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

MEMORANDUM

Agenda Item No. 14(A)(3)

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

DATE: October 20, 2015

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

SUBJECT: Resolution approving restrictive covenant in favor of the State of Florida, Department of State, Division of Cultural Affairs, for a term of ten years for the use, operation, and renovation of the Adrienne Arsht Performing Arts Center located at 1300 Biscayne Boulevard, Miami, Florida 33132; authorizing the County Mayor to execute same for and on behalf of Miami-Dade County and authorizing its recordation in the public records of Miami-Dade County

Resolution No. R-952-15

The accompanying resolution was prepared by the Department of Cultural Affairs Department and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

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Memorandum

MIAMI-DADE COUNTY

Date: October 20, 2015

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving Restrictive Covenant in Favor of the State of Florida, Department of State, Division of Cultural Affairs, for a Term of Ten Years for the Use, Operation, and Renovation of the Adrienne Arsht Performing Arts Center Located at 1300 Biscayne Boulevard, Miami, Florida, 33132; Authorizing the County Mayor or County Mayor's Designee to Execute Same for and on Behalf of Miami-Dade County and Authorizing its Recordation in the Public Records of Miami-Dade County

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Recommendation

It is recommended that the Board of County Commissioners (Board) grant the County Mayor or the County Mayor's designee the authority to execute a Restrictive Covenant on the Adrienne Arsht Center for the Performing Arts of Miami-Dade County (Arsht Center) in favor of the Florida Department of State's Division of Cultural Affairs in support of Performing Arts Center Trust, Inc.'s (Trust) FY 2015-16 Cultural Facilities Grant in the amount of $500,000.00 to support renovations and improvements to the Arsht Center.

Scope

The Arsht Center is located at 1300 Biscayne Boulevard, Miami, Florida, 33132, which is in County Commission District 3, represented by Commissioner Audrey M. Edmonson. This facility is one of countywide and regional importance.

Fiscal Impact/Funding Source

The County owns the land and buildings that make up the Arsht Center and has an Operating and Management Agreement with the Trust to operate and maintain the facility. Receipt of this State Cultural Facilities Grant will be used to support renovations and improvements to the Arsht Center.

The State grant requires matching funds in the amount of $1 million that will be provided by the Trust.

Delegation of Authority

Authority for executing the Restrictive Covenant for this grant resides with the County Mayor or Mayor's designee.

Track Record/Monitor

The Trust has a track record of implementing local, state, and federal grants successfully. Michael Spring, from the Department of Cultural Affairs, will be responsible for the Restrictive Covenant.

Background

In 1991, cultural arts, government and business leaders in Miami-Dade County conceptualized a world-class performing arts center in downtown Miami. As a result, the Trust was established as a 501(c)(3). Miami-Dade County owns the Arsht Center's land and buildings and provided oversight in its construction. The Trust--a non-profit corporation governed by a 39-member volunteer board--manages and operates the Arsht Center, and is also charged with raising funds from the public and private sector. The Arsht Center is celebrating its 10th anniversary season in FY 2015-16 and is committed to making sure that the facility continues to be maintained in "like new" condition.

The Arsht Center, designed by world-renowned architect Cesar Pelli of Pelli Clarke Pelli Architects, includes the 2,400-seat Sanford and Dolores Ziff Ballet Opera House; the 2,200–seat John S. and James L. Knight Concert Hall; the 200-seat Carnival Studio Theater; the Peacock Education Center; the restored Carnival Art Deco Tower; and the Thomson Plaza for the Arts that unites the Arsht Center buildings across Biscayne Boulevard.

The Trust applied for and received from the State of Florida, Division of Cultural Affairs a FY 2015-16 Cultural Facilities grant in the amount of $500,000.00 These resources will be used primarily to pay for repairs, pressure cleaning, and sealing of the building's exterior stone throughout the Arsht Center campus in order to restore the halls' exterior surfaces to "like new" condition, and further maintain and protect the exterior building envelope into the future.

