

Memorandum



Date: July 8, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

Agenda Item No. 8(C)(1)

From: Daniella Levine Cava
Mayor

Resolution No. R-633-21

Subject: Resolution Approving an Operating and Management Agreement with Roxy Theatre Group, Inc. for the Westchester Cultural Arts Center

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Recommendation

It is recommended that the Board of County Commissioners (Board) waive competitive bid procedures pursuant to section 2-8.1 of the Code of Miami-Dade County, Florida and section 5.03D of the Home Rule Charter to approve an Operating and Management Agreement (Agreement) between Miami-Dade County and Roxy Theatre Group, Inc. (Roxy Theatre Group), a Florida not for profit corporation, by a two-thirds vote of the Board members present for the operation and management of the Westchester Cultural Arts Center.

Scope

The Westchester Cultural Arts Center is located at 7930 SW 40th Street within Tropical Park in District 10, which is represented by Commissioner Javier D. Souto. The programs offered by Roxy Theatre Group will have community-wide impact beyond the District's boundaries.

Delegation of Authority

In accordance with Section 2-8.3 of the Miami-Dade Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which includes authority for the Mayor and Mayor's designee to execute the Operating and Management Agreement and exercise all provisions, including cancellation provisions contained therein.

Fiscal Impact / Funding Source

This item will have a positive fiscal impact on the County; the Department of Cultural Affairs had projected annual overhead and operating costs of approximately \$750,000.00 for the Westchester Cultural Arts Center. By partnering with a cultural not-for-profit organization, Roxy Theatre Group will be responsible for all costs related to the operations, programming, and maintenance of the theater. Subject to the availability of funds in the County's FY 2021-2022 budget, there is the possibility of including a County subsidy to Roxy Theatre Group to cover facility overhead costs which are estimated to be \$380,000.00 annually. This is consistent with County support of other nonprofit cultural organizations that manage County theaters.

Track Record/Monitoring

Miami-Dade County has a track record of partnering with not-for-profit cultural organizations for the successful management and operation of some of our community's most significant cultural facilities, such as HistoryMiami, the Adrienne Arsht Center for the Performing Arts of Miami-Dade County and the Sandrell Rivers Theatre, among others. Michael Spring, Director of the Department of Cultural Affairs, will be responsible for working with Roxy Theatre Group in implementing the terms of the Agreement.

Background

The Building Better Communities General Obligation Bond (BBC-GOB) Program approved by voters in 2004 included a \$4 million allocation for the Westchester Cultural Arts Center project (referenced as the "Westchester Community Arts Center") to be constructed at Tamiami Park. Thereafter, in August of 2008, and pursuant to Resolution No. R-715-08, Miami-Dade County voters approved a referendum, as required by Article 7 of the Home Rule Charter, to allow the construction of a community arts center at Tropical Park instead of at Tamiami Park. Two subsequent significant modifications, Resolution No. R-589-10 approved on June 3, 2010 and Resolution No. R-185-20 approved on February 19, 2020, increased the budget for this project by \$4 million and \$2.8 million, respectively. A competitive selection process resulted in contracting with Zyscovich Architects Inc. in 2015 to lead the architectural and engineering work for the Westchester Cultural Arts Center. The Department has worked closely with the architect, providing input at key milestones of the project regarding theater design and operations to ensure that the theater is of the highest quality and functionality. The resulting facility is one that the entire team can be proud of and will be a great asset to the community. By Resolution No. R-196-20, the Board approved the award of the contract for the construction of the Westchester Cultural Arts Center with TGSV Enterprises, Inc. and the project is scheduled to be completed in the fall of 2021.

