requesting a lease ("Lease") or other property interest in the Property for use in accordance with the jointly prepared Coconut Grove Playhouse Business Plan ("Plan"); and

Whereas, on August 20, 2013, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Florida Cabinet) approved the Lease and Plan; and

Whereas the Plan provides for a written Operating Agreement between the County and GS ("Operating Agreement"); and

Whereas the Plan and the proposed Operating Agreement provide for a written agreement between GS and FIU creating certain rights and benefits for FIU taking into account the goals of the Business Plan for FIU's students, faculty and the community.

The Parties hereto, GS and FIU, in consideration of the mutual promises and benefits contained herein and each with full authority to execute this agreement through its lawfully selected officers or agents or designees, agree as follows:

1. Term. This FIU-GS Agreement shall be for a term required pursuant to the Plan and Operating Agreement, as may be modified from time to time by matters within and outside the control of the Parties.
2. This FIU-GS Agreement contemplates that FIU and GS shall agree to develop certain activities starting on the effective date of the Operating Agreement ("EDO") and other activities commencing on the commencement date of the Operating Agreement ("CDO"), as such dates are defined therein.

3. The Parties recognize that the completion of the structure where they shall operate is a multi-year process, that this FIU-GS Agreement is dependent upon the existence of the actual structure, that the County is responsible for the construction of the structure and that the timing of completion of the structure is beyond the control of the Parties, that this development and construction process is sufficiently long for the parties to utilize the time between the EDOA and CDOA to develop specific programs and mutually beneficial programs and that planning such specific activities even prior to the EDOA is contrary to best practices as this would not allow the flexibility required for the most effective partnerships.

4. Mutual Obligations.

a. Within thirty (30) days after the EDOA, the Parties shall designate in writing a responsible party as the contact person for the administration of this FIU-GS Agreement. Each such person shall be designated as the "Administrator" for his/her appointing party and each party hereto reserves the right to substitute another Administrator upon written notice.

b. Within ninety (90) days of their appointments as Administrator, the two Administrators shall meet and agree upon a schedule for the development of programming and other partnerships between the Parties.

c. The partnerships between the Parties shall take into consideration the goals and objectives of the Plan for FIU students, faculty and the community including, but not limited to, the following anticipated benefits: joint marketing, signage and promotion; GS and FIU faculty and staff affiliations; workshops and master classes; student and faculty opportunities for performance, directing, set design, lighting, costuming, stage managements, and arts management; use of the Theater and other facilities for office space, meetings, classes, events, exhibitions, lectures, symposia, conferences, ceremonies; and other benefits necessary to advance FIU, the County and GS. At a minimum, the benefits will reflect consideration of all of the terms and conditions stated in the Plan, including, without limitation, Attachment D-Coconut Grove Playhouse Questions and Answers. GS, as the operator of the playhouse, will be responsible for and shall have discretion in establishing schedules and priorities regarding usage of the playhouse and related facilities and in exercising its discretion in such scheduling shall appropriately account for GS obligations under this Agreement and the Plan.

d. The Administrators shall, in their proposed partnerships, also take into consideration opportunities for the FIU Theater Department for teaching, learning, research, and performance activities (e.g., student internships, workshops with practicing theater professionals, university sponsored performances, opportunities for

theater and arts faculty to develop professional credentials through acting, directing, set and costume design, production and technical aspects of lighting and sound, etc.).

e. The Administrators shall also, in their proposed partnerships, take into consideration opportunities to benefit the community at large while meeting their organizations' respective missions.

f. The Administrators shall, within twelve (12) months of their initial meeting as required above, present a joint outline of proposed partnerships to their respective Boards of Directors or other governing bodies for review and input.

g. Thereafter, and giving due weight to the input from their governing boards, the Administrators shall in the following six(6) months, draft an agreement or agreements for presentation to their respective governing bodies for partnerships.

h. All agreements for partnerships approved by the respective parties in writing shall be binding according to their terms, the commencement date for each of these agreements shall be the CDOA, and the term shall be as set forth above in paragraph 1.

5. Funding/No-Cost. The Parties shall at no time be required to expend their funds to fulfill their obligations arising out of or pursuant to this FIU-GS Agreement except to the extent specifically agreed in writing.

