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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: February 5, 2008

Agenda Item No. 12(A)(1)

Resolution R-141-08

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Amendment - Resolution Ratifying Execution of Amendment No. 6 to the Operating Management Agreement Between Miami-Dade County and Performing Arts Center Trust, Inc.

This item was amended at the December 10, 2007 Recreation and Cultural Affairs Committee to include that the Performing Arts Center Trust, Inc. will conduct its affairs in accordance with all applicable law, statutes, ordinances and regulations of Miami-Dade County, as they may be enacted or amended from time to time. The County Attorney's Office provided the appropriate language, as shown in Section F (f) of the accompanying agreement , which was approved by the Performing Arts Center Trust, Inc. at their January 22, 2008 meeting.

Recommendation

It is recommended that the Board ratify the execution of the attached Amendment No. 6 to the Operating Management Agreement between Miami-Dade County and the Performing Arts Center Trust, Inc. The Board, at its June 26, 2007 meeting, directed the County Manager to amend this agreement to provide for County oversight of the operations of the Carnival Center for the Performing Arts. In order to effectuate the Board's direction in a timely manner, it was necessary to execute this agreement prior to formal Board approval.

Scope

The proposed agenda item will have a countywide impact.

Fiscal Impact/Funding Source

There is no direct fiscal impact associated with this agreement. The financial and operational oversight provided for in this agreement will be performed by existing County staff.

Background

At its June 26, 2007 meeting, the Board approved the Mid-Year Supplemental Budget Ordinance (Ord. No. 07-83), which included a $4.1 million budget adjustment for the Carnival Center for the Performing Arts. As a condition of this approval, the Board required that oversight by the County Manager and the Commission Auditor be included as a term of the Operating Management Agreement between the County and the Performing Arts Center Trust, Inc. The County Attorney's Office provided the appropriate language, as shown in Section E.1.2 of the accompanying Agreement, which was then approved by the Performing Arts Center Trust at their July 31, 2007 meeting.

While my Office and the Office of Strategic Business Management continue to stay very involved in the financial and operational oversight of the Carnival Center, the Commission Auditor's Office has also initiated their meetings with Carnival Center financial staff and is undergoing their own auditing process.

This operating agreement was originally entered into in 1993. We will be working in conjunction with the Performing Arts Center Trust, Inc., and the new President and CEO, Dr. Larry Wilker, to update, and possibly rewrite this agreement to better reflect the operational and financial relationship that has evolved since the time the terms of this agreement were originally conceived.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: February 5, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
2-5-08

RESOLUTION NO. **R-141-08**

RESOLUTION RATIFYING EXECUTION OF AMENDMENT NUMBER SIX TO THE AMENDED AND RESTATED OPERATING MANAGEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE PERFORMING ARTS CENTER TRUST, INC.; AND AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXERCISE RENEWAL AND TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby ratifies the execution of Amendment Number Six to the Amended and Restated Operating Management Agreement between Miami-Dade County and the Performing Arts Center Trust, Inc., in substantially the form attached hereto and made a part hereof; authorizing the County Mayor or Designee to exercise renewal and termination provisions thereof.

The foregoing resolution was offered by Commissioner **Sally A. Heyman** , who moved its adoption. The motion was seconded by Commissioner **Katy Sorenson** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	**aye**		
Barbara J. Jordan, Vice-Chairwoman	**aye**		
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**nay**	Dennis C. Moss	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**nay**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of February, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. DBM

Deborah Bovarnick Mastin

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

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

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

A. GENERAL TERMS

A. 1. RECITATIONS INCORPORATED.
The recitations stated above are incorporated into the terms of this Agreement.

A.2. PARTIES.
The parties to this Agreement are Miami- Dade County, a political subdivision of the State of Florida, ("County") and the Performing Arts Center Trust, Inc., a not for profit Florida corporation, "Corporation").

A.3. SCOPE OF AGREEMENT.
This Agreement shall encompass all matters relating to the services to be provided and the obligations to be performed by the Corporation to the County and the County's obligations to the Corporation in connection with the planning, design, construction, furnishing and operations of the proposed performing arts facilities on County owned property ("Facility") consisting of one or more structures, all owned by the County, as may be established in the Building Program which will be recommended by the Corporation and is subject to the approval of the Board of County Commissioners of Miami-Dade County, Florida (the "Board").

