

**THE BOB CARR
MANAGEMENT AGREEMENT**

THIS AGREEMENT is made _____, 2014 (the “Effective Date”), by and between the City of Orlando, Florida, a Florida municipal corporation (hereinafter referred to as the “City”), and Dr. Philips Center for the Performing Arts, Inc., a Florida non profit corporation (hereinafter referred to as “DPC”).

WITNESSETH:

WHEREAS, the City owns the Mayor Bob Carr Performing Arts Centre, a municipal building providing a public venue for the performing arts located at 401 W. Livingston Street, Orlando, FL 32801, inclusive of Lots 5, 6 and reconfigured Lot 1 as shown on Exhibit A attached hereto (“The Bob Carr”), and

WHEREAS, the City wishes to engage DPC to manage The Bob Carr on an interim basis until DPC’s construction phases are complete.

NOW, THEREFORE, for good and valuable consideration, including the covenants herein contained and to be performed by City and DPC, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1

MANAGEMENT BY DPC

1.1 **Designation of DPC.** Subject to the terms of this Agreement, City hereby engages DPC to direct and control the management, accounting, marketing and operation of The Bob Carr. The facilities and equipment of The Bob Carr include those items described in Exhibit B attached hereto.

1.2 **Independent Contractor.** It is expressly understood and agreed that DPC is an independent contractor and not an agent or employee of the City. Without limiting the

generality of the foregoing, this Agreement will not create any principal-agent, employer-employee, master-servant, joint-venture or partnership relationship, either express or implied, between DPC (or any affiliate or employee of DPC) and City (or any affiliate or employee of City).

SECTION 2

TERM AND TERMINATION

2.1 **Term.** The initial term of this Agreement shall be three (3) years, beginning on or about October 1, 2014 and ending on August 31, 2017 (the “Term”). This Agreement may, by mutual written consent of the parties, be extended under the same conditions for two additional one-year periods.

2.2 **Events of Termination.** It will be an Event of Termination hereunder:

2.2.1 If City is legally required or obligated to cease operating The Bob Carr.

2.2.2 If, as a result of a natural disaster, or other act of God, or any other occurrence of Force Majeure, The Bob Carr is damaged or destroyed and rendered incapable of normal operation for a period of fifteen (15) or more days in succession.

2.2.3 **Damage or Destruction of Bob Carr.** If The Bob Carr or any portion thereof is destroyed or damaged so as to materially hinder effective use of The Bob Carr for its intended use as a performing arts theater, as reasonably determined by DPC, DPC may elect to either (1) repair or reconstruct The Bob Carr, applying any insurance proceeds thereto, or (2) terminate this Agreement by giving thirty (30) days written notice to City, in which event DPC shall direct its insurer to pay over to City the full amount which should be paid under the insurance DPC is required to maintain under this Agreement, for losses to The Bob Carr, if any.

In the event that DPC elects to terminate the Agreement, it shall promptly remove its personal property, furniture and equipment from The Bob Carr. Regardless of whether the damage or destruction is caused in whole or part by DPC, its officers, employees, invitees or anyone for whom it may be liable, if DPC chooses not to repair or reconstruct The Bob Carr, then City, as a named insured, shall retain any insurance proceeds payable as a result of such damage or destruction under policies required by Section 7 of this Agreement.

Except to the extent as may be provided above, City shall have no obligation to reconstruct damage to The Bob Carr that materially hinders effective use of The Bob Carr. If DPC exercises its option to repair or reconstruct The Bob Carr, it shall do so in a manner that restores The Bob Carr to its structural integrity and capacity prior to such damage or destruction; provided, that in no event, shall DPC be required to spend in excess of the insurance proceeds received by DPC for the repair and reconstruction of the Bob Carr, so long as DPC fulfills all of its insurance obligations to the strict extent required under this Agreement. In the event of such repair or reconstruction, City shall retain title to the Bob Carr as repaired or reconstructed.

2.3 **Termination of Operations**. Upon an Event of Termination, DPC shall cooperate with City to effect an orderly termination of the operation of The Bob Carr.

SECTION 3

DUTIES AND RESPONSIBILITIES OF DPC

3.1 **General Duties**. In general, DPC duties will be to protect and maintain the assets of The Bob Carr, to properly supervise and manage the daily operations of The Bob Carr, to provide full and accurate accounting for the financial affairs of The Bob Carr, and

to protect and to manage and schedule the acts which will be performing at The Bob Carr, all at its own discretion and expense except as otherwise provided herein.

