

A-51-93-CC

OPERATING AGREEMENT for the

Christopher Cohan Center – Performing Arts Center San Luis Obispo

~~This Operating Agreement (Agreement), dated this is made and entered into and is effective this~~ _____ day of April _____, 2024 (the "Effective Date"), is ~~is~~ ~~This Agreement is made and entered into by and among the Foundation for the Performing Arts Center, a California non-profit public benefit corporation ("FPAC"); the City of San Luis Obispo, California ("the "City"); and the Board of Trustees of the California State University (the "University") ("the Trustees") on behalf of California Polytechnic State University, San Luis Obispo ("the University"), and the Central Coast Performing Arts Commission, a non-profit public benefit corporation (the "Commission"), to provide for the operation and governance of the Christopher Cohan Center – Performing Arts Center San Luis Obispo (aka San Luis Obispo County Performing Arts Center, aka Christopher Cohan Center, and hereinafter "the "Center") which the FPAC, the University, Trustees, the University, the City and the Commission FPAC (collectively, the "Parties") have built, maintained, and/or operated.~~

~~From this date forward, this Agreement is the governing document for the Center, and supersedes and replaces all prior versions of any and all operating agreements for the Center, including but not limited to these at certain operating agreement dated March 31, 1993, and as amended on April 15, 2002, and further amended on July 25, 2023. Any prior operating agreements in effect as of the eEffective dDate of this Agreement are hereby terminated by mutual agreement of the Parties hereto.~~

~~This agreement is made and entered into this 31st day of March, 1993, amended~~

~~on April 15, 2002, and further amended on July 25, 2023 by and among the Foundation for the Performing Arts Center, a California non-profit public benefit corporation ("FPAC"), the City of San Luis Obispo, California (the "City") and the State of California acting through the Trustees of the California State University (the "Trustees") on behalf of California Polytechnic State University, San Luis Obispo (the "University") to provide for the operation and governance of the Performing Arts Center (the "Center") which the Trustees, the University, the City and FPAC (collectively, the "Parties") have built.~~

Statement of Facts and Purposes

~~On or about December 5, 1989, the Parties FPAC, City, and University entered into a that certain Development Agreement, for the Center~~

~~Performing Arts Center (the "Development Agreement"). (For clarification, the Development Agreement states it is entered into on the 13th day of November 1989, but was signed by the last party on December 5, 1989.)~~

~~The Development Agreement called for the Pits parties to enter into an a Agreement for the operation of the Center, consistent with the Development Agreement. All other obligations of all those partners parties laid out in the Development Agreement have been fulfilled and this Operating Agreement is the only continuing agreement.~~

It is the intent of the Parties that the Center be operated cooperatively for the mutual benefit of the University and the people of San Luis Obispo County, on a permanent basis. The Parties affirm that the operation of the Center has fulfilled this intent during its existence, I, ~~and the Parties seek to amend this Operating Agreement replaces prior operating agreements in order to identify the terms and conditions agreed to by the Parties and to reflect current operating practices of the Center, and allow it to respond to current and anticipated future performing arts industry practices and local market conditions in order to continue to fulfill theis intent of the Development Agreement.~~

Section 1 - Center Mission and Policies

1.01 The Intent and Mission. ~~The Parties intend that the agree to operate the Center presents a wide array of events from as a facility where a broad mix of community, and University, and nonprofit organizations, and commercial producers will present a diverse array of events. The Parties intend to accomplish this through a Director (as hereafter defined) and a professional staff, and through the Central Coast Performing Arts Center Commission (“the “Commission”), all as more specifically provided in Section 2. The Parties intend that t~~The Center functions primarily as a host/rental facility for other organizations to present events. However, in order to fulfill its mission to make a diverse array of events available to a broad demographic cross-section of San Luis Obispo County, as well as generate earned revenue, ~~the~~ Center management may present and/or co-promote certain events each season.