A.4. TERM

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

A.5. CLAIMS.

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

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

A.6. PRESIDENT.

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

A.7. CORPORATION PERSONNEL.

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

A. 8. CORPORATION BUDGET AND RECORDS.

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

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

A.9. DEBT.

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

A. 10. ANTI-LOBBYING.

a. No Corporation Director as presently defined in the Articles of Incorporation of the Corporation, *as they may be amended from time to time,* shall discuss any pending solicitation for commodities, services or construction in connection with the Facility with any County commissioner, officer or employee, except at a public meeting which satisfies the requirements of the Florida Government in the Sunshine Law. All communications regarding pending solicitations shall occur through the Corporation staff.

b. The bid, proposal or submission of any bidder or proposer who, itself or through its representative, discusses any pending solicitation for commodities, services or construction in connection with the Facility with any Corporation director, officer or employee or with any County commissioner, officer or employee, except at a public meeting which satisfies the requirements of the Florida Government in the Sunshine Law, may be rejected as non-responsive. This Section shall not preclude the submission in writing to the County or the Corporation staff, by a potential bidder or proposer of questions related to factual matters concerning the bid/proposal or bid/proposal process.

c. The provisions of this Section shall be included in the specifications for each solicitation for goods or services issued by the Corporation in

connection with the Facility.

A. 11. RECOMMENDATION AND APPROVAL.

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

A.12. ASSIGNMENT, SUBLETTING AND DELEGATION.

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

B. PLANNING PHASE

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

B.1. COUNTY RIGHTS AND OBLIGATIONS DURING PLANNING PHASE

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

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

certain existing facilities and for the appropriate funding thereof.

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

B.2. CORPORATION RIGHTS AND OBLIGATIONS DURING PLANNING

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

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

C. DESIGN PHASE

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

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

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

C.1.2. The County shall allocate and pay the architectural, engineering, and other reasonable and necessary fees for the architectural and engineering design of the Facility, as provided in this Agreement.

C.1.3. After acceptance by the Corporation and the County of the architectural, engineering and acoustical design plans prepared by the Architect, the County shall issue an invitation for bids for the construction of the Facility. The invitation for bids will be upon specifications for a complete structure or structures, usable for its intended purpose. The County shall contract with the lowest responsible and responsive Contractor or CM submitting a bid to construct the Facility in accordance with the plans and specifications prepared by the Architect and approved by the County.

C.1.4. The County shall provide the construction management services for its own benefit. The cost of these services shall be reimbursed from the bond proceeds to be issued by the County, and shall be considered part of the County's cost of the Facility.

C.1.5. The County shall insure that the total compensation due to the Architect and to the Contractor or CM does not exceed available funds. The County may reduce the scope of the Building Program or the Facility plans and specifications in order to keep the costs within available funds; provided however, that as a prerequisite to any such modification, the County shall first provide the Corporation with a reasonable opportunity to recommend the appropriate modifications or to provide sufficient additional funds to build the Facility as proposed.

C.1.6. The County shall only be obligated to proceed to the Construction Phase if the cost of the design and construction of the Facility as shown on the winning bid together with the Planning and Design Phase costs is less than the construction funds provided by bonds issued by the County and other non-bond sources in addition to the Corporation's contributions provided in cash to the County to that date; except that the Corporation shall have the option of supplementing that amount with its own additional resources, provided however that at the time the County is called upon to award the contract for the construction of the Facility, the full amount of the Corporation's contribution and the County's portion to that contract must be in the form of a financing plan approved by the Board of County Commissioners.

C.2. CORPORATION RIGHTS AND OBLIGATIONS DURING DESIGN PHASE

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

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

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

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

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

D. CONSTRUCTION PHASE

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

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

D. 1. COUNTY RIGHTS AND OBLIGATIONS DURING CONSTRUCTION PHASE

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

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

D.2. CORPORATION RIGHTS AND OBLIGATIONS DURING CONSTRUCTION PHASE

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

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

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

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

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

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

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

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

D.2.2 The Corporation shall appoint a committee called the "Construction Committee", which shall meet with the County construction management staff and with appropriate representatives of the Architect and the Contractor or CM on a regular monthly basis. The Corporation's participation in the construction process of the Facility shall not increase the cost of design and construction beyond the amount identified in the Final Financing Plan and shall not delay the construction schedule.

