

TO: Mayor Jerry L. Demings
and
Board of County Commissioners

FROM: Fred Winterkamp, Fiscal & Business Services Division Manager



DATE: September 23, 2019

RE: **Consent Agenda Item - October 8, 2019**
Tourist Development Tax Grant Application Review Committee Funding
Agreement for Orlando Philharmonic Orchestra Plaza Live Project

On November 29, 2016, the Board of County Commissioners (“Board”) adopted Ordinance No. 2016-30 (“Ordinance”), which amended the County’s Tourist Development Plan to authorize funding from available unallocated Tourist Development Tax (TDT) revenue for legally authorized capital projects and events pursuant to a grant application process set forth in Section 25-147 of the Orange County Code (Code). Pursuant to the Ordinance, on October 31, 2017, the Board adopted Resolution No. 2017-M-44, which established the Tourist Development Tax Grant Application Review Committee (ARC) to serve in an advisory capacity to the Board, with Tourist Development Council (TDC) recommendation, by evaluating applications for excess TDT revenue funding pursuant to established application review criteria and to make recommendations on same.

At its March 15, 2019 meeting, the ARC evaluated an application from the Orlando Philharmonic Orchestra (OPO) for excess TDT revenue to help the Plaza Live facility. OPO requested up to \$3,000,000 toward the City acquisition of the Plaza Live facility and then up to \$7,000,000 toward the OPO renovation of the facility. Following its evaluations of the grant application, the ARC approved recommending the funding request to the TDC. On March 27, 2019, the TDC approved recommending the funding request to the Board. Then, on April 23, 2019, the Board approved the funding request recommended by ARC and TDC and directed staff to develop a funding agreement.

The Plaza Live funding agreement will be presented in two parts with one part now and another part to follow later. This first funding agreement is between the County and the City of Orlando to provide \$3 million to the City to acquire the Plaza Live facility which the City will be agreeing to lease long-term for at least 25 years to the OPO for a nominal annual rate. This acquisition funding agreement contains appropriate real estate confirmations related to survey, title and appraisals; and requires covenants protecting the County that require ongoing use as an auditorium, City or non-profit ownership, and provide for County approval before any other liens or encumbrances related to the Plaza Live facility. Once the City owns the Plaza Live and OPO is the lessee, OPO can finalize planning the renovations with the remaining ARC TDT grant funds that will be the subject of a follow-up renovation funding agreement between the County and the OPO.

The Board appropriated \$8,000,000 per year beginning in Fiscal Year 2017-18 through Fiscal Year 2022-23 for applicants that apply for funding to the ARC pursuant to Section 25-147 of the Code. The use of TDT revenues for auditoriums and museums is authorized pursuant to section 125.0104(5)(a)1.b. and c., Florida Statutes, respectively. If approved, the Comptroller will disburse TDT funds in accordance with the terms of the funding agreement.

If you have any questions, please contact me at (407) 836-2920.

ACTION REQUESTED:

Approval and execution of Agreement between Orange County, Florida and City of Orlando The Plaza Live

FMW

C: Byron Brooks, County Administrator
Jeffrey Newton, County Attorney
Randy Singh, Deputy County Administrator
Lila McHenry, Senior Assistant County Attorney

AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
CITY OF ORLANDO

THE PLAZA LIVE
(425 North Bumby Avenue, Orlando, FL 32803)

THIS AGREEMENT, made and entered into as of the date of last execution below, by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“County”), and CITY OF ORLANDO, FLORIDA, a Florida municipal corporation (“City”).

WITNESSETH:

WHEREAS, the County currently collects the tourist development taxes authorized by Section 125.0104(3)(c), (d), and (m), Florida Statutes (“Tourist Development Tax” or “TDT”) and authorized uses of such Tourist Development Tax include the acquisition, construction and/or renovation of auditoriums that are publicly owned, but are operated by not-for-profit organizations and open to the public within the county in which such tax is levied; and

WHEREAS, on November 29, 2016, the Orange County Board of County Commissioners (“Board”) adopted Ordinance No. 2016-30 (“Ordinance”), which amended the Tourist Development Plan to authorize funding from legally available unallocated TDT revenue for legally authorized capital projects and events pursuant to a grant application process set forth in Section 25-147 of the Orange County Code (“Code”); and