1.02 Policies on Use and Access. Center policies shall be developed and implemented by the Commission for use of and access to both interior spaces and exterior spaces of the Center, ~~and in compliance with applicable policies of the Trustees and the University.~~ As used in this Agreement, “exterior spaces” mean plazas and courtyards constructed as part of the Center. Such policies shall be consistent with the Parties’ intent that the Center be available to a diverse group of users. The Director, the Commission and the Parties shall respect the lawfully exercised artistic and other rights of expression of users of the Center.

1.03 Role and Goals of the Partners. The University shall have access to the Center as a venue for key University events, and two-thirds of the Center’s overall schedule must enhance the educational mission of the University.

The University will provide an appropriate number of staff to manage fiscal operations and custodial needs for the Center. The University shall be responsible for facility projects and improvements. This work will be paid for through the University’s annual

operating budget or major equipment maintenance/repair reserve fund, or as otherwise determined by the University. In the event of the failure of large internal or external building systems (terms laid out in Section 3.04), the University shall cover two-thirds of the expense and the City and FPAC shall each cover one-sixth of the expense to fix the affected system and keep the Center in operation.

The City, FPAC, and Commission will provide guidance and support to the Center and its staff to provide the citizens of San Luis Obispo and the surrounding area with a world class facility for the performing arts. These Parties are committed to providing local non-profit arts groups an equitable share of time in the Center. (Terms laid out in Section 4.01)

Section 2 – Center Governance and Management

~~2.01 The Central Coast Performing Arts Center Commission. In consideration for the non-state funding provided by the City and FPAC for the Center, the Parties previously agreed to and did create a nonprofit public benefit corporation known as “The Central Coast Performing Arts Center Commission.” that the City, FPAC and the University shall create a nonprofit public benefit corporation. The purpose of the corporation Commission shall be to advise the University and the Center manager on operating policies, scheduling, and maintenance policies. The Commission, with concurrence of the University President, shall adopt the operating budget and budget amendments.~~

~~2.01.1 Name. The nonprofit public benefit corporation formed by the Parties shall be known as the Central Coast Performing Arts Center Commission (the “Commission”).~~

~~4.01.2 Board of Directors. The Commission shall be governed by a board of directors consisting of nine persons (“the “Board”).~~

~~2.01.3 — Membership. The Commission shall have no members, as provided in California Corporations Code Section 5310.~~

~~2.01.4 — Powers and Responsibilities of the Commission. The Commission shall be advisory to the University and the Manager of the Center as to operating policies, scheduling; and maintenance policies. The Commission, with concurrence of the University President, shall adopt the operating budget and budget amendments of the Center all as set forth herein.~~

~~2.01.5 — Selection of Directors. The President of the University shall appoint five directors and five alternates. The City shall appoint two directors and two alternates. FPAC shall appoint two directors and two alternates.~~

~~2.01.6 — Compensation of Directors. No director shall be compensated for services as such, except that directors may be reimbursed for actual expenses incurred as permitted by California Corporations Code Section 5236, and approved by the Board.~~

~~2.01.7 — Terms of Office. Directors shall be appointed for a three-year term. Directors' terms may be renewed for one or more additional three-year terms at the discretion of the Party for whom they serve as a director. A Director may be removed at any time without cause by the Party agency which appointed them.~~

~~2.01.8 — Quorum. A quorum shall consist of five members of the Board, including at least one representative from each of the three Parties.~~

~~2.01.9 — Officers. The Board shall select one of its members as Chair, one member as Vice-Chair, one member as Treasurer/CFO, and one as Secretary to serve at the pleasure of the Board. All officers, with the exception of the Treasurer/CFO, shall serve two-year terms, commencing and rotating in January. The Chair, Vice-Chair and Secretary shall not be from the same organization/Party. Upon expiration of the Chair's two-year~~