Similar care has been placed in identifying an operator for the facility. Roxy Theatre Group was founded in 2002 and has a distinguished track record for serving the children and families of West Miami-Dade County with educational programs and on-stage presentations of the performing arts. Roxy Theatre Group has produced seasons of recitals and musicals, implemented after-school programs, conducted an annual summer camp, and has participated in numerous local, regional, and national arts competitions and events. The company focuses on reaching under-served children, providing arts education and performance opportunities that would not normally be available to them. In recognition of the company's outstanding work in the arts, the Department of Cultural Affairs has provided Roxy Theatre Group with strong annual grants support for its events and activities. The Westchester Cultural Arts Center will provide this theater company with a stable home to continue to serve the families and children of our community.

It is in the best interest of the County to enter into an Operating and Management Agreement with Roxy Theatre Group as the operator of the Westchester Cultural Arts Center given their long and distinguished track record of serving the families and children of West Miami-Dade County. The successful operation of County facilities by nonprofit cultural organizations requires that the selected arts groups have the specialized qualifications that enable them to understand and manage facilities to achieve the programming and community goals that guided their development. The Westchester Cultural Arts Center was developed to serve families and children in the arts and to celebrate the Hispanic culture of the community through theater and the performing arts. Roxy Theatre Group has a long track record of providing original, high quality educational and multicultural professional theater arts programs for children and families of all cultures and backgrounds in West Miami-Dade County, has solid management and facility operational skills, and has established staff to quickly and efficiently to assume responsibility for the operations of the theater.

Through the Operating and Management Agreement with Miami-Dade County, Roxy Theatre Group will assume the day-to-day operational responsibilities for the theater, and use it for offering classes, performances, and recreational activities. Other key features of the Operating and Management Agreement include:

- Term: 30 years and may be renewed for up to two (2) additional 30-year terms;
- Scope: Theater building, including auxiliary spaces (front of house, backstage, administrative offices, rehearsal rooms, closets, etc.) and the thirty-nine (39) parking spaces in the adjacent surface parking lot allocated to the theater;
- Insurance: Roxy Theatre Group shall be responsible for maintaining insurance coverage, including Worker's Compensation Insurance, General Liability Insurance, and Automobile Liability Insurance;
- Repairs and maintenance: The County will be responsible for structural repairs to the roof and envelope of the building, subject to annual budgeted allocations adopted by the Board. Roxy Theatre Group will be responsible for overall maintenance, cleaning, and upkeep of building systems and utilities, and shall contribute to the maintenance and repair of the surface parking lot; and
- Termination: either party may terminate the agreement for convenience upon 180 days prior written notice.

Roxy Theatre Group will provide the staffing support for the operation of the theater and will be responsible for maintaining the facility on a day-to-day basis. The Department of Cultural Affairs had projected annual overhead and operating costs of approximately \$750,000.00 for the facility. By partnering with a cultural not-for-profit organization, the operational cost to the County will be substantially reduced. The Department's FY 2021-22 budget submission includes a \$380,000.00 requested allocation for the overhead and operation of the Westchester Cultural Arts Center, and if approved, the funding will be granted to Roxy Theatre Group pursuant to the issuance of a Grant Award Agreement to augment Roxy Theatre Group's own funds to operate and maintain the theater.

Attachments: Attachment 1: Operating and Management Agreement Between Miami-Dade County and Roxy Theatre Group, Inc.



Morris Copeland
Chief Community Services Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 8, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(C)(1)

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
- ☐ Statement of social equity 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 present ☒, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 8(C)(1)
7-8-21

RESOLUTION NO. R-633-21

RESOLUTION AUTHORIZING WAIVER OF FORMAL BID PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT TO APPROVE AN OPERATING AND MANAGEMENT AGREEMENT WITH ROXY THEATRE GROUP, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, FOR THE MANAGEMENT AND OPERATION OF THE WESTCHESTER CULTURAL ARTS CENTER LOCATED AT 7930 SW 40TH STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT AND TO EXERCISE ALL 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:

Section 1. The foregoing recital is incorporated in this resolution and is approved.

