



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Does this Item include the use of Federal funds? Yes \_\_\_\_\_ No X  
 Does this Item include the use of State Funds? Yes \_\_\_\_\_ No X

Budget Account No.:

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

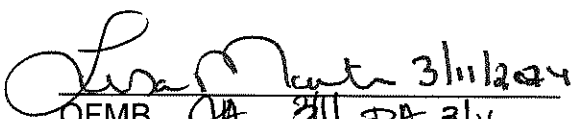
No fiscal impact.

**C. Departmental Fiscal Review:**

  
 Valerie Alleyne, Division Director II  
 Finance and Administrative Services, DHED

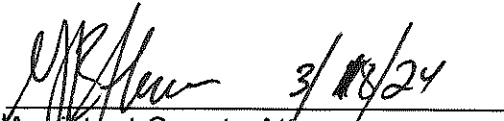
**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

  
 OFMB AA 211 DA 3/11  
 MR 3/11

  
 Contract Development and Control  
 3/13/24

**B. Legal Sufficiency:**

  
 Assistant County Attorney  
 for David Behar

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA (THE "ISSUER") AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE FINANCING AGREEMENT ORIGINALLY ENTERED INTO IN CONNECTION WITH THE ISSUANCE OF THE ISSUER'S INDUSTRIAL DEVELOPMENT REVENUE BOND (THE RAYMOND F. KRAVIS CENTER FOR THE PERFORMING ARTS, INC. PROJECT), SERIES 2018 THE PROCEEDS OF WHICH WERE USED FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO THE RAYMOND F. KRAVIS CENTER FOR THE PERFORMING ARTS, INC. (THE "BORROWER") TO PROVIDE FUNDS TO FINANCE THE COST OF ALL OR A PORTION OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN FACILITIES OF THE BORROWER; AUTHORIZING CERTAIN OFFICIALS OF THE ISSUER TO TAKE CERTAIN ACTION IN CONNECTION WITH THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") of Palm Beach County, Florida (the "Issuer") previously authorized the issuance for the benefit of The Raymond F. Kravis Center for the Performing Arts, Inc., a Florida not-for-profit corporation (the "Borrower") of the Issuer's Industrial Development Revenue Bond (The Raymond F. Kravis Center for Performing Arts, Inc. Project), Series 2018 (the "Bond") and the loan of the proceeds of the Bond to the Borrower to finance all or a portion of the acquisition, construction and equipping of certain facilities of the Borrower; and

WHEREAS, the loan was funded from the proceeds of the sale of the Bond to The Northern Trust Company (the "Lender"), pursuant to a Financing Agreement dated as of December 1, 2018 (the "Original Financing Agreement"), as amended by the First Amendment to Financing Agreement dated as of December 9, 2022 (the "First Amendment") and as further amended by the Second Amendment to Financing Agreement dated as of October 17, 2023 (the "Second Amendment"), each among the Lender, the Issuer and the Borrower;

WHEREAS, the Borrower and the Lender now desire to amend the Original Financing Agreement to modify the interest rate formula applicable to the Bond and certain other provisions related thereto (the "Amendments");

WHEREAS, the Borrower and the Lender have requested that the Issuer assist the Borrower in order to undertake the necessary actions; and

WHEREAS, it is necessary and desirable to approve the form of and authorize the execution and delivery of a Third Amendment to Financing Agreement (the "Third Amendment", together with Original Financing Agreement, the First Amendment and the Second Amendment, the "Financing Agreement") in substantially the form attached hereto as Exhibit A and incorporated herein by reference to, inter alia, specify the new formula for the interest rate applicable to the Bond.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA THAT:

SECTION 1. **AUTHORITY FOR THIS RESOLUTION.** This resolution, hereinafter called the "Resolution," is adopted pursuant to the laws of the State of Florida, including the Constitution of the State of Florida, Chapter 125, Florida Statutes, Part II, Chapter 159, Florida Statutes and other applicable provisions of law (the "Act").