~~term, the Vice Chair shall succeed him/her as Chair for the succeeding two year term, and the Secretary will move into the Vice Chair position. The then vacant Secretary position shall be filled by a member from the same organization/Party as the departing Chair. The Treasurer/CFO position shall be filled by a member from the University, and shall serve in that position for a period of time determined by the University President.~~

~~2.01.10 — 2.01.10 Voting. All actions of the Board other than adoption of a budget or changes to a budget require the approval of five (5) members with at least one vote from each of the Parties. Adoption of a budget or changes to a budget require the approval of seven (7) members with at least one vote from each of the Parties.~~

~~2.01.11 — 2.01.11 Regular Meetings. The Board shall hold regular meetings, on a schedule to be agreed upon by the members; but, in any event, not less often than quarterly.~~

~~2.01.12 — 2.01.12 Special Meetings. Special meetings may be called by the Chair or by any two members.~~

~~2.01.13 — 2.01.13 Emergency Meetings. Emergency meetings may be called by the Chair or by the Director when there are exigent circumstances that threaten the mission, operations or physical assets of the Center that are managed by the PAC parties.~~

~~2.01.14 — 2.01.14 Public Meetings. Commission meetings, being those of a California State University auxiliary organization as defined by California Education Code § 89901, shall be conducted in accordance with Education Code Section 89920 et seq. All meetings shall be held in the Center, unless some other meeting place providing convenient public accessibility is specified in the notice of meeting.~~

~~2.01.15 — 2.01.15 Bylaws. The Board shall, from time to time, adopt such bylaws, rules and policies not inconsistent with this Operating Agreement and the Development Agreement as it determines to be best suited to the internal operation of the Commission and its advisory role to the Manager of the Center and the President of the~~

~~University. Proposed bylaws and proposed bylaw amendments shall be submitted to each of the three Parties for review and comment, all in a timely manner.~~

2.02 Management. All aspects of the management and operation of the Center (including both interior and exterior spaces, furnishings and equipment) shall be the responsibility of a Director. The Director shall be a person qualified to perform the duties required to fulfill the Mission of the Center. Qualifications of the Director shall include, but not be limited to professional training, experience in performing arts and/or public assembly venue management, and the personal traits necessary to work effectively with a diverse group of University and community groups and individuals. The Director shall see to the wise use of the Center for the ultimate benefit of both the University community and the people of the City of San Luis Obispo and San Luis Obispo County. Prior to hiring a new Director, the Commission and the President of the University shall review and amend, as necessary, a detailed job description for the Director. Representatives of all ~~three~~ Parties shall participate in the hiring process and provide a recommended selection ~~selection of the Managing-Director to the President of the University. The final selection of the Director is under the sole and exclusive purview of the President of the University.~~ The Director shall be an employee of the University or a University auxiliary organization, as the President of the University shall determine.

Early each year, in accordance with guidelines established by the President of the University in consultation with the Commission, the Commission will review the past year's operations, including an assessment of the Director's performance. The employer of the Director (University or the University Auxiliary) shall be responsible for ~~insuring~~ ensuring that the Director operates the Center as contemplated by ~~within this Agreement, and in accordance with the~~ ~~and~~ budgets and policies of the Center adopted by the Parties or the Commission, as provided in this Agreement. ~~The Commission-~~

~~shall advise the President in the selection of the Director.~~ The Director shall be responsible to and serve at the pleasure of the University President and shall serve as liaison to the Commission on broad policy matters. The Director shall be responsible for all administrative and operating matters. The President shall consult with the Commission in the review of the Director and prior to terminating the Director.

~~2.022.01~~ Other Center Staff. ~~The balance of the~~ Operating staff of the Center will be employees of the University or a University auxiliary. The Commission shall reimburse the University ~~and or the~~ University auxiliary, as appropriate, each year, in the amount set forth in the final approved Center budget, for compensation and benefits for the operating staff of the Center; consistent with Section 3 of this Agreement and the Development Agreement. The Director and certain other Center Management staff will be employees of the University or a University auxiliary, and their compensation and benefits expense will be paid by their employer ~~e University~~ as part of its annual assessment to cover Center operating costs, as set forth in Section 3, below. The Commission will contract with the California Polytechnic State University Cal Poly Partners or some other entity suitable to the Commission and the University President, for its accounting and financial management and facility support services.