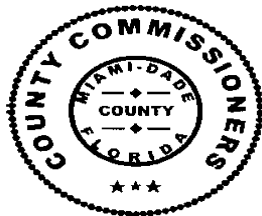
Section 2. This Board hereby authorizes a waiver of formal bid procedures pursuant to section 5.03(D) of the County Home Rule Charter and section 2-8.1(b) of the Code of Miami-Dade County, Florida, by a two-thirds vote of the Board members present, to approve the Operating and Management Agreement between Miami-Dade County and Roxy Theatre Group, Inc., a Florida not-for-profit corporation, in substantially the form attached to the accompanying memorandum and made a part hereof.

Section 3. This Board authorizes the County Mayor or County Mayor's designee to execute such agreement and to exercise all provisions contained therein.

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

	Jose "Pepe" Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	absent	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	absent	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2021. 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: **Melissa Adames**
 Deputy Clerk

Approved by County Attorney as
 to form and legal sufficiency.

MRP

Monica Rizo Perez

**OPERATING AND MANAGEMENT AGREEMENT BETWEEN
MIAMI-DADE COUNTY AND
THE ROXY THEATRE GROUP, INC.**

This Operating and Management Agreement (the "Agreement") is entered into this _____ day of _____, 20__, by and between MIAMI-DADE COUNTY, FLORIDA, (the "County"), a political subdivision of the State of Florida, and THE ROXY THEATRE GROUP, INC., a not for profit Florida corporation, ("Roxy" and jointly with the County referred to herein as "Parties").

W I T N E S S E T H:

Whereas, the County desires to contract with Roxy for the operations, programming and maintenance of Westchester Cultural Arts Center ("WCAC"), located at the entrance to Tropical Park, 7900 S.W. 40th Street, and comprised of the theater, its auxiliary spaces (front-of-house, backstage, administrative offices, rehearsal rooms, closets, etc.), ("Theater") along with the thirty-nine (39) parking spaces in the adjacent surface parking lot dedicated to the theater (together the "Theater Property"); and

Whereas, the Parties are entering into an operating agreement in order to set forth the Parties' respective rights and obligations with respect to the operation and programming of the Theater, development of cultural, recreation, educational and community programs; and

Whereas, Roxy has a longtime track record of providing original, high quality educational theater and professional theater arts programs for children and families of all cultures and backgrounds throughout Miami-Dade County and in particular in the West Miami-Dade area; and

Whereas, Roxy will assume all day-to-day operational responsibilities for the Theater, and will be using it for its administrative home, rehearsals and performances; and

Whereas, Roxy will own improvements to the Theater that it makes that are not intended to be permanent; and

Whereas, Roxy will operate the Theater with a balanced annual budget, utilizing earned revenue and contributed income, along with state, federal and private funds so to minimize the operational reliance on funds from Miami-Dade County or any agency or instrumentality thereof, except as may be approved by the Board of County Commissioners through the County's annual budget, annual competitive grants programs, and a grant allocation to Roxy for the operation of the Theater; and

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

Now therefore, in consideration of the mutual promises and obligations contained herein, the Parties wish to enter into the following terms and conditions of this Agreement:

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 The Roxy Theatre Group, Inc., a not for profit Florida corporation, ("Roxy").

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 Roxy to the County and the County's obligations to Roxy in connection with the management and operations of the Theater and the Theater Property. Roxy's obligations and rights under this Agreement shall be limited to the Theater building including auxiliary spaces (front of house, backstage, administrative offices, rehearsal rooms, closets, etc.) and the thirty-nine (39) parking spaces in the adjacent surface parking lot allocated to the theater. Roxy shall have no responsibility, obligations or rights to use, operate, manage, maintain, occupy or otherwise possess the balance of Tropical Park 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 thirty (30) years, commencing with the issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy for the Theater ("Effective Date"). This Agreement may be renewed for up to two additional thirty (30)-year terms, all subject to mutual agreement by the County and Roxy. Any additional terms shall run consecutive from the prior term. This Agreement may be terminated before the end of the initial or renewal terms pursuant to the provisions set forth herein.

