

**THIS DOCUMENT PREPARED BY  
AND RETURN TO:**

Roy K. Payne  
Chief Assistant City Attorney  
City of Orlando  
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Orlando, Florida 32801  
(407) 246-2295

**PARKING AGREEMENT  
BETWEEN  
DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC.  
AND  
CITY OF ORLANDO  
RE: ADMINISTRATION CENTER GARAGE**

THIS PARKING AGREEMENT BETWEEN DR. PHILLIPS AND CITY RE: ADMINISTRATION CENTER GARAGE, (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF ORLANDO**, a municipal corporation existing by and under the laws of the State of Florida (“CITY”), and **DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC.**, a Florida not-for-profit corporation, (DPC).

WHEREAS, DPC desires to utilize up to Two Hundred Sixty (260) parking spaces in the CITY's Administration Center Parking Garage (“Garage”) located at 300 Liberty Street, Orlando, FL, 32801, for employee parking related to operation of the Dr. Phillips Center for the Performing Arts (“Center”); and

WHEREAS, DPC also desires to utilize up to Thirty (30) on-street parking spaces located on Magnolia Avenue, south of Anderson Street for valet parking related to operation of the Center with a discounted accessible rate; and

WHEREAS, the CITY has spaces available in the Garage for employee parking and will provide them to DPC under the terms of this Agreement on a per-space, per-month basis, with the addition of a one-time access card fee for certain users.

NOW THEREFORE, in consideration of the mutual premises and other good and valid consideration given one party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**I. LOCATION OF SPACES.**

**A. ADMINISTRATION CENTER GARAGE.** The CITY will make available up to Two Hundred Sixty (260) parking spaces (Spaces) in the CITY's Garage for

DPC's use as described herein, these Spaces being subject to all generally applicable Parking System rules and regulations, either presently in force or as may be hereafter adopted. The location of the Spaces shall be assigned solely by the CITY and the CITY reserves the right to change the Spaces location within the Garage. The CITY further reserves the right to change the Spaces location to another parking facility on a temporary basis upon thirty (30) days prior written notice to DPC if such change is necessitated by the repair, or maintenance; sale or alienation of any portion of the Garage; the results of any system parking studies or policies in effect relating to the system; or for any other reason deemed reasonable by the CITY, solely.

**B. MAGNOLIA SPACES.** The CITY hereby authorizes DPC's use of Thirty (30) on-street parking spaces currently located within the right of way for Magnolia Avenue, south of Anderson Street, ("Magnolia Spaces"). DPC shall be entitled to use the Magnolia Spaces from 4:00 p.m. to 12 midnight, Monday through Friday, and from 11:00 a.m. to 12 midnight, Saturday and Sunday, ("Magnolia Use Term"). DPC personnel, or its authorized valet representative are authorized to bag the meters during the Magnolia Use Term or any portion thereof, utilizing procedures and equipment approved by CITY. Use of the Magnolia Spaces for valet parking is conditioned upon DPC's maintenance of a discounted rate for valet service for accessible parking during performances at the Center.

II. **TERM OF AGREEMENT.** The term of this Agreement, ("TERM)," shall be for a period of five (5) years, commencing on September 1, 2014.

III. **RENTAL CHARGE.**

**A. GARAGE SPACES.** DPC shall pay the sum of Seventy-Five Dollars (\$75.00) per month, per space for up to Sixty-Five (65) Spaces which equals up to Four-Thousand Eight Hundred Seventy-Five Dollars (\$4,875.00) per month for the full-time employees of DPC, ("FT Employees"). DPC shall pay the sum of Fifty Dollars (\$50.00) per month, per space for up to Forty-Five (45) Spaces which equals up to Two Thousand Two Hundred Fifty Dollars (\$2,250.00) per month for the part-time employees of DPC, ("PT Employees"). DPC shall pay Five Dollars (\$5.00) per space for each day a SPACE is actually used by performers and other temporary staff, ("Performance Staff"). Performance Staff may utilize up to One Hundred Fifty (150) Spaces per day. The monthly rate for Spaces for FT Employees and PT Employees shall increase annually by Five Percent (5%), with the first 5% increase occurring on October 1<sup>st</sup>, 2015 and on October 1<sup>st</sup> each year thereafter during this Agreement and any renewals of this Agreement. The \$5.00 daily rate for Performance Staff will be reviewed annually by CITY and is subject to increase at any time after one year from the Effective Date of this Agreement, if deemed appropriate, as solely determined by CITY. Said rate increase for Performance Staff