6. Dispute Resolution. Given the nature of this FIU-GS Agreement, the Parties recognize that impasses and even disputes may arise. The Parties agree to engage in mediation of any disputes at the written request of either Party as a condition precedent to the filing of any lawsuit. In the event the Parties are unable to reach agreement informally or through a mediation, then either Party shall be permitted to pursue legal action provided that under no circumstances shall either Party be permitted to recover money damages or incidental damages from the other Party or to obtain any relief that would prevent, limit or restrict GS from its use of the Property or from the exercise of its rights as set forth in the preceding paragraph.

[SIGNATURE PAGE FOLLOWS]

ATTACHMENT B - GABLESTAGE/FIU AGREEMENT

The Parties have hereto executed this FIU-GS Agreement on the dates set forth with their signatures.

THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES

By: 
Name: Kenneth A. Jeske
Title: Senior V.P. and CEO
Date: 4-8-15

Approved:


Brian Schriener, Dean
College of Architecture & The Arts
Florida International University

Approved as to form
and legally

F.I.U. Attorney

GABLESTAGE, INC.

By: 
Name: Joseph Adler
Title: Producing Artistic Director
Date: April 10, 2015

AGREEMENT BETWEEN THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES (FIU) AND GABLESTAGE, INC.

This Agreement ("FIU-GS Agreement") is entered into this ___ day of February, 2013, 2015 ("Effective Date") by and between The Florida International University Board of Trustees ("FIU") and GableStage, Inc. ("GableStage" or "GS") (each a "Party" and collectively, the "Parties").

WITNESSETH:

Whereas, ~~the FIU and~~ GS and Miami-Dade County (the "County") submitted a proposal to the State of Florida for the development and use of the property owned by the State of Florida and known as the Coconut Grove Playhouse property ("Property") requesting a lease ("Lease") or other property interest in the Property for use in accordance with the jointly prepared Coconut Grove Playhouse Business Plan ("Plan"); and

Whereas, on August 20, 2013, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Florida Cabinet) approved the Lease and Plan; and

Whereas the Plan provides for a written Operating Agreement between the County and GS ("Operating Agreement"); and

Whereas the Plan and the proposed Operating Agreement provide for a written agreement between GS and FIU creating certain rights and benefits for FIU taking into account the goals of the Business Plan for FIU's students, faculty and the community.

The ~~parties~~Parties hereto, GS and FIU (~~referred to as "Parties" for purposes of this FIU-GS Agreement~~), in consideration of the mutual promises and benefits contained herein and each with full authority to execute this agreement through its lawfully selected officers or agents or designees, agree as follows:

1. Term. This FIU-GS Agreement shall be for a term required pursuant to the Plan and Operating Agreement, as may be modified from time to time by matters within and outside the control of the Parties.

2. This FIU-GS Agreement contemplates that FIU and GS shall provide for agree to develop certain activities starting on the Effective Date~~effective date~~ of the Operating Agreement ("~~EDOA~~") and other activities commencing on the Commencement

Date commencement date of the Operating Agreement ("CDOA"), as such dates are defined therein.

3. The Parties recognize that the completion of the structure where they shall operate is a multi-year process, that this FIU-GS Agreement is dependent upon the existence of the actual structure, that the County is responsible for the construction of the structure and that the timing of completion of the structure is beyond the control of the Parties, that this development and construction process is sufficiently long for the parties to utilize the time between the EDOA and CDOA to develop specific programs and mutually beneficial programs and that planning such specific activities even prior to the EDOA is contrary to best practices as this would not allow the flexibility required for the most effective partnerships.

4. Mutual Obligations.

a. Within thirty (30) days after the EDOA, the Parties shall designate in writing -a responsible party as the contact person for the administration of this GS-FIU-GS Agreement. Each such person shall be designated as the "Administrator" for his/her appointing party and each party hereto reserves the right to substitute another Administrator upon written notice.

b. Within ninety (90) days of their appointments as Administrator, the two ~~administrators~~Administrators shall meet and agree upon a schedule for the development of programming- and other partnerships between the Parties.