A.5 CLAIMS

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

A.6 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.7 NON-DISCRIMINATION POLICY

Roxy 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.8 CORPORATION AS INDEPENDENT CONTRACTOR AND ITS PERSONNEL

Roxy is, and shall be, in the performance of all services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed under this Agreement shall at all times, and in all places, be subject to Roxy's sole direction, supervision, and control. No employee of Roxy shall be an employee of the County. Roxy shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Roxy's relationship and the relationship of its employees to the County shall be that of an

independent contractor and not as employees and agents of the County.

A.9 PUBLIC RECORDS

Documents pertaining to obligations and responsibilities of Roxy in carrying out the terms of this Agreement are subject to public records law. Pursuant to Florida Statutes 119.0701(2), Roxy 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 or the County with access to public records on the same terms and conditions that the County would provide the records within a reasonable amount of time 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 for the duration of the term of this Agreement and, following the expiration or termination of this Agreement, if Roxy does not otherwise transfer the records to the County; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of Roxy 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.

If the contractor has questions regarding the application of Chapter 119, Florida Statutes to the contractor's duty to provide public records relating to this contract, contact the Custodian of Public Records, Graham Winick, at 305-375-2523, graham.winick@miamidade.gov, 111 NW 1st Street, #625, Miami, Florida 33128.

The County acknowledges that certain records of Roxy or information relating to the use, management or operation of Roxy 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 Roxy if the County receives a request for disclosure of any information that Roxy has informed the County that it reasonably believes is trade secret information, or that is otherwise exempt from disclosure, so that Roxy 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.10 RECORDS

Roxy shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of Roxy, financial or otherwise, shall be kept in Miami-Dade County, Florida under the custody and control of Roxy. The County shall have a right to audit and inspect all books, records and accounts of Roxy 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 Roxy shall be in institutions located within Miami-Dade County, Florida. Failure by Roxy to comply with any provision of this Section shall be cause for termination of this Agreement.

A.11 ASSIGNMENT, SUBCONTRACTING AND SUCCESSORS

Roxy 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 Roxy 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 Roxy 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.

A.12 DEBT

The Theater Property and its contents owned by the County may not be used to secure any debt and Roxy is expressly prohibited from mortgaging, pledging, using as collateral or security, or otherwise encumbering in any manner the Theater Property, including the contents therein owned by the County. County consent required under this section may be withheld for any reason within the sole and absolute discretion of the Board of County Commissioners. Roxy will not incur any debt that requires or seeks a pledge of funding support from the County.

A.13 COUNTY INSPECTION AND RIGHT OF ENTRY

The County shall have the authority to make inspections of the Theater Property and Roxy and its operations, along with any and all equipment, furnishings, fixtures, intellectual property, and/or improvements thereof to determine whether Roxy is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Theater 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 and specifically provided for in this Agreement.

B. THE THEATER FACILITY

B.1 CHANGES OR ADDITIONS BY THE COUNTY

Provided the County provides Roxy with thirty (30) days 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 Theater 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 Property, there shall be no allowance nor reimbursement to Roxy 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 Property, 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 Roxy, and that the County will diligently proceed therewith to completion.

B.2 IMPROVEMENTS BY ROXY

B.2.1 County Approval

Any permanent improvements, changes, or alterations to the interior, non-structural portions of the Theater Property contemplated by Roxy shall be submitted in writing for review and approval by the County Mayor, or his designee. Roxy 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 having jurisdiction. Roxy shall not make any changes, alterations or improvements to the exterior or the structure of the Theater Property.