SECTION 2. **DEFINITIONS.** Unless the context otherwise requires, the terms used in this Resolution in capitalized form and not otherwise defined herein shall have the meanings specified in the Financing Agreement among the Issuer, the Borrower and the Lender. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

SECTION 3. **INTERPRETATION.** Unless the context shall clearly indicate otherwise in this Resolution: (i) references to sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding sections and subdivisions of this Resolution;

(ii) the terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, refer to this Resolution only and to this Resolution as a whole and not to any particular section or subdivision hereof; and (iii) the term "heretofore" means before the date of adoption of this Resolution; the word "now" means at the time of enactment of this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

SECTION 4. **FINDINGS**. It is hereby ascertained, determined and declared that the Bond shall not be deemed to constitute a debt, liability or obligation, or a pledge of the faith and credit or taxing power, of the Issuer or of the State of Florida (the "State") or of any political subdivision thereof, but the Bond shall be payable solely from the revenues and proceeds to be derived by the Issuer from payments received under the Financing Agreement and the Issuer shall be obligated to pay the Bond only from the revenues and proceeds derived by the Issuer from such payments.

SECTION 5. **AUTHORIZATION OF AMENDMENT TO FINANCING AGREEMENT**. The form of the Third Amendment in substantially the form attached hereto as "Exhibit A" is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein, as may be approved and made in the form of the Third Amendment by the Mayor, subject to the approval of the County Attorney as to form and legal sufficiency, who are hereby authorized to execute, deliver and perform the Original Financing Agreement, as amended by the Third Amendment on behalf of the Issuer, and by the Borrower, in a manner consistent with the provisions of this Resolution, such execution by the Mayor and the attestation of signatures by the Clerk, to the extent required in the Financing Agreement, to be conclusive evidence of any such approval by the Issuer.

SECTION 6. **FURTHER INSTRUMENTS AND ACTIONS**. At the request of the Borrower or the Lender, the Issuer shall, at the expense of the Borrower, execute and deliver such further instruments or take such further actions as may be reasonably required to carry out the purposes of this Resolution, as the Borrower and Lender may deem necessary or appropriate, not inconsistent with the terms hereof.

SECTION 7. **AMENDMENTS**. No amendment to this Resolution shall become effective unless and until the Borrower and the Lender shall have consented thereto in writing.

SECTION 8. **LIMITED LIABILITY OF ISSUER**. Anything in this Resolution, the Financing Agreement, the Bond or the Other Financing Documents to the contrary notwithstanding, the performance by the Issuer of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements and promises made by it hereunder, and the liability of the Issuer for all warranties and other covenants hereunder, shall be limited solely to the revenues and receipts derived from the Financing Agreement, the Bond and the Other Financing Documents, and the Issuer shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such revenues and receipts.

SECTION 9. **NO PERSONAL LIABILITY**. No recourse under or upon any obligation, covenant or agreement contained in this Resolution, the Bond, any other Financing Document or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Resolution, shall be had against any member of the Board, agent, employee or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Bond or otherwise of any sum that may be due and unpaid by the Issuer upon the Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any member or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Bond or otherwise, of any sum that may remain due and unpaid upon the Bond is hereby expressly waived and released as a condition of and in consideration for the execution of this Resolution and the Amendments.

SECTION 10. **BOND TO BE LIMITED OBLIGATION**. Neither the State nor any political subdivision thereof (including the Issuer) shall in any event be liable for the payment of the principal of or interest on or late charges with respect to the Bond, except that the Issuer shall be liable to pay the Bond from the special sources as herein and in the Financing Agreement, the

Bond and the Other Financing Documents established and provided. The Bond issued hereunder shall never constitute an indebtedness of the State or of any political subdivision of the State (including the Issuer) within the meaning of any state constitutional provisions or statutory limitation and shall never constitute or give rise to the pecuniary liability of the State or any political subdivision thereof or of the Issuer or a charge against their general credit. The holder of the Bond shall not have the right to compel any exercise of the ad valorem taxing power of the State or of any political subdivision of said State (including the Issuer) to pay the Bond or the interest thereon or any late charges with respect thereto.

SECTION 11. **LAWS GOVERNING.** This Resolution shall be governed exclusively by the provisions hereof and by the applicable laws of the State.

SECTION 12. **NO THIRD PARTY BENEFICIARIES.** Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any person other than the Issuer, the Lender and the Borrower any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

SECTION 13. **PREREQUISITES PERFORMED.** All acts, conditions and prerequisites relating to the passage of this Resolution and required by the Constitution or laws of the State to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required. Any actions by officials of the Issuer with respect to the Bond, this Resolution, the Financing Agreement and the Other Financing Documents, and the transactions contemplated hereby and thereby, that may have occurred prior to the date of this Resolution are hereby ratified.