3.2 **Scope of Work**. Commencing on or about October 1, 2014 (the first day of the Term), DPC will be responsible for the management, operations, marketing, branding, and maintenance of The Bob Carr including all areas shown on Exhibit A, subject to the provisions of this Agreement. Without limiting the generality of the foregoing, the general rights, responsibilities, duties and obligations of DPC will include, but may not be limited to, the following:

3.2.1 **Revenues to DPC**. DPC shall receive all revenues for performances presented at The Bob Carr including, but not limited to, license fees, surface lot parking to the extent that it is available, concession commissions, rent, ticketing fees, facility fees, box office charges, labor charges, and advertising income. All the revenues generated by the operation of The Bob Carr including the collection of a facility fee on each ticket sold for The Bob Carr events shall be retained by DPC and used for payment of The Bob Carr operational expenses as referenced in Section 3.2.2 below with net revenues, if any, retained by DPC after payment of said operations expense. DPC shall settle all performances and events at The Bob Carr.

3.2.2 **Expenses**.

(a) **Expenses to be paid by DPC**. DPC shall pay all expenses related to events and performances presented at The Bob Carr including but not limited to, staff salaries (and related benefits), labor wages (and related benefits) including overtime, professional services, utilities, event parking expenses including security and pre-and post-event cleaning, commissions, equipment

rentals, advertising and box office expenses including box office labor, fire/police as required, and interior and exterior maintenance of The Bob Carr and its grounds as shown on Exhibit A .

(b) **Utility Expenses.** DPC shall arrange and pay as an operating expense the costs of all utilities provided to The Bob Carr including, but not limited to, water, gas, electric, telephone, cable/satellite, and refuse collection. DPC shall arrange for the transfer of the utilities for The Bob Carr to its name within five days of October 1, 2014.

(c) **Capital Maintenance Costs.** DPC shall pay all routine capital maintenance costs such as those related to plumbing, heating/cooling, electrical, lighting, structure including exterior glass, theater seating, interior carpets and finishes, restrooms fixtures, and significant re-landscaping sufficient to keep The Bob Carr operating in a safe manner at least comparable to the current conditions.

(d) **Major Capital Maintenance & Repair.** The parties have conducted a joint facility assessment of The Bob Carr in preparation for its change in management as copy of which is attached as Exhibit G and incorporated herein by reference. City and DPC shall coordinate on budgeting and timing for any Major Capital Maintenance and Repair Items (defined as those expected to cost \$100,000 or more). The City will continue to maintain a Repair and Replacement Fund and any agreed upon Major Capital Maintenance and Repairs or replacements are expected to be made from these funds with such contribution thereto as the City shall make in its sole discretion as part of its Capital Improvement Program budgeting process. By each April 1 for the upcoming fiscal

year and thereafter, DPC will submit requests for Major Capital Maintenance and Repair and replacement items necessary for the safe and efficient operation of The Bob Carr to the City through its Fleet and Facilities Management Division. As discussed and agreed upon by the parties as part of the annual submittal process, the City or DPC shall use the funds in the Repair and Replacement Fund to undertake the tasks for which the funds have been budgeted.

3.2.3 **Services.**

(a) **Staffing.** DPC will assign qualified and experienced personnel to oversee operations at The Bob Carr and to supervise on-site management personnel at The Bob Carr. Contracts for labor shall be negotiated through DPC or the Orlando Philharmonic or the Orlando Ballet.

(b) **Service Contracts.** On behalf of City and in DPC's name, and as an operations expense of The Bob Carr, DPC shall enter into service contracts and vendor agreements as necessary or advisable to support the operation and maintenance of The Bob Carr, including its landscaping. Such agreements may include, but may not necessarily be limited to those agreements set forth on Exhibit C attached hereto.

(c) **Supplies and Inventories.** In DPC's name, and as an operating expense of The Bob Carr, DPC shall purchase operating supplies, equipment and inventories as necessary to support the operation and maintenance of The Bob Carr.