As result of the Cultural Facilities Grant award for FY 2015-16, the State requires that a restrictive covenant be executed and recorded on the Arsht Center's property, requiring that the facility be used for cultural purposes for a period of ten (10) years following the execution of the grant award agreement. The renovation project will be implemented by the Trust pursuant to its Operating and Management Agreement with the County. The Miami-Dade County Department of Cultural Affairs will work cooperatively with the Trust to ensure the success of this project

Michael Spring
Senior Advisor, Office of the Mayor

MEMORANDUM

(Revised)

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

DATE: October 20, 2015

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

SUBJECT: Agenda Item No. 14(A)(3)

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(3)
10-20-15

RESOLUTION NO. R-952-15

RESOLUTION APPROVING RESTRICTIVE COVENANT IN FAVOR OF THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS, FOR A TERM OF TEN YEARS FOR THE USE, OPERATION, AND RENOVATION OF THE ADRIENNE ARSHT PERFORMING ARTS CENTER LOCATED AT 1300 BISCAYNE BOULEVARD, MIAMI, FLORIDA 33132; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND AUTHORIZING ITS RECORDATION IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY

WHEREAS, Miami-Dade County has an operating agreement with the Performing Arts Center Trust, Inc. (the "Trust"), pursuant to which the Trust is charged with operating the Adrienne Arsht Performing Arts Center ("PAC") on behalf of the County; and

WHEREAS, the Trust applied for, and received, a grant in the amount of $500,000.00 from the State of Florida, Department of State, Division of Cultural Affairs ("State") for renovations to the PAC; and

WHEREAS, a condition of the State grant is that the PAC execute and record in the public records of the County a restrictive covenant for a term of ten years limiting the use of the PAC to that of a regional, cultural facility that is primarily engaged in the disciplines of dance, music, theater, visual arts, literature, media arts, interdisciplinary and multidisciplinary programs, all in accordance with Section 265.702(5), Florida Statutes; and

WHEREAS, as the County owns the PAC and the land underneath, it is necessary that, and this Board desires to have, the County approve and execute the restrictive covenant and allow it to be recorded on County property; and

WHEREAS, further, this Board desires to accomplish the purposes set forth in the Mayor's Memorandum which is attached hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

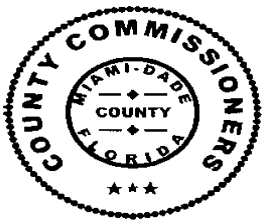
Section 1. The foregoing recitals are incorporated into this resolution and are approved by this Board.

Section 2. This Board hereby approves the restrictive covenant in substantially the form attached hereto as Exhibit "A" for County-owned land and the PAC located at 1300 Biscayne Boulevard, Miami, Florida 33132, and authorizes the County Mayor or Mayor's designee to execute the restrictive covenant and authorized the Trust to record same in the public records of Miami-Dade County.

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

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**absent**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**aye**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

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

Monica Rizo Perez

EXHIBIT A

RESTRICTIVE COVENANT
(Grantee leases land and building.)

THIS RESTRICTIVE COVENANT is hereby entered into this _____ day of _____, 20___, by **Miami-Dade County**, hereinafter referred to as the "Owner"; **Performing Arts Center Trust, Inc.**, hereinafter referred to as the "Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Owner is the fee simple title holder of the building(s) and the underlying land located at **1300 Biscayne Boulevard. Miami, Florida 33132.** A legal description of the subject property is attached as Exhibit I and made a part of this covenant.

WHEREAS, the Grantee has an Operating Agreement with the Owner to operate the facility for an initial term set to expire on February 28, 2026. "Facility" is used herein to refer to the building(s) and the associated land that will be used as a "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **$500,000,** to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility in accordance with Section 265. 701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the facility will be used as "cultural facility," as defined herein, for at least (10) ten years following the execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties hereby agree to the following:

1.) This restrictive covenant shall run with the title to the land and the cultural facility, encumber them, and be binding upon the Grantee, the Owner and their successors in interest for ten (10) years following the execution of the grant award agreement.

2.) The grant award shall only be expended for

Project Title: Performing Arts Center Trust, Inc. (Grant# 16.9.200.547)

3.) The Parties agree that for the required duration of this covenant, all improvements to the facility and the associated land, funded in whole or part by grant funds shall be owned by the Owner.