SECTION 14. **GENERAL AUTHORITY.** The Mayor, the Clerk (or Deputy Clerk), the County Attorney (or assistant County Attorney) and the other officers and employees of the Issuer are hereby authorized to execute and deliver such documents, instruments and certificates as deemed necessary or appropriate to carry out the intent of this Resolution and do all acts and things required of them by this Resolution, the Financing Agreement, the Bond and the Other Financing Documents or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Bond, this Resolution, the Financing Agreement and the Other Financing Documents, including, without limitation, amending or issuing replacement Bond in a manner not inconsistent herewith.

SECTION 15. **RESOLUTION CONSTITUTES A CONTRACT.** The Issuer covenants and agrees that this Resolution shall constitute a contract between the Issuer and the holders from time to time of the Bond and that all covenants and agreements set forth herein and in the Bond, the Financing Agreement and the Other Financing Documents and to be performed by the Issuer shall be for the benefit and security of the holder of the Bond.

SECTION 16. **SEVERABILITY.** If any one or more of the covenants, agreements, or provisions contained herein or in the Bond shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions hereof and thereof and shall in no way affect the validity of any of the other provisions of this Resolution or of the Bond.

SECTION 17. **REPEALER.** All resolutions or ordinances or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

SECTION 18. **LIMITED APPROVAL.** The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any current or prospective purchaser of the Bond, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bond, or (iv) any necessary governmental approval relating to the Project, and the Issuer shall not be construed by reason of its adoption of this resolution to have made any such endorsement, finding or recommendation or to have waived any of the Issuer's rights or estopping the Issuer from asserting any rights or responsibilities it may have in that regard.

SECTION 19. **EFFECTIVE DATE.** This Resolution shall take effect immediately upon its passage and adoption.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and being put to a vote, the vote was as follows:

Commissioner Maria Sachs, Mayor	_____
Commissioner Maria G. Marino, Vice Mayor	_____
Commissioner Gregg K. Weiss	_____
Commissioner Michael A. Barnett	_____
Commissioner Marci Woodward	_____
Commissioner Sara Baxter	_____
Commissioner Mack Bernard	_____

The Mayor thereupon declared the Resolution duly passed and adopted this 9<sup>th</sup> day of April, 2024.

**PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS**

**APPROVED AS TO LEGAL  
SUFFICIENCY**

**ATTEST: JOSEPH ABRUZZO  
CLERK & COMPTROLLER**

By: *J.P. Hewa for*  
Assistant County Attorney  
*David Behar*

By: \_\_\_\_\_  
Deputy Clerk

EXHIBIT A

FORM OF THIRD AMENDMENT TO FINANCING AGREEMENT

**THIRD AMENDMENT TO  
FINANCING AGREEMENT**

THIS THIRD AMENDMENT TO FINANCING AGREEMENT (this "Amendment"), dated as of \_\_\_\_\_, 2024, among THE RAYMOND F. KRAVIS CENTER FOR THE PERFORMING ARTS, INC. (the "Borrower"), THE NORTHERN TRUST COMPANY, an Illinois banking corporation ("Bondholder") and PALM BEACH COUNTY, FLORIDA.

**RECITALS**

A. This Amendment amends the terms of that certain Financing Agreement dated as of December 1, 2018 (as the same may have been amended from time to time, the "Financing Agreement") among Palm Beach County, Florida (the "Issuer"), the Borrower and the Bondholder, as amended by the First Amendment to Financing Agreement dated as of December 9, 2022 and as further amended by the Second Amendment to Financing Agreement dated as of October 17, 2023, pursuant to which the Issuer, at the request of the Borrower, issued its Industrial Development Revenue Bond (The Raymond F. Kravis Center for the Performing Arts, Inc. Project), Series 2018 to the Bondholder (as the same may have been amended from time to time, the "Series 2018 Bond"), pursuant to which Borrower agreed to pay Bondholder the original principal amount of \$20,000,000 (the "Loan") as set forth in the Series 2018 Bond.

B. The Borrower and the Bondholder, in order to correct a mutual misunderstanding and to evidence the original intention of the parties with respect to certain of the interest rate provisions in the Financing Agreement (collectively, the "Interest Rate Provisions"), agree to amend the Interest Rate Provisions as set herein to remove the concept of Margin Rate Factor.