WHEREAS, (i) The Orlando Philharmonic Orchestra, Inc. (“Orchestra”) is a Florida not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (ii) The Orlando Philharmonic Plaza Foundation, Inc. (“Foundation”) is a Florida not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and also is a Type I supporting organization of and for Orchestra under Section 509(a)(3)(B)(i) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Orchestra applied for TDT capital funding for (i) the acquisition by the City of real property currently owned by Foundation and used by Orchestra, more particularly described in **EXHIBIT “A”** attached hereto, known and operated as “The Plaza Live” (the “Property”), and (ii) the renovation of the Property by Orchestra, all of which are authorized expenditures pursuant to the Local Option Tourist Development Act, §125.0104, Florida Statutes (2019); and

WHEREAS, on March 15, 2019, the County's TDT Application Review Committee ("ARC"), evaluated Orchestra's application and recommended approval to the Tourist Development Council ("TDC") of TDT funding to City and Orchestra in the total amount of up to Ten Million Dollars (\$10,000,000.00) (the "Total TDT Funding"), such Total TDT Funding to be paid in four (4) increments during Fiscal Years 2019, 2021, 2022 and 2023; and

WHEREAS, the Total TDT Funding will be paid (i) in an initial amount of Three Million Dollars (\$3,000,000.00) payable to City using funds allocated in Fiscal Year 2019, for the purpose of City acquiring the Property (the "Initial Funding"), and (ii) in the remaining amount of up to of Seven Million Dollars (\$7,000,000.00) payable to Orchestra in Fiscal Years 2021, 2022 and 2023, as set forth in the ARC recommendation and TDC recommendation (the "Remaining Funding"); and

WHEREAS, this Agreement shall provide for the Initial Funding only, and the Remaining Funding shall be addressed and provided for in a separate agreement between County and Orchestra; and

WHEREAS, on March 27, 2019, the TDC recommended approval of Orchestra's application.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the City agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

2. **County Contribution.** Subject to all terms and conditions set forth in this Agreement, the County agrees to contribute an amount equal to Three Million Dollars (\$3,000,000.00) solely from Fiscal Year 2019 Excess TDT Revenue ("County Contribution"). The County Contribution shall be paid to the City in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, "Excess TDT Revenue" shall mean those TDT revenues appropriated by the Board in 2018 in the amount of \$8,000,000.00 per year beginning in Fiscal Year 2017-18 through Fiscal Year 2022-23 for capital projects that apply for funding to the ARC pursuant to Section 25-147 of the Code.

3. **Restrictions on Use of County Contribution.** City shall use the County Contribution only to pay the costs of acquisition of the Property as described in Orchestra's "Orange County Tourist Development Tax Capital Project Grant Application" dated November, 2018 (the "Grant Application"), as on file with the County. The County Contribution shall not be used or pledged to secure any debt whatsoever.

4. **Limitations on County's Obligation.** The County's obligation to make the County Contribution shall not constitute a lien on Tourist Development Taxes and will not be on parity with any existing or future debt of the County. The obligations of the County under this Agreement are limited solely to Excess TDT Revenue and no general fund revenues or other funds whatsoever of the County are obligated. Nothing provided herein shall obligate or require the County to levy any ad valorem taxes, fees or assessments whatsoever. This Agreement and any payments provided for in this Agreement are contingent upon the availability of Excess TDT

Revenues derived from the tax levied under Section 25-136 of the Code and made available under Section 25-147 of the Code to make the payments hereunder. The County shall not cause such Excess TDT Revenues to be unavailable as a result of dilution of the funds made available through the application process set forth in Section 25-147 of the Code through funding other projects through such process.

5. Disbursement of County Contribution.

(a) Approved Due Diligence. By its approval and execution of this Agreement, the County hereby acknowledges that the County has received, reviewed, and accepted each of the following from the City:

(i) Approved Lease. An unexecuted copy of that certain proposed long-term lease agreement entitled “Plaza Live Lease and Operation Agreement” to be between the City, as lessor, and Foundation, as lessee, (the “Approved Lease”) pursuant to which the City intends to lease the Property to Foundation (the “Approved Lease”).

(ii) Approved Title Commitment. An executed copy of that certain ALTA Commitment for Title Insurance bearing File No. 2037-4354298 issued by First American Title Insurance Company, (the “Title Company”) through its issuing agent, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., with a commitment date of May 31, 2019, at 8:00 a.m. (the “Approved Title Commitment”).

(iii) Approved Survey. ALTA Survey prepared by Ireland & Associates Surveying, Inc. and Patrick K. Ireland (PSM No. 6637) bearing File Number IS-12600 and a Date of Plat or Map of June 24, 2019, and last revised July 16, 2019.