4.) The Division has the right to inspect the facility and the associated land at all reasonable times to determine whether the conditions of the grant award agreement and this covenant are being complied with.

5.) The Grantee shall operate and maintain the facility as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition

or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums."

6.) This restrictive covenant will be violated by the Grantee, or its successors in interest if the facility ceases to be used as a cultural facility, as defined above, within ten (10) years following execution of the execution of the grant award agreement as required by Section 265.701(4), Florida Statutes. If the Grantee violates this restrictive covenant, it shall repay the grant funds to Division pursuant to the amortization schedule set forth below:

a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;

b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;

c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;

d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;

e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and

f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) The amount due as a result of Grantee's violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the parties.

8.) If the entire amount due under the paragraph (6.) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the facility is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee or the Owner to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. Such a stipulated judgment, when recorded, shall be considered a valid lien upon the Grantee's interest in the facility and the associated land, including all improvements made in whole or in part with grant funds.

9.) As a condition to receipt of the grant funds, the Grantee shall:

a. Record this covenant in the public records with the Clerk of the Circuit Court of **Miami-Dade** County, Florida;

b. Pay all fees associated with its recording; and

c. Provide a certified copy of the recorded covenant to the Division and to the Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Owner, Grantee and the Division affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

IN WITNESS WHEREOF, the Grantee and the Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

For the Grantee (Performing Arts Center Trust, Inc.):

WITNESSES:

Jodi Farrell
First Witness Signature

Jodi Farrell
First Witness Name (print)

Second Witness Signature

David Green
Second Witness Name (print)

PARTIES:

M. J. Richard
GRANTEE SIGNATURE

M. John Richard
GRANTEE NAME (print)

1300 Biscayne Blvd.
GRANTEE ADDRESS

Miami, Fl. 33132
City State Zip

The State of Florida County of Miami-Dade

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

M. John Richard personally
(Name)

appeared as President + CEO for Performing Art Center Trust, Inc.
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of identification Produced Personally Known

Executed and sealed by me at Miami-Dade, Florida on September 25, 2015

Notary Public in and for

Chantal Cecily Honore The State of Florida

[SEAL]

CHANTAL CECILY HONORE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF070610
Expires 11/17/2017

My commission expires: November 17, 2017

For the Owner (Miami-Dade County):

First Witness Signature	OWNER SIGNATURE
First Witness Name (print)	OWNER NAME (print)
Second Witness Signature	OWNER ADDRESS
Second Witness Name (print)	City State Zip

The State of Florida County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for _____
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of identification Produced _____

Executed and sealed by me at _____, Florida on _____

Notary Public in and for

The State of _____

[SEAL]

My commission expires: _____

For the Division (State of Florida Division of Cultural Affairs):

First Witness Signature

DIVISION OF CULTURAL AFFAIRS

First Witness Name (print)

DIV. REPRESENTATIVE NAME (print)

R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32303

Second Witness Signature

Second Witness Name (print)

The State of Florida County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

_____ personally
(Name)

appeared as _____ for the Florida Department of State,
(Position)
Division of Cultural Affairs known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____.

Notary Public in and for

The State of _____

[SEAL]

My Commission expires: _____

EXHIBIT I

LEGAL DESCRIPTION

Folio: 01-3231-056-0010
Address: 1300 Biscayne Blvd., Miami, FL 33132
Legal Description:
PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
TR A
LOT SIZE 3.524 AC M/L
FAU 01-3231-035-0010

Folio: 01-3231-056-0020
Address: 1351 Biscayne Blvd., Miami, FL 33132
Legal Decription:
PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
TR B LESS S140FT
LOT SIZE 1.466 AC M/L
FAU 01-3231-012-0150-0160-0170
0180 & 01-3231-015-0020
OR 19505-1686 0201 3

Folio: 01-3231-056-0021
Address: 1301 Biscayne Blvd., Miami, FL 33132
Legal Description:
PERFORMING ARTS CENTER OF MIAMI
PB 155-50 T-20256
PORT OF TR B DESC AS S140FT TR B
LOT SIZE .883 AC M/L
FAU 01-3231-014-0010-0030 &
OR 19505-1686 0201 3