D.2.3. The County will include in the contract with the Contractor or CM a 5% contingency allowance. Changes within the contingency allowance will be subject to the sole approval of a committee designated by the Corporation, upon the recommendation of the Architect and the County's Project Director through a process that shall be outlined by the Corporation's Construction Committee and approved by the Corporation's Board of Directors. The above Owner Scope Additions in the amount of One Million Three Hundred and Eighty-Three Thousand Dollars ($1,383,000) will not increase the above contingency allowance and will be subject to the requirements stipulated above in Section D.2.3.

E. OPERATIONS PHASE

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

E. 1. COUNTY RIGHTS AND OBLIGATIONS DURING OPERATIONS PHASE

E.1.1 The County shall at all times be the sole owner of the Facility and shall make structural repairs to the roof, structural skeleton and exterior walls of the Facility within an annual budgeted allocation recommended by the Corporation and adopted by the Board of County Commissioners in its sole discretion.

E.1.2 The County, acting through the County Manager and the Commission Auditor or their designees, shall have the right to oversight of the Corporations' operations.

E.2. CORPORATION RIGHTS AND OBLIGATIONS DURING OPERATIONS PHASE

E.2.1. The Corporation shall operate and manage the Facility on behalf of the County on an exclusive basis using the highest degree of professionalism. In connection with its management of the Facility, the Corporation shall conduct its business in accordance with the same requirements which are imposed by law upon the County by County or local charter or ordinance, or by state or federal statute, or by any rule, regulation or order; provided,

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

E.2.2. The Corporation shall establish uniform rates for rental of spaces within the Facility, for temporary licenses to use spaces or equipment within the Facility, and for services to be performed within the Facility. Various classes of rates may be established, so long as the rates are assessed in a non-discriminatory manner within each class so as to provide access to the Facility for a wide spectrum of Miami-Dade County based performing arts groups. The Corporation shall make the Facility available to Miami-Dade County community-based arts groups at reduced rates. The County shall not be entitled to keep any revenues received by the Facility from the rental of spaces therein, the sale of tickets by the Corporation, revenues from concession sales, and any other revenue generated by the Corporation. The County shall not be entitled to any rental fees from the Corporation, nor shall the County establish any admission charges or fees. The Corporation shall establish ticket prices, concession sales rates, parking fees in facilities controlled by the Corporation and all other fees and rates incidental to the operation of the Facility consistent with sound management practice.

E.2.3. The Corporation shall establish a booking policy in which various classes of rates, priorities and procedures may be established, so long as these rates, priorities and procedures are assessed in a non-discriminatory manner within each class. This booking policy will govern the priorities and procedures for the use of space and services within the Facility. In accordance with its booking policy, the Corporation shall establish a standard procedure for allocation of rehearsal and performance spaces among the Designated Artistic Organizations, as defined in the Articles of Incorporation of the Corporation. In accordance with its booking policy, the Corporation shall establish a standard procedure for allocation of space for other potential occupants or licensees of spaces within the Facility. The Corporation shall retain a master set of booking records.

E.2.4. The Corporation shall schedule the spaces within the Facility, and establish policies for collecting and retaining rents, admissions, and fees, all in accordance with its uniform box office policy. The Corporation shall select vendors and concessionaires in accordance with the procedures imposed upon the County by County Ordinance, Charter or by state or Federal statute, rule, regulation or order. The Corporation shall provide all theater and property management, accounting, advertising, public relations and legal services required by the operations of the Facility; it shall obtain and pay all costs for utilities, water, sewer, trash and garbage collection, as

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

E.2.5. The Corporation shall establish a procedure for handling ticket sale revenues and other box office receipts which it may receive in contemplation of or arising from an event at the Facility in order to protect the ticket purchasers, the performers, the County and the Corporation. The Corporation shall provide insurance, a bond or other evidence of security for ticket sale revenues, if required by the County.