B.2.2 Quality of Improvements

Roxy shall cause any and all improvements to be performed competently and in a good and workmanlike manner in compliance with all applicable Laws and 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.2.3 Roxy's Procurement Policy

Within ninety days (90) of the execution of this Agreement, Roxy shall adopt a procurement policy (the "Procurement Policy") for the purchase of goods or services, including without limitation, professional services and capital improvements for the Theater Property. The Procurement Policy shall promote the transparency, efficiency and fairness of the contracting of Roxy, and shall promote the best value for the Theater Property, all consistent with the best interest of the Theater Property. Roxy shall submit the Procurement Policy to the County for review and approval by the County Mayor or Mayor's designee. Once approved, Roxy shall, at all times, comply with the Procurement Policy and shall submit any proposed amendments thereto to the County for its review and approval, through the County Mayor or Mayor's designee. Failure of Roxy to comply with the requirements of this Section and the Procurement Policy, and any purchase made or contract executed in violation of the Procurement Policy or this Agreement shall be considered a material breach of this Agreement.

The Procurement Policy shall at all times comply with all provisions of applicable law, including, those governing the use, construction, maintenance and improvement of public facilities, and at a minimum, and without limitation, shall provide:

- (a) Roxy shall not lease, convey or transfer the Theater Property, or any portion thereof, without the express, written and prior approval of the County through its Board of County Commissioners;
- (b) the purchase of architecture, engineering or landscape architecture services, or any other services covered under the Consultants Competitive Negotiation Act, Section 287.055 of the Florida Statutes, shall be done in compliance with all of the provisions of that law when funded in whole or in part with County or other agency funds as defined in the law;
- (c) bidding for construction on the Theater Property shall be governed by the provisions of Section 255.20 of the Florida Statutes and Roxy shall competitively select any contractor in accordance with the provisions of Section 255.20 of the Florida Statutes when the estimated value of the work exceeds the thresholds set forth in such law;
- (d) a payment and performance bond or alternative form of security shall be obtained by Roxy for any and all construction on the Facility when the cost of such improvements exceeds \$200,000.00 as required under Section 255.05 of the Florida Statutes and shall name the County and Roxy as beneficiaries thereof, as joint obligees;
- (e) contracts for the design and construction of the Theater Property shall comply with the requirements of the County Code governing small business enterprises, including but not limited to the requirement that all design, construction and/or construction management packages be submitted to the County's Small Business Development ("SBD") office for review for the application of the County's CSBE, SBE, and CBE measures in accordance with Sections 2-10.4.01, 10-33.02, 2-8.1.1.1.1 and 2-

8.1.1.1.2 of the County Code and the Corporation shall require that all of its consultants, contractors, subconsultants and subcontractors comply with all measures set by SBD;

(f) all construction contracts shall comply with the requirements of, and procedures contained within, Section 2-11.16 of the County Code relating to Responsible Wages and Benefits, including the Wage and Benefit Schedule;

(g) contracts for the construction of the Theater Property shall comply with applicable County requirements relating to contractor's workforce, including the hiring of personnel from Designated Target Areas pursuant to Section 2-1701 of the Code of Miami-Dade County, and the education and hiring requirements of Section 2-11.17 of the Code which seeks to promote the employment opportunities of local residents;

(h) all construction contracts shall comply with the County's Sustainable Buildings Programs, as set forth in Section 9-71, et. al. of the County Code and Implementing Order ("IO") 8-8;

(i) all contracts for the design and construction of Theater Property shall comply with the County's Art in Public Places Program, as set forth in Section 2.11.15 of the County Code, IO 3-11, and the Miami-Dade County Guide to AIPP; and

(ii) all contracts for "covered services" (as such term is defined in section 2-8.9 of the County Code and otherwise known as the Living Wage Ordinance) that are funded in whole or in part with County funds shall require the service contractors to pay their employees the Living Wage, all in accordance with the County's Living Wage ordinance and shall comply with SBE-Goods and SBE-Services provisions.