(d) **Parking Lot Operation.** DPC shall be responsible for the cost of the insurance, utilities, non-capital maintenance, staffing, security and operation

of surface parking Lot #6, Lot #5 and the reconfigured Lot #1. DPC shall operate Lots #1, #5 and #6 for event parking. Lot #1 shall remain open for the benefit of student parking for UCF students in accordance with the attached Exhibit D; provided, however that after the City commences construction to straighten out the curve of West Livingston Street, that portion of Lot 1 designated as Lot 1 C on Exhibit D shall remain open for UCF students and DPC may otherwise fence off or separate the remaining parking areas at its expense. DPC shall notify City Venue Operations Division Manager or his designee immediately of any necessary capital maintenance items for the Parking Lot #1.

(e) **Ticketing Systems.** DPC shall provide ticketing systems including all ticketing infrastructure as required to operate the box office at The Bob Carr. If DPC chooses a ticketing system other than Ticketmaster, the automated ticket kiosk located in front of The Bob Carr box office shall be removed at the City's expense.

(f) **Scheduling.** DPC has exclusive right to select the type and nature of programming to be presented at The Bob Carr. DPC shall manage calendar and cooperate in scheduling with the Orlando Philharmonic, the Orlando Ballet, local non-profit groups and commercial entities. DPC shall provide the Orlando Philharmonic and the Orlando Ballet priority for scheduling at The Bob Carr subject to restrictions to be negotiated with the Philharmonic and the Ballet.

3.2.4 **General**

(a) **Licenses and Permits.** DPC shall ensure that licenses and permits necessary to support the operation and maintenance of The Bob Carr are kept

current and in good standing, including, but not limited to, any liquor licenses necessary for the operation of The Bob Carr.

(b) **Environmental Compliance.** DPC shall maintain and operate The Bob Carr, including, but not limited to, the facilities, buildings, grounds, and parking lots in compliance with all environmental and hazardous wastes/toxic substances federal, state, and local laws, ordinances, rules and regulations.

(c) **Inspection by DPC.** DPC shall perform regular inspections and pay for any special and regular maintenance of equipment used for performances, including rigging, lighting, stage platforms, sound equipment and other theatrical house equipment.

(d) **Transfer of Operations.** City and DPC agree that the exact transfer of operational responsibilities shall be contingent upon the performance schedule in place on or near October 1, 2014. The parties agree that a smooth operational transfer is important and if possible that this transfer shall occur during a period when the theater is dark. DPC and Orlando Venues (the City Department currently running The Bob Carr) shall cooperate in scheduling the calendar for The Bob Carr for any event occurring after October 1, 2014.

(e) **No Liens.** DPC will not suffer or through its actions or by anyone under its control or supervision, cause to be filed upon The Bob Carr any lien or encumbrance of any kind. In the event any lien is filed, DPC shall cause such lien to be discharged within ten (10) days after written notice to do so from City.

SECTION 4

CITY OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

4.1 **Obligations and Duties of City.** City will cooperate with DPC so as to enable DPC to carry out its obligations and responsibilities under this Agreement. This cooperation will include, but will not be limited to, the following:

(a) Performing all its obligations under contracts to which City is, at any time, a signatory party relating in any way to The Bob Carr;

(b) Designating one individual in the Orlando Venues Department to serve as the City's principal representative, spokesperson and liaison with DPC for all operational matters related to this Agreement or to the business of The Bob Carr. The designated individual may be changed by the City by providing notice thereof in accordance with Section 8 hereof.

(c) Promptly responding to DPC's inquiries and requests for information, documentation or approvals to enable DPC to carry out its obligations under this Agreement.

4.2 **City's Representations and Warranties.** City makes the following representations and warranties to DPC, and will be true and correct in all material respects on the Effective Date and during the Term.

(a) The City is a Florida Municipal corporation in good standing, and will, upon the start of operations management services under this Agreement and during the term of this Agreement, have good, marketable, and indefeasible title to The Bob Carr, free and clear of any liens, claims, security interests, leases, restrictions, and encumbrances of any nature which would prevent the effectuation of the terms of this Agreement.

(b) The City has obtained and maintained in good standing all such governmental approvals, licenses and qualification as are required for it to operate The Bob Carr.

(c) The individual executing this Agreement on behalf of City has full capacity, right, power, and authority to execute and deliver this Agreement and all documents to be executed by City pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individual signing this Agreement and all other documents executed by City pursuant hereto on behalf of City is and will be duly authorized to sign the same on City's behalf and to bind City thereto. This Agreement and all documents to be executed pursuant hereto by City are and will be binding upon and enforceable against City in accordance with their respective terms.