The Director shall be responsible for the appropriate use and operation of the Center, and for the hiring, training, retention, control and, as needed, the discipline and termination of Center employees reporting to the Director. The Director will report to the University President and inform the Commission on these matters.

Section 3 – Center Fiscal Matters

3.01. Financing of Center Operations. The assessments to cover the budget requirements of the Center shall be shared by the Parties as follows: two-thirds (2/3) assessed to the University, one-sixth (1/6) to ~~the Foundation for the Performing Arts Center~~ FPAC and one-sixth (1/6) to the ~~City of San Luis Obispo~~ FPAC ~~[(collectively, the~~

~~“Partners’ Contributions.”]~~ ~~.)~~ ~~The assessment requirement is ca~~ Partners’ Contributions shall be calculated as equal to the sum of the Center annual budget for operations and contribution to reserves, less revenue derived from operations. For purposes of calculating the budget, The operating costs shall include all costs of operation, including but not be limited to, management and staff compensation, marketing, fiscal management and bank fees, staff travel and training, insurance, contracts for services, supplies and equipment, interest expense, routine maintenance and utilities, and other miscellaneous operating expenses deemed appropriate by the Commission. Reserves shall include, but not be limited to, operations, promotion or co-promotion risk mitigation fund, major maintenance, and repair and replacement. Center operation revenue shall include facility use rent, administrative fees for University events, reimbursement for event related labor expenses (plus contribution to overhead), per-ticket fees on tickets sold for events at the Center and through the Cal Poly Ticket Office, net ticket sales from Center presented and co-promoted ticketed events, grant support from FPAC and other donors for the Center’s Outreach (youth arts-in-education) Program, interest income, and other revenue items as agreed by the Parties. The Center’s fiscal management (i.e. procurement, cash handling, etc.) shall follow policies established by Cal Poly Partners, who currently supports the Center’s fiscal services.

3.02. FPAC Support for the Outreach Program. In addition to its annual Partner Contribution specified above, the FPAC will provide an annual grant to the Center to fund a portion of the Center’s Outreach Program. FPAC staff will collaborate with the Director during the development of the annual operating budget each year to determine the scope of, and associated costs for the Outreach Program for the upcoming fiscal year, and therefore the size of FPAC’s grant to support the Program. The Center, through the Parties, will provide appropriate recognition for FPAC’s support of the Outreach Program in marketing and publicity materials associated with the Program.

3.03. University Support and Maintenance. The University will provide the Center with utilities, routine building maintenance and minor repairs/upgrades, and custodial services consistent with state criteria and reasonable industry standards for professional performing arts center facilities. The University's maintenance staff will consult and cooperate with the ~~Managing~~ Director as to maintenance and service needs and scheduling occasioned by the Center's schedule and uses. Costs associated with these items will be included in the operating costs of the Center and shared by the Parties per section 3.01 above. Maintenance and repair of the grounds and landscaping adjacent to the Center, including the Plaza in front of the Center, and loading dock area, shall be the responsibility of the University and not at a cost to the Center's operating budget or major maintenance fund.

3.04 Major Maintenance/Repair and Replacement Reserve Fund. The Parties shall establish and shall maintain a dedicated Reserve Fund for costs associated with maintenance, repairs, upgrade and/or replacement of Center equipment, systems, furnishings, fixtures, interior finishes, and structures that exceed the scope and costs of "routine maintenance and minor repairs/upgrades" covered by the Center's annual operating budget, as specified above. In general, such "major maintenance, repair or replacement/upgrade projects shall have a minimum estimated cost of \$7,500, and a maximum estimate cost of \$250,000. (2022 dollars). These minimum and maximum cost thresholds will be adjusted annually by the percentage increase in the Federal Bureau of Labor Statistics Consumer Price Index ("CPI-U") applicable to San Luis Obispo County, or as the Parties deem appropriate.