B.2.4 Requirements for Consultant and Contractor Agreements

All contracts with contractors and design professionals for improvements, repairs, replacements and/or renovations to the Theater Property shall be in writing, shall contain terms and conditions consistent with all applicable laws and with the terms of this Agreement, shall expressly list the County as an intended third-party beneficiary to such contract, and shall require that the contractor/consultant and all of its subcontractors/subconsultants indemnify the County in the same manner and to the same extent that the Roxy indemnifies the County herein. Roxy shall provide a copy of each such contract to the County upon the County's request.

B.2.5. Ownership of Plans

All construction documents, plans, specifications, drawings, models, samples and the like produced or developed in connection with the planning, design and construction of the Theater Property or any portion thereof are and/or shall be, as the case may be, the sole property of the County, subject to the right of Roxy to utilize same during the term of this Agreement. Roxy shall provide the County with as-builts for any construction, renovation, repair, improvements and/or additions undertaken during the term of this Agreement and Roxy shall keep such plans confidential as required by section 119.071(3), Florida Statutes.

B.2.6. Liens

Roxy shall cause any construction, renovation, repair, improvements and/or additions to the Theater Property to be constructed free and clear of any and all liens, encumbrances, security interests, pledges, claims in, to, against or in any way applicable to any portion of the Theater Property ("Liens"). In the event a Lien is filed on the Theater Property, Roxy shall cause said Lien to be to be satisfied or transferred to appropriate bond within 30 days following the recording of such Lien. If Roxy does not satisfy or transfer to appropriate bond any such Lien with 30 days of recording, the County shall have the right, but not the obligation to cause the Lien to be released by any means the County deems proper, including, without limitation, payment of the Lien. All reasonable sums paid and expenses incurred by the County in

connection with releasing a Lien, including, without limitation, reasonable attorneys' fees and costs, shall be payable by Roxy to the County upon demand plus interest at the Prime Rate computed from the date any such sum was paid by the County. In addition, Roxy shall indemnify, defend and hold harmless the County with respect to all Liens on the Theater Property incurred or permitted by Roxy if same are not satisfied or transferred to appropriate bond within 30 days of recording.

B.2.7 Payment for Improvements

Roxy 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 Roxy 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 Property, along with an affidavit from Roxy 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.3 FURNISHING, FIXTURES, AND EQUIPMENT INSTALLED BY ROXY

Roxy 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 Theater shall be of a high quality, and as good as or better than that what is found at similar facilities. Roxy shall afford the County the opportunity to review and comment upon in advance the selection of all furnishings, fixtures and equipment for the Theater. Roxy 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, Roxy 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. Roxy 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, Roxy reserves the right to remove the furnishings and equipment provided and paid for by Roxy with non-County funds, so long as the removal of such furnishings and equipment will not result in damage to the Theater 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.4 SIGNS

Roxy shall maintain all signage in good condition and appearance. Any changes, additions, and/or alterations to permanent exterior sign(s) on the Theater 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 Roxy. 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 Theater Property. Roxy shall submit detailed drawings to the County of any proposed signage or change of signage. The County's approval must be by the County Mayor, or the County Mayor's designee. Any damage or unsightly condition caused to the Theater Property because of, or due to, said signs, shall be satisfactorily corrected or repaired by Roxy, to the County's satisfaction, at Roxy'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 Roxy, its employees, vendors, licensees, etc., or that are the result of Roxy's failure to perform routine maintenance of these building systems, shall be the responsibility of Roxy. Roxy 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 Roxy is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Theater 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.

C.2 ROXY RIGHTS AND OBLIGATIONS**C.2.1 Permitted Uses and Equal Access**

The County grants to Roxy the exclusive rights to, and Roxy agrees to, use, manage, and operate the Theater as a facility primarily for the presentation of performing arts, cultural, recreational, and educational activities. Roxy acknowledges and agrees that the Theater shall be utilized for the benefit of the public and community interest and welfare. Roxy 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. Roxy 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 legal requirement or insurance requirements; or (ii) impair any of the County's right or interest in the Theater Property.