parking shall not be increased more than 5% in any twelve (12) month period. The payment for the FT Employees and the PT Employees shall be made in the total amount of up to Seven-Thousand One Hundred Twenty-Five Dollars (\$7,125.00), (“Rent”), in advance of each month's use of up to One Hundred Ten (110) Spaces by the FT Employees and the PT Employees. City and DPC agree that DPC may reserve less than One Hundred Ten (110) Spaces per month; however DPC acknowledges that the rate offered for Garage Spaces under this Paragraph is a discounted rate and the rate may be increased if DPC fails to reserve a sufficient number of Spaces. The first Rent payment shall be due on or before November 1, 2014. Thereafter Rent shall be due and payable, 1) on the first (1st) business day of each ensuing month, 2) for the full term of this Agreement and 3) without demand by CITY. DPC shall purchase in advance the Spaces for Performance Staff, (“Performance Staff Rent”). CITY has established a procedure for establishing a record of use by Performance Staff. DPC hereby consents to the CITY’s procedure and shall comply with all CITY directives in relation thereto. DPC shall pay the Performance Staff Rent prior to use. Any Spaces purchased for Performance Staff shall be valid for up to six months after purchase. In the alternative, DPC may purchase validation stickers from the City for Performance Staff use. CITY shall be responsible for the payment of any applicable sales or use tax that may be required to be collected by any governmental agency upon purchase of Garage Spaces under this Agreement.

**B. MAGNOLIA SPACES.** DPC shall pay Five Hundred Dollars (\$500.00) per space, per year for the 30 Magnolia Spaces, which equals Fifteen Thousand Dollars (\$15,000.00), annually. (“Magnolia Rent).” The Magnolia Rent shall be due and payable in advance of each year's use of the Magnolia Spaces. The first Magnolia Rent payment shall be due on or before October 1, 2014. Thereafter, Magnolia Rent shall be due and payable, 1) on the first (1st) business day of October each year, 2) for the full term of this Agreement and 3) without demand by CITY. DPC shall also pay to CITY any applicable sales or use tax that may be required to be collected by any governmental agency, on or before each monthly Magnolia Rent due date and as a part of each monthly payment as detailed in this Section.

Rental charges for both the Administration Garage Spaces and the Magnolia Spaces are subject to change at the CITY's sole discretion, provided that any parking rate change must be approved by City Council, with the exception of the increases set forth in Section III. B, above. In the event rental charges are increased, with the exception of the increases set forth in Section III. B, above, DPC may terminate this Agreement and its obligation to pay such Rent, Performance Staff Rent or Magnolia Rent upon thirty (30) days prior written notice to the CITY. A ten percent (10%) late charge shall be payable to CITY for any and all lease fees not timely paid that may be due and owing under the terms of this Agreement.

IV. **CHANGES IN SYSTEM PARKING.** The provisions of this Agreement shall be subject to change at the option of the CITY upon thirty (30) days prior, written notice to DPC, provided that the Spaces provided to DPC shall not be materially different from the parking spaces provided for general use in the CITY's Parking System. Changes to the parking system may include, but not be limited to, the use of decals, the elimination of reserved spaces, or other methods or means of parking space utilization deemed appropriate by the CITY.

V. **RENEWAL OPTIONS.** DPC has the option to extend this Agreement for a period of five (5) years from the end of the Term upon the same terms and conditions as contained herein. Provided, however, that no less than three (3) months prior to the termination of the Term, DPC shall notify the CITY in writing of its desire to extend the Agreement for an additional term of five (5) years.

VI. **ACCESS CARD FEE.** In addition to the Rent, DPC shall pay the sum of Ten and 00/100 Dollars (\$10.00) (Sum) for each access card (Card) to the Spaces as issued by the CITY, to authorize DPC entrance to the Garage for the FT Employees and the PT Employees. The Sum shall also be due and payable on the same dates as the Rent, and shall serve as a security deposit for return of the Card(s) upon the expiration of the Agreement. In the event that a Card is not returned to the CITY for any reason, the Sum shall be forfeited to the CITY. It is the parties' intent that DPC shall purchase up to One Hundred Ten (110) Cards for the FT Employees and the PT Employees.

VII. **USE OF THE SPACES.** Any and all of the Spaces granted to DPC under the terms of this Agreement shall be utilized exclusively for FT Employees, PT Employees and Performance Staff, and for no other purpose whatsoever. The Spaces shall be available between the hours of 7:00 am and 2:00 am, each day of the week. Use of the Magnolia Spaces shall be utilized as provided in Section I. B, above. DPC further agrees that any vehicles parked in the Spaces or Magnolia Spaces before or after the operative times memorialized in this Section shall be the responsibility of DPC solely, and it shall be the DPC'S sole obligation to ensure that all its rental spaces are made vacant with all reasonable speed, but in any event before the onset (7:00 am) of the next business day memorialized in this Agreement. If DPC does not meet the requirements and obligations of this Paragraph, then DPC shall reimburse the CITY for all of its (the CITY's) reasonable and provable expenses in making its rental spaces fit for normal business-day, CITY personnel and visitor use.

DPC hereby accepts the Garage, Spaces and Magnolia Spaces in their present ("as is") condition, and warrants that the spaces shall not be used, nor will DPC allow them to be used, for any purposes other than vehicle parking and does hereby release and discharge the CITY from any and all damages of every kind in nature that may be in any way occasioned thereby, and will at all times indemnify and save harmless the CITY from all liability in any way arising out of the use or condition of the Garage, Spaces and Magnolia Spaces, DPC shall use its best efforts to ensure that

no vehicle, utilizing the parking spaces under this Agreement, contains, transports or stores any hazardous, toxic, flammable or other dangerous chemicals, goods, items or materials on, over or within the premises of the Garage and the Magnolia Spaces , except as those chemicals, goods items or materials may reasonably and normally be anticipated to be present in type and amount in similar commercial Garage situations. If DPC breaches its obligations set forth herein, DPC shall release, indemnify, defend and hold CITY harmless from an against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including reasonable attorney's fees which may arise during or after the term of this Agreement as a result of such contamination. If DPC becomes aware of the presence of any hazardous material in or on the Garage or on-street parking spaces , DPC shall notify CITY and CITY shall carryout and complete any repair, closure, detoxification, decontamination or other cleanup and recover all of the costs and expenses from DPC.