3.04.1 Projects Above the Maximum Cost Threshold. Major maintenance/repair/replacement projects for internal or external building systems (External systems that connect to the PAC, Roof/Physical Shell failure and Internal Systems (i.e. Electrical, HVAC, Security, Life Safety, Lighting, Utilities, Telecom, and

Energy Management) whose estimated cost exceeds the maximum amount of \$250,000 shall be funded by an alternate method and resources. Once a project is determined to be above the maximum cost threshold, the Partners will meet within 30 days and determine the specific funding sources to move forward with the project. The assessments to cover the funding of these projects shall be as follows: two-thirds (2/3) assessed to the University, one-sixth (1/6) to the FPAC and one-sixth (1/6) to the City.

3.04.2 Annual Contribution to the Major Maintenance/Repair and Replacement Fund. The Major Maintenance/Repair and Replacement Fund will be funded by an annual contribution from the Center's operating budget, and from other resources as the Commission may determine. The Director will prepare an annual budget of Major Maintenance/Repair and Replacement Fund project expenses for review and approval of the Commission and University President concurrent with the annual operating budget review and approval process. The Director will provide the Commission not less than quarterly updates of actual expenses compared to this approved annual Major Maintenance/Repair and Replacement Fund project budget.

3.05 Operating Budget and Reserves. The Center will be budgeted to operate on a balanced, fiscally viable basis. The Director will be responsible for preparing an annual balanced operating budget, and setting reserve needs in consultation with the Commission. The Director shall not materially exceed the authorized budget limit without the prior consent of all three Parties represented on the Commission. The Commission and the Director shall conduct no less than quarterly reviews of actual results compared with the budget. If appropriate in light of those results, the Commission may adopt, with concurrence of the University President, and the Director shall implement revisions to the budget and to Center operations in order to avoid a deficit. The budget will be effective when approved by the Commission and

the University President. (Specified in section 3.01) Any operating budget surplus at the end of the fiscal year will be allocated to the Operating Reserve, or as the Commission determines.

3.06 Event Presentation/Co-Promotion Risk Mitigation Fund. The Commission shall establish and maintain a Risk Mitigation Fund separate from the Operating Reserve and Major Maintenance/Repair/Replacement Reserve to supplement/offset any unbudgeted financial losses that may occur from the Center's presentation and/or co-promotion of events during a fiscal year, as provided for in Section 4. Any resources drawn from this Fund will be replenished first by net revenue from subsequent presentations/co-promoted events, before such net revenue is accounted for/credited to the annual operating budget. In the event that all Risk Mitigation Funds are exhausted, the Commission will determine whether or not to allocate additional funds from the Operating Reserve to replenish the Fund.

3.07 Fundraising, Sponsorship for Center Presentations, Outreach Program Support and Named Gifts.

The Parties ~~to the Commission~~ may agree to pursue the establishment of a Commission endowment when the spendable earnings of the FPAC's endowment are sufficient to cover the FPAC's obligations under this agreement. When established, this Commission Operating Endowment Fund shall be held by a trustee approved by the Parties with the spendable earnings transferred for inclusion in the Center's operating budget. Other funds held by the FPAC are not subject to this ~~agreement~~Agreement. FPAC will be the primary fundraising entity for the Center, including, but not limited to securing sponsors for Center presentations/ co-promotions, donations to support the Center's Outreach Program, and donations for specific special or capital projects. The University, Commission and the ~~Managing~~ Director shall

coordinate with the FPAC to ensure that fundraising is as efficient as possible. Notwithstanding the foregoing, FPAC shall consult with the University's Advancement Department, and obtain the University's approval (not to be unreasonably withheld or denied) before soliciting and obtaining a "naming gift" for any portion of the Center. The University will collaborate with FPAC to assist with this process to facilitate its success, while ensuring that this solicitation/donation does not conflict with the University's pre-existing plans to solicit a gift from the same donor.