C.2.2 Commencement of Obligations

Roxy shall commence operations and management of the Theater on the Effective Date. Roxy 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. Roxy 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 Roxy 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

Roxy shall operate and manage the Theater on behalf of the County using the highest degree of professionalism. Roxy shall have at the Theater adequately trained personnel and staff to provide services to customers, users, patrons, visitors and/or guests. Roxy 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 Roxy 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

C.2.4.1 All repairs, maintenance, refurbishment and redecoration of the Theater shall be the obligation of

Roxy, excepting those items outlined in Section C.1, which shall be the responsibility of the County. Roxy 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. Roxy'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, fire alarm, cable, phone, internet, and security services, etc. Upon failure of Roxy to maintain the Theater as required by this Agreement, the County may, after thirty (30) days' written notice to Roxy 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 Roxy.

C.2.5 Pro-Forma and Annual Budget

Roxy 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. Roxy 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. Roxy 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 funds requested from the County to help address operational costs and a recommended capital repair budget and necessary list of repairs in accordance with Section C.1.1. County funding support is subject to annual budgeted allocation(s) as may be available and adopted by the Board of County Commissioners in the Board's sole and absolute discretion. Roxy 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 Roxy; (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 Fees and Revenues

The County shall not be entitled to keep any revenues received by Roxy from the rental of spaces in, or use of, the Theater, the sale of tickets by Roxy, revenues from concession sales, and any other revenue generated by Roxy. Neither the County nor Roxy 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. Roxy 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.2.7 Operational Responsibilities

Roxy 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 Roxy 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 and funds requested from the County to help address operational costs to pay the expenses associated with the operations of the Theater. Roxy shall apply for available state, federal and private grant money to help pay for these expenses. Roxy shall have the exclusive authority to determine space allocation and scheduling within the Theater. All contracts, licenses and agreements entered into by Roxy in connection with the management of the Theater shall be in its own name.

C.2.8 Obligations and Debt

Roxy 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. Roxy shall not cause any liens or encumbrances to be placed on the Theater 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.2.9 Taxes

Roxy 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 Roxy shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition and/or excise. Roxy 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 Roxy.

C.2.10. Assets: Ownership, Care, Disposal

All equipment, furniture and other items of personal property at the Theater (1) paid for with County funds, (2) necessary for the proper functioning of a theater or exhibition hall, or (3) listed by the County on its inventory of County property as a County asset, shall be owned by the County. Roxy has the exclusive right to use all such existing equipment, furniture, and other items of personal property at the Theater during the Term of the Agreement.

C.2.10.1. County Property

Roxy shall not sell or otherwise dispose of any County property; provided that, with respect to County personal property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, Roxy may sell or dispose of the same if such property has been replaced by Roxy with property which is either the equivalent or an upgrade of the replaced property and such newly purchased property shall at all times be considered County property.

C.2.10.2. Inventory

Roxy shall maintain a detailed inventory of all County-owned personal property and equipment in the Theater in accordance with applicable law, including, but not limited to, the applicable provisions of Chapter 274, Florida Statutes and Sections 69I-73.001–69I-73.006, Florida Administrative Code, and Administrative Order 8-2, all as amended from time to time (the “Inventory”), and deliver a copy of the Inventory to the County. The Inventory shall be maintained and updated (annually) throughout the term, and copies of the updated Inventory shall be provided to the County upon the County’s request. Upon the expiration or earlier termination of this Agreement, Roxy and the County shall prepare a final Inventory, and Roxy shall explain to the County any discrepancies between the most recent Inventory (prior to termination or expiration) and the final Inventory. To the extent the final Inventory discloses missing items (other than items that became unusable, were consumed or otherwise disposed of in accordance with the terms of this Agreement during the last year of the term, or were reported to law enforcement as stolen) the County may, at its sole discretion, require Roxy to pay the County an amount equal to the depreciated value of the missing items. The County shall mark all items of Inventory in accordance with applicable law, including, but not limited to, the applicable provisions of Section 69I-73.004, Florida Administrative Code, as amended from time to time. The County’s personal property and equipment shall be disposed of in accordance with Section 2-11.2.1 of the Code and Administrative Order 8-2.