E.2.6. The Corporation shall establish and shall follow a marketing plan to enhance and encourage use of the Facility. The marketing plan shall contain specific long and short-term goals for attracting audience support. At least once each year the Corporation shall present its then current marketing plan to the County and shall report on the results of its past marketing plans.

E.2.7. The Corporation shall establish and shall follow a program plan to maximize the Corporation's ability to meet its goals and objectives for the use of the Facility. At least once each year the Corporation shall present its then current program plan to the County and shall report on the results of its past program plans.

E.2.8. The Corporation shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Facility and the County shall have no responsibility therefore.

E.2.9. The Corporation shall indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of the Agreement. The Corporation shall pay all claims and losses of any nature whatever in connection therewith, and shall defend all suits, in the name of the County when applicable, and shall pay all costs and judgments which may issue thereon.

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

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

A. Worker's Compensation Insurance for all employees of the Corporation as required by Florida Statute 440.

B. Public Liability Insurance on a comprehensive basis including products liability and host liquor liability, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami- Dade County must be shown as an additional insured with respect to this coverage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

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

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

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

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

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

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

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

E.2. 10. The Corporation shall not rely upon revenues from the County's general fund to help pay for the programming, marketing, operation and improvement of the Facility. The Corporation shall apply for available state, federal and private grant money to help pay for these expenses.

E.2.11. The Corporation shall not discriminate in the allocation of space, in the charges imposed or in any other respect arising out of this Agreement, on the basis of race, sex, national origin, religion, creed, age, or disability.

E.2.12. The Corporation shall recommend appropriate repairs to the County as needed, within the scope of the County's obligation to repair and its budget. All other repairs and refurbishment and redecoration shall be the obligation of the Corporation. The Corporation may not alter or reconfigure the performance spaces or modify the structure without the approval of the County Manager.

E.2.13. The Corporation shall be responsible for compliance with the requirements of copyright law and the requirements of all applicable sales and use taxes arising out of performances or events at the Facility and all other applicable taxes.

F. COVENANTS OF CORPORATION

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

(a) Corporation will not discriminate in either its operations or employment practices and procedures on the basis of race, creed, national origin, religion, sex, or disability.

(b) Corporation will conduct its meetings in accordance with the Florida Government in the Sunshine Statute to the same extent as if it were a government agency.

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

(d) Corporation's Board of Directors shall reflect the ethnic and cultural diversity of the Miami-Dade County community as provided in its Articles of Incorporation.

(e) Corporation's Board of Directors shall each file annual Financial Disclosure Statements with the Clerk of the Board of County Commissioners on the same forms and at the same times as are required of County Commissioners by Florida Law.

(f) Corporation will conduct its affairs in accordance with all applicable law, statutes, ordinances and regulations of Miami-Dade County, the State of Florida and the United States, as they may be enacted or amended from time to time.

(g) Corporation will not include the words "Knight-Ridder" or "Miami Herald" in the name of the Facility.

G. CORPORATION EVENTS OF DEFAULT

Any of the following situations shall be an event of Default

(1) Failure to comply with the covenants set forth in Article F.

(2) Failure to pay the sums required in Section C.2.1 by the times required.

(3) A material failure to observe any other provision of this Agreement.

(4) Failure to properly or adequately maintain and secure the Facility.

(5) Failure to operate and market the Facility so as to appropriately maximize use of the Facility, including but not limited to, failure to book a sufficient number of events at the Facility and failure to provide adequate access to a wide spectrum of Miami-Dade County based performing arts organizations; provided, however, that the Corporation shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots.

(6) Failure of the Corporation to remain solvent or to operate the Facility in a fiscally responsible manner.

H. TERMINATION

H. 1. CORPORATION TERMINATION FOR CONVENIENCE.
The Corporation may terminate this Agreement for its convenience upon 180 days prior written notice to the COUNTY.

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

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

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

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

H.3. DISPUTE RESOLUTION PROCEDURE.

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

H.4. EFFECT OF TERMINATION.

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

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

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

I. NOTICES

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

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

copy to: County Attorney

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

J. ENTIRETY OF AGREEMENT

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

K. AMENDMENT

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

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

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

PERFORMING ARTS CENTER TRUST, INC.

(corporate seal)

By:_____
Chair

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 or Designee

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

(SEAL)