4.01 Hold Harmless for Trustees University. The Commission ~~will~~ shall release and hold harmless the ~~Trustees of the California State University~~ University from any debts the Commission may incur. Failure to finance a deficit or to agree to a budget ~~may~~ bear grounds to terminate this Agreement.

Section 4 – Center Use and Access Scheduling

4.01 Use and Access Scheduling. The -Director, in consultation with the Commission, shall develop, update and maintain an "Event Scheduling and Booking Policy," consistent with the Center's mission outlined in Section 1 and the requirement that the Center operate on a balanced, fiscally viable basis outlined in Section 3. This Policy will recognize and facilitate the eCity's and community's entitlement to fair and equitable access to and use of the Center. The Director will ensure that approximately one-third of event dates are reserved for City and community organization (FPAC) events appropriately reflecting their combined approximate one-third share of the capital costs (in excess of revenue) of the Center and that approximately two-thirds of the event dates at the Center, including University-presented public events, shall be activities that- enhance the University's educational mission.

The University shall have first priority scheduling for up to twelve (12) official University functions (such as faculty convocations and graduations) each fiscal year/season (July-June). This list is provided by the Office of the President. The Director will work with the University partners to schedule these functions by October 15th of each year for events in the subsequent fiscal year (July 1 – June 30). Once the dates for these official functions are received, the Center will next afford priority scheduling for the following fiscal year for annual ticketed public performances/events hosted by the University's Music Department and the Center's; Resident Arts Organizations (as defined in the Scheduling and Booking Policy); Once those events are scheduled, the scheduling for the University's arts-presenting organization (Cal Poly Arts or its successor) begins, and they it shall have access to booking until May 1; ~~and~~ After May 1, the Center's commercial presentations/ co-promotions can be booked for a reasonable period of time before confirming date requests for other events in the following fiscal year. -

Once an event and date is identified, the University's presenting department, will be given the first opportunity to present the proposed event.

If the University's presenting organization decides not to add the event to the schedule, the Center will then have the opportunity to move forward with presenting or co-promoting the event with a different presenter. Proposed events should aim to provide different genres than the Center's resident tenants and Campus presenting organization so there is no direct competition for fundraising dollars and ticketing revenue. Events cannot be confirmed until after the Campus presenting department's season is confirmed. Artist offers must be in line with the Campus presenting department's show budgets (i.e. venue, labor and tech rates, and ticket fees) as to not

weaken the shared negotiating power in the performing arts industry.

The Center will not be the exclusive home for any user group. The Director will make every effort to accommodate the needs and schedules of local performing groups (campus based and community based) including organizations which present touring performers. The Parties recognize that certain users may best be served by scheduling more than one year in advance. The Director shall determine the means to adjust to that need while maintaining opportunities for flexibility in scheduling. All use of the Center shall be subject to the Director's scheduling decisions after consultation with the Commission. In the event of a scheduling conflict or perceived unfairness in the allocation of Center usage for city or community sponsored events the Director, the University and the Commission shall use their best efforts to resolve the conflict and/or the perceived unfairness of date allocation, pursuant to section 4.02 of this Agreement. After good faith consultation, should the parties be unable to resolve said conflict/incidence of perceived unfairness, the matter shall be referred to the University President, whose decision in the matter shall be final.

Community and campus nonprofit groups will be charged at a lower rate for use of the Center than other groups. The Director shall develop and maintain a schedule of facility use fees and event related charges for use of the Center in consultation with the Commission, consistent with the mission of the Center, per section 1, and financial management expectations, per section 3. This schedule shall provide the most favorable/lowest facility use fee rates for University, City and FPAC events; with the Center's Resident Arts Organizations receiving the next most

favorable/discounted facility use rates; then other community non-profit, educational, and government organizations; before non-discounted facility use rates for events presented by commercial, for-profit entities.