C.2.11 Security for Theater Events

Roxy shall, at its cost, procure and provide adequate security to protect the safety of theater patrons, guests, and invitees of the Theater during all events which are open to the public and occurring at the Theater Property, whether in the form of on-duty police, off-duty police or private security patrol. In no event shall the County have any responsibility or liability for harm to Theater patrons, tenants, guests, invitees, etc., or damage to property, occurring as a result of Roxy’s failure to provide security which is adequately and reasonably designed to ensure the safety of the public.

D. INSURANCE AND INDEMNIFICATION

D.1 ACTS OF OTHERS

The County shall not be responsible or liable to Roxy, or to those claiming by, through or under Roxy, 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 Roxy for themselves or for personal property from actions or activity by such person(s) or entities at the Theater Property. Further, the County shall not be responsible or liable to Roxy, or to those claiming by, through or under Roxy, 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 ROXY

D.2.1 Throughout the term of this Agreement, Roxy 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 Roxy 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.2.2 Miami-Dade County will not be responsible for damage to contents owned by Roxy or improvements to the Theater that Roxy makes that are not intended to be permanent.

D.2.3 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.

D.2.4 All Policies must include a Waiver of all Rights of Subrogation against Miami-Dade County.

D.2.5 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

Roxy 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 Roxy or its employees, agents, servants, partners, principals or subcontractors. Roxy 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. Roxy expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Roxy 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 Roxy 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 Roxy from any liability or claim arising out of the negligent performance or failure of performance of Roxy or any unrelated third party.

E. ROXY 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 provide annual seasons of quality theatrical and performing arts events and education, recreation and outreach activities for the benefit of the residents of and visitors to Miami-Dade County; provided, however, that Roxy shall not be held responsible for hurricanes, Acts of God, civil insurrections or riots;
- (5) Failure of Roxy to remain solvent or to operate the Theater in a fiscally responsible manner; and/or
- (6) Failure of Roxy 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

Roxy may terminate this Agreement for its convenience upon one hundred eighty (180) 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 one hundred eighty (180) days' prior written notice to Roxy at any time after the Effective Date.

F.2 COUNTY TERMINATION FOR DEFAULT BY ROXY

If an event of Default as set forth in Article E has occurred and Roxy 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 Roxy. Roxy 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 Roxy 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 Roxy 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, Roxy 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 Roxy 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 part 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 criterion 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.

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 Roxy shall be removed by Roxy 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, Roxy 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 Roxy'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 Roxy, 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 Roxy in connection with this Agreement. The terms of this Article shall not impose any liability on the County by Roxy 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:
Miami-Dade County

County Mayor
111 N.W. 1 Street, Suite 2920
Miami, Florida 33128

copy to:
Miami-Dade County

County Attorney
111 N.W. 1 Street, Suite 2920
Miami, Florida 33128

To The Roxy Theatre Group, Inc.:

Chair/President, The Roxy Theatre Group, Inc.

7900 SW 34 St.
Miami, FL 33155

H.2 INDEPENDENT CONTRACTOR RELATIONSHIP

The County and Roxy acknowledge and agree that they are independent entities and neither Roxy 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 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

Roxy 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 Roxy'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 Roxy 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 Roxy. 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.

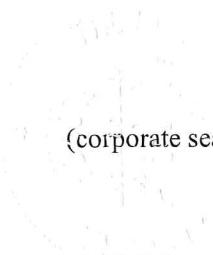
H.10 CHOICE OF VENUE

Any litigation between the County and Roxy 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 Roxy 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)

THE ROXY THEATRE GROUP, INC.

By:
Chair/President

Noramari Onate

ATTEST:

By:
Secretary
Charles Sothers

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)