(iv) Approved Environmental Assessment. Environmental Site Assessment and ASTM Database Review of the Property prepared by Storm L. Richards & Associates, Inc. and Jeanne Fillman-Richards, Ph.D., C.E.C., C.E.I. and Storm L. Richards, Ph.D., C.E.P., C.E.C., C.E.I., and dated June 18, 2019 and presented in June 2019.

(v) Approved Appraisal. Appraisal Report of the Property prepared by Buhler & Associates LLC and Charles E. Buhler, MAI (No. RZ1311) and E. Barrett Whitley (No. RZ2796), bearing Project #: 18-000286-01-1 and Report #: 18C026, and having a date of valuation of April 12, 2018, and a date of report of April 27, 2018 (the “Approved Appraisal”).

(b) Contingencies. The County’s obligation to disburse any portion of the County Contribution for the acquisition of the Property is contingent upon and subject to those matters specifically set forth hereinafter in this subsection 5(b) (each, a “Contingency,” and collectively the “Contingencies”), and the County will disburse the County Contribution to the City within five (5) business days after the satisfaction of all Contingencies, as determined by the County:

(i) The Property. The City shall have acquired the Property, located at 425 North Bumby Avenue in Orlando, Florida, and legally described in **EXHIBIT "A,"** attached hereto and incorporated herein by this reference. Upon the closing of the transaction conveying the Property to the City ("Closing"), the City shall deliver to the County a copy of the fully executed and recorded deed conveying the Property to the City.

(ii) Approved Lease. The City and Foundation shall have fully executed and entered into the Approved Lease in the form previously accepted by the County. Upon execution of the Approved Lease, the City shall deliver to the County, along with a copy of the deed required pursuant to subparagraph (i), a copy of the fully executed Approved Lease.

(iii) Title Policy. The City shall have provided (or shall have caused to be provided) to the County, at no cost or expense to the County, and the County shall have approved a "marked-up" version of the Approved Title Commitment ("Marked-Up Commitment") that: (i) unconditionally obligates the Title Company to issue an owner's policy to the City in an amount not less than the Purchase Price ("Title Policy"); (ii) reflects that all Requirements have been satisfied or deleted; (iii) reflects that all standard exceptions contained in Section B, Section II, of the Approved Title Commitment have been deleted; and (iv) insures the City's fee simple title to the Property free and clear of all liens, claims, assessments, easements, reservations, restrictions, encumbrances, and other matters of record whatsoever, except for matters of record acceptable to the County, if any. Notwithstanding the foregoing, the County hereby acknowledges that all of the following numbered exceptions set forth in Section B, Section II, of the Approved Title Commitment are acceptable to the County: Exceptions 8 through 11, Exceptions 13 through 17, and Exception 19. Upon the Closing, the City shall deliver to the County a copy of the Marked-Up Commitment. The Manager of the Orange County Real Estate Management Division ("REM Division") is hereby authorized, on behalf of the County, to approve the Marked-Up Commitment pursuant to this paragraph.

(iv) Purchase Price. The purchase price paid by the City to the Foundation for the Property may not exceed the appraised value established by the Approved Appraisal. The appraised value established by the Approved Appraisal (and the purchase price being paid by the City) must equal or exceed the amount of the County Contribution.

(v) Restrictive Covenants. The City will execute the Declaration of Restrictive Covenants containing those covenants, conditions, restrictions, and agreements in substantially the form set forth in **EXHIBIT "B,"** attached hereto and incorporated herein by this reference (the "Restrictive Covenants") and cause the Restrictive Covenants to be recorded in the Public Records of Orange County Florida immediately after the deed conveying the Property to the City.

(c) Waiver of Contingencies. Any Contingency may be waived, lessened, or otherwise removed from this Agreement by the County at any time by delivery of written notification from the County to the City. If all Contingencies have not been satisfied (by the person responsible for the satisfaction of the same) or waived in writing by County within twelve (12) months of the date this Agreement is approved by Board, then County's obligation to disburse any portion of the County Contribution for Property acquisition shall terminate. The Manager of the REM Division is hereby authorized, on behalf of the County, to waive Contingencies and furnish notices pursuant to this paragraph.

(d) Restrictive Covenants. The Restrictive Covenants, and all terms, provisions, covenants, conditions, restrictions, and agreements thereof, are incorporated into this Agreement by this reference. The City's failure to comply with any of the Restrictive Covenants shall constitute a breach of this Agreement by the City. The terms and provisions of this paragraph shall survive the City's acquisition of the Property.