(d) Neither the execution and delivery of this Agreement by City nor City's performance of any obligation hereunder: (a) will constitute a violation of any law, ruling, regulation, or order to which City is subject, or (b) will constitute a default of any term or provision or will cause an acceleration of the performance required under any other agreement or document to which The Bob Carr is subject.

SECTION 5

DPC'S REPRESENTATIONS AND WARRANTIES

5.1 **Obligations and Duties of DPC.** DPC makes the following representations and warranties to City, which representations and warranties will, except as otherwise set forth herein, survive the execution and delivery of this Agreement and will be true and correct in all material respects on the Effective Date and during the Term.

(a) DPC is a Florida Not-For-Profit Corporation in good standing and qualified to do business in the State of Florida.

(b) The individual executing this Agreement on behalf of DPC has full capacity, right, power and authority to execute and deliver this Agreement and all documents to be executed by DPC pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individual signing this Agreement and all other documents executed by DPC pursuant hereto on behalf of DPC is and will be duly authorized to sign the same on DPC's behalf and to bind DPC thereto. This Agreement and all documents to be executed pursuant hereto by DPC are and will be binding upon and enforceable against DPC in accordance with their respective terms.

(c) Neither the execution and delivery of this Agreement by DPC nor DPC's performance of any obligation hereunder: (a) will constitute a violation of any law, ruling, regulation or order to which DPC is subject, or (b) will constitute a default of any term of provision or will cause an acceleration of the performance required under any other agreement or document to which DPC is subject.

SECTION 6

EVENTS OF DEFAULT; REMEDIES

6.1 Default by DPC. The following shall constitute a default by DPC:

(a) DPC's default in the performance of any material term or covenant of this Agreement for a period of more than thirty (30) days after its receipt of a written notice of such default from the City ("Notice of Default"). Provided, however, that if the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, then DPC shall have a reasonable period of

time to cure such default provided that it diligently undertakes and pursues such cure to the City's reasonable satisfaction. Moreover, DPC shall provide the City with documentation evidencing that DPC is diligently undertaking and pursuing such cure, but in any event, DPC shall not have more than one hundred twenty (120) days from its receipt of the Notice of Default to cure such default.

(b) The appointment of a receiver or trustee for DPC or the making of an assignment for the benefit of creditors, of the filing of any action or proceeding, voluntary or involuntary, by or against DPC under, or otherwise seeking the benefit of, any bankruptcy, reorganization or insolvency law.

(c) DPC vacating or abandoning The Bob Carr for a period of more than thirty (30) days; provided, however, that The Bob Carr shall not be deemed abandoned if DPC keeps the building closed between performances.

6.2 The City Remedies.

(a) In the event of a default by DPC as defined above, the City, at its option, may exercise any one or more of the following remedies:

(b) Declare this Agreement terminated, whereupon all rights and interests of DPC under this Agreement shall immediately end. Upon such termination, the City may take over DPC's rights, duties and obligations under this Agreement.

(c) Exercise any and all remedies available at law and in equity.

6.3 Default by City. The following shall constitute a default by the City:

(a) The City's default in the performance of a material term or covenant of this Agreement, for a period of more than thirty (30) days after its

receipt of written notice of such default from the DPC (the “Notice of Default”), provided, however, that if the nature of the default is such that it cannot reasonably be cured within such thirty (30) days period, then the City shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure to the DPC’s reasonable satisfaction. Moreover, the City shall and provide DPC with documentation evidencing that the City is diligently undertaking and pursuing such cure, but in any event, the City shall not have more than one hundred twenty (120) days from its receipt of the Notice of Default to cure such default.

6.4 **DPC’s Remedies.** In the event of a default by the City as defined above, then DPC, at its option, may exercise any one or more of the following remedies:

(a) Declare this Agreement terminated, whereupon all rights and interests of the parties under this Agreement shall immediately end; or

(b) Exercise the remedy of mandamus to require the City’s performance under the terms and conditions of this Agreement and/or an action for specific performance. DPC hereby acknowledges and agrees that the only remedies available to DPC, are those of mandamus and specific performance.

The parties acknowledge that the City bears no liability for direct, indirect or consequential damages.