C. There has been delivered on the date hereof an Opinion of Bond Counsel with respect to the change to the Interest Rate Provisions being amended by this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto hereby agree as follows:

SECTION 1. Definitions. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Financing Agreement.

SECTION 2. Amendments to the Financing Agreement.

(a) Effective \_\_\_\_\_, 2024 (the "Effective Date"), the defined terms "Margin Rate Factor" and "Maximum Federal Corporate Tax Rate" are deleted from Section 1.01 of the Financing Agreement.



(b) The defined term "Interest Rate" in Section 1.01 of the Financing Agreement is amended and restated in its entirety as follows:

"Interest Rate" except as otherwise provided herein, means a per annum rate equal to the sum of (x) the Applicable Percentage multiplied by the Daily Simple SOFR-Based Rate (the Base Rate, during a Base Rate Segment) plus (y) the Applicable Spread, and subject to adjustment to reflect changes in SOFR (or the Base Rate, during a Base Rate Segment) and in accordance with Section 2.03 hereof. [((Applicable Percentage X the Daily Simple SOFR-Based Rate) + Applicable Spread).]

(c) Section 2.03(d) of the Financing Agreement is hereby amended and restated in its entirety as follows:

(d) If Bondholder notifies Borrower that (A) reasonable means do not exist for Bondholder to determine the Daily Simple SOFR-Based Rate as determined by Bondholder in its sole discretion, (B) there is a public statement or publication of information by or on behalf of the SOFR Administrator, the regulatory supervisor for the SOFR Administrator, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the SOFR Administrator or a court or an entity with similar insolvency or resolution authority over the SOFR Administrator, announcing that (1) the SOFR Administrator has ceased to provide SOFR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide SOFR or (2) SOFR is not representative (including pursuant to an earlier statement or announcement that SOFR will not be representative as of a specified future date), or (C) if any treaty, statute, regulation, interpretation thereof, or any directive, guideline, or otherwise by a central bank or fiscal authority (whether or not having the force of law) shall prohibit or restrict the making or maintenance of the interest on the Series 2018 Bond based on the Daily Simple SOFR-Based Rate then the principal subject or to be subject to the Daily Simple SOFR-Based Rate shall continue to accrue interest at a rate equal to the Applicable Percentage multiplied by the Base Rate plus the Applicable Spread, (a "Base Rate Segment"). [((Applicable Percentage X the Base Rate) + Applicable Spread).]

SECTION 3. Representations and Warranties of the Borrower. Except as specifically amended and modified pursuant to the terms of this Amendment, the Financing Agreement, the Series 2018 Bond and the Other Financing Documents (including all terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by the Issuer and the Borrower. For the avoidance of doubt, in the event of any conflict or inconsistency between the provisions of this Amendment, and the provisions of the Financing Agreement, the Series 2018 Bond or any Other Financing Document, including without limitation any of the interest rate, payment and prepayment provisions and

any benchmark replacement provisions, the provisions of this Amendment shall control and be binding. The Borrower covenants and agrees to comply with and perform all of its obligations under all of the terms, covenants and conditions of the Financing Agreement and Series 2018 Bond, as amended and modified by this Amendment, and the Other Financing Documents.

SECTION 4. No Waiver or Novation. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided in this Amendment, operate as a waiver of any right, power or remedy of Bondholder, nor constitute a waiver of any provision of the Financing Agreement, the Series 2018 Bond, the Other Financing Documents, or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing defaults or events of default under the Financing Agreement, the Series 2018 Bond or any Other Financing Document or of any of Bondholder's rights and remedies in respect of such defaults or events of default. This Amendment (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Financing Agreement, the Series 2018 Bond or any Other Financing Document.

SECTION 5. Indemnity by the Borrower. Section 6.07 of the Financing Agreement continues to apply and is in full force and effect in connection with this Amendment.

SECTION 6. Counterparts. This Amendment may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Borrower, the Issuer and the Bondholder have executed this Amendment by their respective duly authorized representatives, all as of the date first written above.

THE RAYMOND F. KRAVIS CENTER  
FOR THE PERFORMING ARTS, INC.

By: \_\_\_\_\_  
Name: Diane Quinn  
Title: Chief Executive Officer

THE NORTHERN TRUST COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PALM BEACH COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor

ATTEST: JOSEPH ABRUZZO  
CLERK AND COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Assistant County Attorney

*[Signature Page to the Third Amendment to Financing Agreement]*