6. **Commemorative Plaque.** Upon acquisition of the Property by the City and the completion of any renovation of the Property by the Orchestra, City agrees that a plaque shall be prominently displayed on the Property acknowledging the names of the Orange County Mayor and Board of County Commissioners and their contribution to the renovation project.

7. **Audit.** The County and the County Comptroller (or designee) shall have the right to audit from time to time for compliance with the terms, conditions, obligations, limitations, restrictions and requirements of this Agreement, including the use of the County Contribution for the acquisition of the Property. Such right shall extend for a period of five (5) years after the City's acquisition of the Property. The City agrees to provide reasonable assistance in providing documents, materials, data, information and records to the County and the Comptroller or designee in the performance of these audits as requested by the Comptroller or County during the course of this Agreement and for a period of five (5) years after acquisition of the Property. In those situations where records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the Comptroller's representatives shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats. Such activity shall be conducted during normal business hours.

8. **Notices.** Any notices required or allowed hereunder shall be in writing and given by certified mail with return receipt requested, to the addresses below, or in person with proof of delivery to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

County: Orange County Administrator
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32801

City: City of Orlando
400 South Orange Avenue
P.O. Box 4990

Orlando, Florida 32802-3370
Attn: Laurie J. Botts, Real Estate Manager

Comptroller: Orange County Comptroller
Director of Finance & Accounting
201 S. Rosalind Avenue, 4th Floor
Orlando, Florida 323801

9. **Indemnification.** To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party. This provision shall survive termination of this Agreement.

10. **Recordkeeping; Accounting.** The City will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County, as well as all its receipts and disbursement of funds, and such procedures and practices shall be in accordance with generally accepted accounting principles. The County and the County Comptroller or their designees shall have access to all books, records, subcontract(s), financial operations, and documents of the City, its lessee(s), contractors, and its subcontractors, as required to comply with this paragraph, for the purpose of inspection or audit anytime during normal business hours during the term hereof, and for a period of five (5) years after acquisition of the Property or the termination of this Agreement, whichever shall occur later. Any cost incurred by the City as a result of a County audit shall be the sole responsibility of and shall be borne by the City. This provision shall survive termination of this Agreement.

11. **Term; Termination.** This Agreement shall become effective upon execution by both parties hereto ("Effective Date") and shall continue for a period of five (5) years after the City's acquisition of the Property. This Agreement may be amended, modified or terminated at any time during the term of this Agreement by the mutual written agreement of the Parties.

12. **Default by the City.** The occurrence of any of the following constitutes an Event of Default by the City:

(a) Failure of the City to acquire the Property within one (1) year of the Effective Date of this Agreement;

(b) Any material representation made by the City in any communication submitted to the County in an effort to induce the disbursement of Excess TDT Revenues is determined by the County to be materially false, misleading, or incorrect;

(c) The City's default in the performance of any material term or covenant of this Agreement not otherwise provided for in this section for a period of more than 30 days after its receipt of a notice of default, provided however, that if the nature of the default is such that it cannot reasonably be cured within such 30-day period then the City shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure; and

(d) The City's failure to comply with the Restrictive Covenants beyond any applicable grace or cure period.

In the event of a default by the City, the County, may, at its option, exercise any one or more of the following remedies: (i) declare this Agreement terminated or (ii) exercise any and all remedies available at law and in equity. Notwithstanding the foregoing, the City shall bear no liability for direct, indirect or consequential damages.

13. **Default by the County.** The following shall constitute a default by the County: the County's continued default in the performance of a material term of this Agreement including but not limited to its obligations for disbursement of the County Contribution in accordance with the requirements of this Agreement for a period of more than 30 days from its receipt of written notice of such default from the City. In the event of a default by the County, then the City, at its option, may exercise any one or more of the following remedies: (i) declare this Agreement terminated; or (ii) exercise the remedy of mandamus to require the County's performance under the terms and conditions of this Agreement and/or an action for specific performance. The City hereby acknowledges and agrees that the only remedies available to the City other than termination are those of mandamus and specific performance and the County shall bear no liability for direct, indirect or consequential damages.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. No other agreement whether verbal or written, with regard to the subject matter hereof shall be deemed to exist.

15. **No Assignment.** The City may not assign its rights hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

16. **No waiver.** Continued performance by either party hereto, pursuant to the terms of this Agreement, after a default of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

17. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by

such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

18. **Governing Law; Venue.** Any litigation occurring as a result of this Agreement shall be held in the courts of Orange County, Florida. This Agreement shall be governed by the laws of the State of Florida.