6.5 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an

Event of Default hereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

SECTION 7

INDEMNIFICATION/INSURANCE

7.1 **DPC's Indemnification of the City**. DPC shall indemnify, defend and hold harmless the City from and against any and all liability, damages, actions, claims, costs and expenses (including reasonable attorneys' fees and costs at trial and all appellate levels) in contract or in tort arising out of the performance of DPC's obligations under this Agreement by DPC, its employees, agents, and anyone for whom DPC may be liable and DPC shall maintain a policy of General Liability insurance covering its management of The Bob Carr on which the City shall be named as an additional insured. DPC shall require all The Bob Carr facility use agreements that it enters into during the Term to be in substantially the format attached as Exhibit E and shall maintain documentation that such facility users have the required insurance that lists both DPC and the City as additional insureds. Similarly, DPC shall require any subcontractors it hires to perform work at The Bob Carr to have General Liability insurance and, as applicable, auto liability insurance in commercially reasonable amounts which cover the subcontractor's work at The Bob Carr. DPC shall require and maintain documentation that all such policies list both DPC and the City as additional insureds.

7.2 **The City's Indemnification of DPC.** To the extent provided by law, the City shall indemnify, defend and hold harmless DPC from and against any and all liability, damages, actions, claims, costs and expenses (including reasonable attorneys' fees and costs at trial and all appellate levels) in contract or in tort arising out of the performance of the City's obligations under this Agreement by the City, its employees, agents, and elected and appointed officials, and anyone for whom the City may be liable. The City's limits of liability are set forth in Section 768.28, Florida States (F.S.), and nothing in this Agreement shall be construed to extend the liabilities of the City beyond that provided in Section 768.28, F.S. Nothing herein is intended to serve as a waiver of sovereign immunity by the City.

SECTION 8

NOTICES

Any and all notices, consents, or directives by either party intended for the other shall be in writing and shall be given by hand delivery or by the United States mail, registered or certified mail, return receipt requested, to the following address, unless either party shall have designated a different address by serving written notice of change of address on the other party given in accordance with the provisions of this Section.

If to City: Orlando Venues Department Executive Director
City of Orlando
400 W. Church Street
Orlando, Florida 32801

With a copy to: Real Estate Manager
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

With a copy to: City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

If to DPC: Kathy Ramsberger, President
Dr. Phillips Center for the Performing Arts, Inc.
455 South Orange Avenue
Orlando, Florida 32801

With a copy to: Hal H. Kantor, Esq.
P.O. Box 2809
Orlando, Florida 32802

SECTION 9

SIGNAGE

9.1 **Signage**. All signage is subject to the sign regulations of City and the Downtown Development Board (DDB). Since The Bob Carr is public property owned by City, political campaign signs are prohibited on the exterior of public property pursuant to Section 64.252 of the Land Development Code. Political campaign signs shall be permitted on the interior only if The Bob Carr has been licensed for an event and the event promoter opts to allow such signage during the event only.

9.2 **Revision of Signage**. The name of the Mayor Bob Carr Performing Arts Centre venue shall be revised so as to preserve the name of the theater while removing “Performing Arts Centre” from the name. The revised name shall be the Mayor Bob Carr Theater or The Bob Carr Theater. Future advertising may read: the Dr. Phillips Center presents ... at The Bob Carr Theater. DPC shall be responsible for any costs associated with on-site signage and City shall be responsible for the costs associated with updating City controlled way-finding signage.

9.3 **Timing.** The parties will discuss and jointly determine timing of and the installation of any revisions to the current signage for The Bob Carr including the primary entrance sign and wayfaring signs around the community

SECTION 10

FORCE MAJEURE

10.1 **Force Majeure Event.** “Force Majeure Event” shall mean an event causing delay occasioned by a cause or causes beyond the control of the party whose performance is so delayed, including, without limitation: adverse weather conditions; earthquake; acts of God; war; war-like operations; civil commotion; riots; sabotage; terrorism; governmental (except The Bob Carr in its proprietary capacity) or judicial action/inaction, regulation, legislation, or controls; third party lawsuits; moratoria; labor disturbances; or material shortages, availability, or fabrication. The parties acknowledge and agree that a party’s incompetence or failure to deploy reasonable resources to meet its obligations under any agreement shall not be deemed to constitute a Force Majeure Event as to such party.

10.2 **Excuse of Performance.** The failure of any party to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event shall not constitute an event of default or a breach of any such obligation. In addition, the parties shall not be liable to each other, or their successors or assigns, for damages, costs, attorney’s fees (including costs or attorney’s fees on appeal) for breach of contract, or otherwise for failure, suspension, or diminution of performance due to a Force Majeure Event.