4.02 Resolution of Usage Conflict.

4.02.1 Issues Covered. The only matter subject to conflict resolution shall be the fairness in the allocation of Center usage for city or community sponsored events.

4.02.2 Complaint Procedure. In the event the City or FPAC takes exception to the fairness of Center usage allocated to city or community sponsored events in the proposed annual calendar developed by the Director and after review by the Commission, either the City or the FPAC may write the University President, specifying the perceived unfairness. The writing must be submitted to the President within one week of receipt of the Director's final schedule. The President shall ~~use his~~ "good offices" to mediate between the complaining party or parties and the Director. If the entity cannot accept the President's decision in mediation, it or they may appeal the matter to a dispute resolution committee.

4.02.3 Dispute Resolution Committee. The dispute resolution committee shall be composed of three members with each Party having one representative. If agreement can't be reached, dispute resolution will go to an external arbitrator to decide upon the dispute. The arbitrator will be paid for by the appealing party.

4.02.4 Time Limit. It is expected that the dispute process shall be completed within thirty (30) days of the time it is begun.

Section 5 - Concessions

5.01 Concessions. The sale or other distribution of food and beverages will be an integral part of events which occur in the Center. Therefore, it is important that the Center's users and patrons have available a first-class, diverse, food and beverage

offering. The California Polytechnic State University Cal Poly Partners Campus Dining and Catering Department will be the primary food service provider for the Center, subject to a mutually agreeable Service Level Agreement that defines service, staffing, qualitative and financial expectations. Should this Department be unavailable, or unable to provide food and beverage catering services acceptable to the Center's client for a particular event, the client may seek and secure catering services from another University-approved caterer for the event.

The Director in consultation with the Commission shall develop concessions and catering policy guidelines to be incorporated into this Service Level Agreement. All concessions and catering at the Center will be operated within these policy guidelines and Service Level Agreement. This Agreement will define opportunities and parameters by which certain revenues from concessions and catering operations are shared with and accrue to the Center and be used to cover Center operations through the Operating Budget.

Section 6 - Acquisition and Display of Art

6.01. Acquisition and Display of Art. The display of art at the Center is an important function of the Center, ~~and~~ which will be governed by the Art Acquisition and Display Policy established by the Commission. This Policy will be reviewed periodically by the Commission upon request of the Director or Commission, and may be modified as the Commission determines is necessary to ensure it appropriately honors and protects the free expression of ideas; and adequately considers its ability to preserve, protect and display pieces it may acquire consistent with available resources.

6.02 Art Acquisition Committee

Any works intended to become part of the permanent collection of the Center, must go through the approval process of the University's Art Acquisition Committee.

Section 7 - Parking

7.01. Parking Management Program. The University's parking management program, policies and procedures will provide public access to campus parking facilities for events scheduled at the Center. The University agrees that providing adequate, though nonexclusive parking is a part of its responsibility. The ~~Director~~Center and the University will execute a Service Level Agreement defining staffing, procedures, and financial aspects of parking for event patrons and Center/client personnel involved in events, (including rehearsals) scheduled at the Center. The University recognizes that safe, convenient, efficient access to and egress from parking before and after events for Center patrons is an important component of quality of the patron experience, and will work collaboratively with Center staff to achieve this, to the greatest extent reasonably possible within available resources.

Section 8 - Miscellaneous Matters

8.01. No Borrowing. The Commission shall not pledge as collateral the Center building, fixtures, or land they are situated upon for any loan, debt, or contract.

8.02. Insurance. The Commission, or the University on the Commission's behalf, shall maintain the following types and amounts of insurance, subject to periodic adjustments to recognize inflation and changes in industry standards:

8.02.1 Liability Insurance. The Commission shall obtain and keep in force a policy or policies of ~~public liability and property damage insurance~~ for bodily injury, property damage, and personal injury with a single combined liability limit of not less than \$5,000,000, ~~and property damage limits of not less than \$500,000~~ insuring against all liability of the Commission arising out of and in connection with use of occupancy of the Center. The Trustees, the City and FPAC, and any supporting auxiliary shall be

named as additional insureds. The Commission shall maintain such other policies of liability coverage as the Board determines prudent.