19. **Headings.** The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

20. **Counterparts.** This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

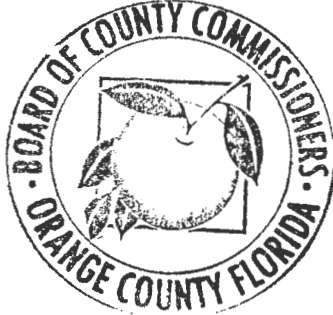
IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Burr W. Brooks
for Jerry L. Demings,
Orange County Mayor

Date: 8 Oct 19



ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: Nedra Perry
for Deputy Clerk

(SEAL)

CITY:

CITY OF ORLANDO, FLORIDA,
a municipal corporation of the State of Florida

By: Buddy Dyer
, as
Buddy Dyer, Mayor 10/7/2019

Approved as to form and legality
For the use and reliance of the City of Orlando only

Wesley Powell
Wesley Powell
Assistant City Attorney

ATTEST:

Denise Alshudige
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lot 1, Plaza Live Theatre, according to the plat thereof as recorded in Plat Book 89, page 137, of the Public Records of Orange County, Florida.

EXHIBIT "B"

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

(On following pages)

Prepared by:
Daniel L. DeCubellis
Carlton Fields
200 S. Orange Ave., Suite 1000
Orlando, Florida 32801

Parcel Identification No.: 30-22-30-7150-01-000

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made this ____ day of _____, 2019, by CITY OF ORLANDO, FLORIDA, a Florida municipal corporation ("City"), whose address is 400 South Orange Avenue, Orlando, Florida 32801, to and for the benefit of ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("County"), whose address is c/o Orange County Administrator, 201 S. Rosalind Avenue, 5th Floor, Orlando, Florida 32801.

WITNESSETH:

WHEREAS, on even date herewith, City has purchased and acquired from The Orlando Philharmonic Plaza Foundation, Inc., a Florida not for profit corporation, title to certain real property situate, lying and being in Orange County, Florida described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, pursuant to that certain Agreement between Orange County, Florida and City of Orlando regarding tourist development tax funding for The Plaza Live, dated as of the ____ day of _____, 2019 (the "Funding Agreement"), City has agreed to impose upon the Property, immediately upon taking title thereto, the covenants and restrictions herein set forth, for the benefit of and enforcement by County.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained in the Funding Agreement, City agrees and declares that the following covenants, conditions, restrictions, and agreements (collectively, the "Restrictive Covenants") shall encumber and burden the Property:

1. Beginning upon the recording hereof and continuing for a period of at least twenty-five (25) years thereafter, the Property shall be used solely for an auditorium and associated amenities, improvements and infrastructure, including, without limitation, parking areas, open space, and event space, which shall be operated by an organization exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) ("Non-Profit Entity"), and open to the public, in compliance with all applicable laws and section 125.0104(5)(a)1.b., Florida Statutes (2019) (collectively, the "Auditorium"), unless the prior written consent of County is obtained for other uses, which consent may be withheld or conditioned in County's sole and absolute discretion. For the avoidance of doubt, the Property may be

used in accordance with that certain "Plaza Live Lease and Operation Agreement" of even date herewith between City, as lessor, and The Orlando Philharmonic Plaza Foundation, Inc., a Florida not for profit corporation ("Foundation"), as lessee, (the "Approved Lease") and all uses described in the Approved Lease shall be deemed in compliance with this paragraph. A "Memorandum of Lease and Operation Agreement" between City and Foundation, providing public notice of the Approved Lease, is being recorded in the Public Records of Orange County, Florida, simultaneously with (but following) the recording of these Restrictive Covenants.