10.3 **Mitigation.** The parties shall be obligated to (i) use all reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects such party and (ii) to perform all of their other obligations hereunder that are not affected by Force Majeure Event.

SECTION 11

MISCELLANEOUS

11.1 **Exhibits.** The exhibits attached hereto and referred to herein are by such attachment and reference made a part of this Agreement for all purposes.

11.2 **Paragraph Headings.** This paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

11.3 **Singular and Plural Usages.** Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.

11.4 **Construction of Agreement.** The fact that one of the parties may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

11.5 **Assignment.** DPC shall not assign this Agreement without the prior, written consent of the City, which consent shall not be unreasonably withheld.

11.6 **Unlawful Discrimination.** DPC covenants and agrees that no person shall be unlawfully discriminated against in the use and operation of The Bob Carr pursuant to this Agreement.

11.7 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and DPC.

11.8 **Governing Law/Venue.** This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be Orange County, Florida.

11.9 **Waiver.** The waiver by any party of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition 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 a party, unless such waiver is in writing signed by such party.

11.10 **Amendment/Termination.** This Agreement may be amended, modified or terminated at any time during the term of the Agreement by the mutual, written agreement of the parties.

11.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11.12 **501(c)3 Status.** DPC has received a determination from the Internal Revenue Service that it meets the requirements of Section 501(c) 3 of the United States Internal Revenue Code, and DPC is in material compliance with the terms of such determination and will maintain its 501(c)3 status during the term of this Agreement.

11.13 **Severability.** If any term or provision of this Agreement, or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to the parties or any circumstances other than those as to which it is held invalid or unenforceable, shall

not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

11.14 **Entire Agreement.** The parties agree that this Agreement sets forth the entire agreement and understanding between the parties with regard to the specific matters addressed herein and supersedes all prior negotiations, representations, understandings or agreements, whether oral or written, between the parties or made by third parties to either party, and there are no promises, covenants, agreements, representations, warranties or understandings between the parties other than those stated herein or in any of the other agreements contemplated hereby, whether such other agreements are executed simultaneously herewith or at a future date.

11.15 **Attorney's Fees.** In the event that any party finds it necessary to employ an attorney to enforce any provision of this Agreement or institute any legal action arising out of this Agreement or related to the subject matter hereof, the predominantly prevailing party will be entitled to recover from the other party or parties its reasonable attorneys' fees and costs incurred in connection therewith (including costs of collection), at both trial and appellate levels; including bankruptcy proceedings, in addition to any other remedies to which such party may be entitled. The requirement to pay the predominantly prevailing party's reasonable attorneys' fees and costs will survive any termination of this Agreement.

11.16 **No Third-Party Beneficiary Rights.** The parties do not intend by this Agreement to create or establish any enforceable third-party beneficiary rights or to intentionally benefit any third party, and therefore this Agreement does not establish any other intended beneficiaries to any rights or obligations.

11.17 **Books and Records/Audit.** DPC shall maintain its books and records relating to the operation and maintenance of The Bob Carr pursuant to this Agreement in accordance with generally accepted accounting principles, and the City shall have the right to inspect and audit such books and records at reasonable times upon prior, written notice to DPC. DPC shall maintain such books and records during the term of this Agreement for a period of five (5) years after an audit is complete for a given year.

11.18 **Compliance with Laws.** DPC shall be responsible for compliance, and shall comply with all applicable present and future federal, state and local laws, ordinances, rules and regulations relating to the operation and maintenance of The Bob Carr pursuant to this Agreement.

11.19. **Artwork Loan.** Contemporaneously with the execution and approval of this Agreement, the City and DPC have entered into an Artwork Loan Agreement for City-owned artwork as set forth on Exhibit F.

11.20. **Furniture, Fixtures, and Equipment.** If Stage 2 construction commences during the term of this Agreement, the City shall allow use of the funds allocated for theatrical furniture, fixtures and equipment (“Theatrical FF&E”) within the Stage 2 Construction Contract Documents for early purchase of the Theatrical FF&E to be used for events and performances at The Bob Carr. Upon completion of Stage 2, the Theatrical FF&E shall be transferred to the Stage 2 acoustical theater.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Dr. Phillips Center for the Performing Arts, Inc.

City of Orlando, Florida

By: _____
Katherine Ramsberger, President

By: _____
Buddy Dyer, Mayor

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.
_____, 2014

Chief Assistant City Attorney