VIII. **INDEMNIFICATION**. DPC shall indemnify and hold harmless CITY, its elected and appointed officials, agents, servants, employees, customers, patrons and invitees from and against all liability, claims, damages, losses, expenses, actions, and costs of actions (including attorney's fees and costs for pre-litigation, trial, appellate, bankruptcy and administrative proceedings), of any kind and nature arising out of or resulting from the use or occupancy of the Garage and Magnolia Spaces by DPC, its agents, servants, employees, customers, patrons, or invitees, or arising out of or in any way connected with any act or omission of DPC or its agents, servants, employees, customers, patrons, or invitees, whether on or off the Spaces, Magnolia Spaces or anywhere within the Garage, of any kind or nature whatsoever sustained during the term of this Agreement.

IX. **RELEASE**. DPC hereby releases the CITY, its representatives, employees and appointed and elected officials from any and all damages, claims, or liability arising from this Agreement or the use of the Garage, Spaces or Magnolia Spaces, including, though not exclusively, any damages, claims or liability arising from (i) the CITY's termination of this Agreement and (ii) the CITY's operation and maintenance of the Garage, Spaces and the Magnolia Spaces.

X. **ASSIGNMENT**. DPC shall neither assign this Agreement or any part of it nor sublease any Spaces or Magnolia Spaces, without the prior written consent of the CITY.

XI. **TERMINATION OF AGREEMENT**. This Agreement may be terminated at any time and for any reason by either party upon thirty (30) days prior written notice to the other party. Upon termination DPC shall remove any and all personal property from the Garage and the parties shall have no further, liabilities, obligations or responsibilities under this Agreement, except for DPC's payment of delinquent Rent and as otherwise provided herein.

XII. **LIABILITY**. CITY shall not be liable for any damage to the property of DPC or the property of DPC's employees, agents, contractors, invitees, and customers whose vehicles are parked in Spaces or Magnolia Spaces under this Agreement.

XIII. **TIME IS OF THE ESSENCE**. Time is of the essence in this Agreement, and in all terms and conditions contained herein.

XIV. **NOTICES**. Written notice mailed or hand-delivered to DPC at President, 155 E Anderson Street, Orlando, FL 32801, shall constitute sufficient notice to it; and written notice mailed or hand-delivered to the CITY Clerk, and to the CITY's Parking Division Manager at 53 West Central Boulevard, Orlando Florida, 32801, shall constitute sufficient notice to the CITY to comply with the terms of this Agreement. Notice by mail shall be considered given on the date postmarked, or, in the case of hand-delivery, on the date delivered.

XV. **CUMULATIVE RIGHTS**. The rights of the CITY under the foregoing shall be cumulative, and in addition to any other rights, which the CITY may have by statute or common law. Failure on the part of the CITY to exercise any of its rights hereunder shall not operate to forfeit or waive any of those rights as defined and outlined here.

XVI. **ATTORNEYS' FEES**. If any actions are taken or proceedings brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs for all prelitigation, trial, appellate, bankruptcy and probate proceedings.

XVII. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all prior written or oral agreements or understandings that may have been had between the parties.

XVIII. **LICENSE**. This Agreement constitutes a License and does not rise to the level of a real property interest in the Garage, Spaces or Magnolia Spaces.

XIX. **EFFECTIVE DATE**. The effective date of this Agreement is the date of its execution by the last person to execute it.

XX. **TAXES/FEES**. DPC shall be responsible for the payment of all taxes or fees which may be assessed or levied against the Garage, Spaces or the Magnolia Spaces or any other property located thereon, that are associated with DPC's use of said property.

SIGNATURES START NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first written above.

ATTEST:

**CITY OF ORLANDO, FLORIDA,**  
a municipal corporation

By: \_\_\_\_\_  
Alana Brenner, City Clerk

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2014  
by \_\_\_\_\_, Mayor Pro Tem and \_\_\_\_\_, City Clerk,  
who is personally known to me who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

SIGNATURES CONTINUE NEXT PAGE

Signed, sealed and delivered in the presence of two witnesses:

DR. PHILLIPS, INC., a Florida non-profit corporation

\_\_\_\_\_  
Print Name:\_\_\_\_\_

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

Title: President

\_\_\_\_\_  
Print Name:\_\_\_\_\_

State of Florida        )  
County of Orange     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as President of Dr. Phillips Center For The Performing Arts, Inc., a Florida Non-Profit Corporation. He/she  is personally known to me or  has produced his driver's license as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name:\_\_\_\_\_

(Notarial Seal)