8.02.2 Property Insurance - Premises. The Commission shall obtain and keep in force a policy or policies of insurance covering loss or damage to the Center, including fixtures, equipment, and improvements to the extent of at least one hundred percent (100%) of full replacement value, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils ("all risk", as such term issued in the insurance industry). These shall include demolition, increased costs of construction, and change in building law endorsements.

8.02.3 Policy Form, Content, Insurer. All insurance required under this Agreement shall be issued by responsible insurance companies qualified to do business in California and reasonably acceptable to the Parties or under coverage provided by CSURMA/AORMA. All such insurance shall be issued as primary, not blanket, policies. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to the Parties.

8.03. Term and renewal of Agreement. This ~~Amended~~ Agreement shall remain in full force and effect, unless terminated or further amended as provided for below, for a period of 10 (ten) years from the Effective date ~~Date of its execution~~. The Agreement shall be automatically renewed for another 10 (ten) year period upon its expiration, unless any of the Parties provides notice to the other Parties at least 120 (one hundred twenty) days prior to such expiration of its desire to modify or terminate the Agreement.

8.04. Termination. This Agreement shall terminate, and the relationship among the Parties shall be dissolved upon the happening of any of the following:

- a. Agreement of all ~~three~~ Parties.
- b. Failure of the Commission to adopt, in a timely manner, an Operating

Budget with appropriate provision for reserves, as established by Commission policy, for a period of one year: after expiration of the most recent budget.

- c. Failure of any of the parties to deliver on the obligations outlined in this Operating Agreement after having been given written notice and a reasonable period to remedy any deficiencies. Termination under this subsection shall not give rise to any claim for damages by any non-deficient ~~party~~Party.

8.05. Amendment. This agreement may be amended at any time, in whole or in part, once or more often, by written agreement executed by the University, ~~Trustees of The California State University, the University, the City of San Luis Obispo, and the Foundation for the Performing Arts~~FPAC, and the Commission. In the event of dissolution, ~~Trustees~~ the University will give recognition to the City's and FPAC's contributions to the Center by guaranteeing community access to the facility at a rental rate and on a schedule no less favorable than what is available to ~~University-affiliated groups~~ for a minimum of ten years, consistent with the community's expectation of fair and equitable access to and use of the Center as set forth in Section 4.01 above.

8.06. No assignment of liability. No provision of this Agreement shall be used to assign liability for any claim of loss, damage, or injury which may occur at the Center, its facilities, or any University~~Cal Poly~~ campus facilities or facilities of the Trustees, which shall be assigned under general principles of liability.

Section 9 - Execution

9.01. Due Authorization. Each of the Parties represents by executing this ~~Amended~~ Agreement that he or she has been fully and completely authorized to do so and that he or she is empowered to bind the entity on whose behalf the Agreement is signed.

9.02 Third Party Beneficiaries Clause. This Agreement is made solely and specifically for the benefit of the Performing Arts Center and its partners, and no other Person or Entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Date: _____ BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

By: _____

RE: ~~A 51 93 CC~~

~~Operating Agreement for the Christopher Cohan Center-
Performing Arts Center San Luis Obispo~~

Date: _____ CALIFORNIA POLYTECHNIC
STATE UNIVERSITY

By: _____ President

Date: _____ CITY OF SAN LUIS OBISPO

By: _____
Mayor

Date: _____ FOUNDATION FOR THE PERFORMING
ARTS CENTER_

By: _____
President; Board of Directors

Date: _____ CENTRAL COAST PERFORMING ARTS
COMMISSION

By: _____
President

ATTEST:
FOR THE CITY OF SAN LUIS OBISPO

City Clerk