2. Beginning upon the recording hereof and continuing for a period of at least twenty-five (25) years thereafter, City shall continuously own the Property and City or a Non-Profit Entity shall continuously use, occupy, and operate the Property (and all buildings, structures, or improvements located thereon from time to time) as the Auditorium in compliance with all applicable laws and materially consistent with generally accepted standards of practice and performance for other auditoriums and facilities of a similar nature throughout the United States of America; provided, however, that periodic closure for weekends and holidays, repair, maintenance, renovation, restoration or the like by reason of fire or other casualty or otherwise and/or private events shall not be deemed to be a failure of this covenant.
3. Other than the Approved Lease for the use, occupancy, operation, inspection, maintenance, service, repair, replacement and/or reconstruction of the Auditorium, City shall not, neither orally nor in writing, without the prior written consent of County, which consent may be withheld or conditioned in County's sole and absolute discretion, sell, convey, alienate, transfer (including a transfer by agreement for deed or land contract), assign, or lease the Property, any part thereof, any interest therein, or any buildings, structures, or improvements now or hereafter located thereon, except as may be permitted pursuant to the terms of the Approved Lease; provided, however, that this covenant shall not prohibit City from entering into short term agreements for third-party use of "event spaces" hereafter located within the Auditorium.
4. City shall not, neither orally nor in writing, without the prior written consent of County (which consent may be withheld or conditioned in County's sole and absolute discretion), create, place, record, or consent to (nor permit to be created, placed, recorded, or exist) on, against, or applicable to the Property, any part thereof, any interest therein, or any buildings, structures, or improvements now or hereafter located thereon, any further monetary or non-monetary liens, pledges, encumbrances, mortgages, security interests, easements, restrictions, leases, agreements, or other instruments whatsoever ("Unpermitted Encumbrances"); provided, however, that this covenant shall not prohibit City from granting easements or similar instruments upon the Property that contain usual and customary provisions and which are reasonably necessary for the construction, operation, or maintenance of the Auditorium upon the Property.
5. These Restrictive Covenants may not be amended or altered without the express written consent of County.

6. In the event of a breach or default by City of any of these Restrictive Covenants which continues for more than thirty (30) days following the date of written notice of such breach or default by City from County, provided, however, that if the nature of the breach or default is such that it cannot reasonably be cured within such thirty (30) day period, then City shall have a reasonable period of time to cure such breach or default provided that it diligently undertakes and pursues such cure, County shall be entitled to full and adequate relief by any and all remedies permitted at law or in equity, including without limitation award of damages, injunction, and specific performance. Any remedies specifically provided by these Restrictive Covenants shall be cumulative with and in addition to all other remedies permitted at law or in equity.
7. In connection with any dispute arising out of these Restrictive Covenants, or the breach, enforcement, or interpretation of these Restrictive Covenants (regardless of whether such dispute results in mediation, arbitration, litigation, or none of the above), each party and person shall bear the cost of its own attorney's, paralegal, expert, and court fees and costs at trial, retrial, on appeal, at hearings and rehearings, and in all administrative, bankruptcy, and reorganization proceedings. Venue for any action, suit, or proceeding brought to enforce compliance with these Restrictive Covenants shall be in a court of competent jurisdiction in and for Orange County, Florida; each party and person hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.
8. These Restrictive Covenants shall run with title to the Property, and shall be binding upon successors and assigns of City. Any transferee of any portion of the Property (regardless of whether such transferee is permitted or unpermitted under these Restrictive Covenants) shall automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all duties and obligations of these Restrictive Covenants relating thereto.
9. City hereby acknowledges and agrees that City's agreement to accept title to the Property subject to and conditioned upon these Restrictive Covenants is made for good and valuable consideration of County as described in the Funding Agreement, the receipt and sufficiency of which are hereby acknowledged. Without limiting the generality of the foregoing, City acknowledges that County has provided all, or a substantial portion of, the funding necessary to acquire the Property.

IN WITNESS WHEREOF, City has caused this Declaration to be executed and delivered as of the date first set forth above.

Signed, sealed and delivered
in our presence:

CITY:

CITY OF ORLANDO, FLORIDA, a
municipal corporation of the State of Florida

(Signature of Witness #1)

By: _____

(Print name of Witness #1)

Buddy Dyer,
as Mayor of the City of Orlando, Florida

(Signature of Witness #2)

ATTEST:

(Print name of Witness #2)

By: _____

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida,
only.

Denise Aldridge, City Clerk

By: _____
Assistant City Attorney

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____,
2019, by BUDDY DYER, as Mayor, and Denise Aldridge, as City Clerk, of the CITY OF
ORLANDO, FLORIDA, a municipal corporation of the State of Florida, who [X] is personally
known to me or [] has produced _____ as identification.

Notary Public, State of Florida at Large
My Commission Expires: _____
Commission No.

(affix seal)

Acknowledged and consented to by:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry L. Demings,
Orange County Mayor

Date: _____

ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

(SEAL)

EXHIBIT "A"

Lot 1, PLAZA LIVE THEATER, a subdivision according to the plat thereof as recorded in Plat Book 89, Pages 137-138, of the Public Records of Orange County, Florida.