c. The partnerships between the Parties shall take into consideration the goalgoals and objectives of the Plan for FIU students, faculty and the community. ~~The including, but not limited to, the following anticipated benefits may include:~~ joint marketing, signage and promotion; GS and FIU faculty and staff affiliations; workshops and master classes; student and faculty opportunities for performance, directing, set design, lighting, costuming, stage managements, and arts management; use of the Theater and other facilities, for office space, meetings, classes, events, exhibitions, lectures, symposia, conferences, ceremonies; and other benefits necessary to advance FIU, the County and GS. At a minimum, the benefits will reflect consideration of all of the terms and conditions stated in the Plan, including, without limitation, Attachment D- Coconut Grove Playhouse Questions and Answers. GS, as the operator of the playhouse, will be responsible for and shall have discretion in establishing schedules and priorities regarding usage of the playhouse and related facilities and in exercising its discretion in such scheduling shall appropriately account for GS obligations under this Agreement and the Plan.

d. The Administrators shall, in their proposed partnerships, also ~~take into consideration opportunities for the FIU Theater Department for teaching-, learning,~~

research, and performance activities (e.g., student internships, workshops with practicing theater professionals, university sponsored performances, opportunities for theater and arts faculty to develop professional credentials through acting, directing, set and costume design, production and technical aspects of lighting and sound, etc.).

e. The Administrators shall also, in their proposed partnerships, take into consideration opportunities to benefit the community at large while meeting their organizations' respective missions.

f. The Administrators shall, within twelve (12) months of their initial meeting as required above, present a joint outline of proposed partnerships to their respective Boards of Directors or other governing bodies for review and input.

g. Thereafter, and giving due weight to the input from their governing boards, the Administrators shall in the following six(6) months, draft an agreement or agreements for presentation to their respective governing bodies for partnerships.

h. All agreements for partnerships approved by the respective parties in writing shall be binding according to their terms, the commencement date for each of these agreements shall be the CDOA, and the term shall be as set forth above in paragraph 1.

5. Funding/No-Cost. The Parties shall at no time be required to expend their funds to fulfill their obligations arising out of or pursuant to this FIU-GS Agreement except to the extent specifically agreed in writing.

~~6. Dispute Resolution. Exclusivity and Non-Competition. The parties recognize and agree that each party hereto is free to enter into partnerships and ventures and other relationships with other persons and entities and nothing contained herein prevents or limits FIU or GS from entering into such agreements except that FIU shall enter into no such agreements with any for-profit or not for profit theater organization with a theater operated or planned to be operated within a one kilometer (.62 mile) radius of the Property at any time in the first ten (10) years from the Effective Date. Furthermore, GS reserves and is granted the exclusive right of use of the Property and the intended theater facilities and all scheduling of activities upon the Property shall be in the sole discretion of GS.~~ Given the nature of this FIU-GS Agreement, the Parties recognize that impasses and even disputes may arise. The Parties agree to engage in mediation of any disputes at the written request of either Party as a condition precedent to the filing of any lawsuit. In the event the Parties are unable to reach agreement informally or through a mediation, then either Party shall be permitted to pursue legal action provided that under no circumstances shall either Party be permitted to recover money damages or incidental damages from the other Party or to obtain any relief that would prevent,

limit or restrict GS from its use of the Property or from the exercise of its rights as set forth in the preceding paragraph.

7.

[SIGNATURE PAGE FOLLOWS]

The Parties have hereto executed this FIU-GS Agreement on the dates set forth with their signatures.

THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES

By: _____

Name:

Title:

Date:

Approved:

Brian Schriener, Dean
College of Architecture & The Arts

~~Given the nature of this agreement, the parties recognize that impasses and even disputes may arise. The parties agree to engage in mediation of any disputes at the written request of either party as a condition precedent to the filing of any lawsuit. In the event the parties are unable to reach agreement informally or through a mediation then either party shall be permitted to pursue legal action provided that under no circumstances shall either party be permitted to recover money damages or incidental damages from the other party or to obtain any relief that would prevent, limit or restrict GS from its use of the Property or from the exercise of its rights as set forth in the preceding paragraph.~~

~~Agreed on the date set forth above.~~

~~GableStage, Inc.~~

By: _____

~~As authorized officer or agent~~
~~Florida International University~~

By: _____

~~As authorized officer or agent~~ GABLESTAGE,
INC.

By: _____

Name:

Title:

Date: