

AGREEMENT REGARDING DR. PHILLIPS CENTER FOR THE PERFORMING ARTS
PLAZA OPERATIONS AND MAINTENANCE AND SALES OF ALCOHOLIC
BEVERAGES AND GOODS ON CITY PROPERTY MANAGED BY THE DR. PHILLIPS
CENTER

This Agreement, effective this 3rd day of November, 2014, is made and entered into by and between Dr. Phillips Center for the Performing Arts, Inc., a Florida non-profit corporation, whose mailing address is 155 E Anderson Street, Orlando, FL 32801, "DPC", and the City of Orlando, Florida, a municipal corporation duly enacted under the laws of the State of Florida, whose address in 400 South Orange Avenue, Orlando, Florida 32801, "City".

WHEREAS, DPC, the City and the CRA entered into an agreement ("Orlando Performing Arts Center Agreement") on June 20, 2007 regarding the financing, construction, operation and maintenance of the Performing Arts Center (as shown as Parcel 1 on Exhibit "A", herein after referred to as "Center"), including the plaza area (as shown as Parcel 2 on Exhibit "A", hereinafter referred to as "Plaza"); and

WHEREAS, the City and DPC desire to further define DPC's obligations regarding management, operations and maintenance of the Plaza; and

WHEREAS, pursuant to the authority in Chapter 39 of the City Code, the City intends to allow the closure, to regular vehicular traffic, of Magnolia Avenue between South Street and Anderson Street to allow for valet and drop-off/pick up and due to safety concerns arising from the number of pedestrians in the area; and

WHEREAS, DPC desires to allow for events to occur in the Plaza; and

WHEREAS, pursuant to Section 18A.10, the City may exempt assemblies from the

requirements of that section, provided that alternate procedures providing for the protections addressed by Chapter 18A are included in a separate agreement approved by City Council; and

WHEREAS, DPC has requested the City's approval for the sale of goods (including food, beverages and alcoholic beverages) within the Center and Plaza; and

WHEREAS, pursuant to Sections 43.44 and 43.85 of the City's Code, sales of goods on public property may be permitted upon specific approval of City Council, and pursuant to Section 33.06(b)(1) of the City's Code, the sale, consumption and possession of alcoholic beverages in a public building or at a public facility is permitted when authorized by agreement approved by City Council and in compliance with State law; and

WHEREAS, DPC acknowledges that activities conducted under this Agreement will increase the number of people within the Plaza; and

WHEREAS, as a condition of this Agreement and due to the increase in people within the Plaza as a result of the activities contemplated by this Agreement, DPC agrees to maintain insurance coverage for the benefit of the City, and to indemnify and hold the City harmless, as memorialized herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, DPC and the City agree as follows:

- 1) RECITALS. The foregoing recitals are true and correct and are incorporated into the substantive body of this Agreement.
- 2) DPC MANAGEMENT AND OPERATION OF THE PLAZA. DPC shall be responsible for management, operation, security and maintenance of the Plaza. DPC shall provide and maintain furnishings for the Plaza, however, DPC shall not construct any improvements on the Plaza, Parcel 1, 3, 4, or 5, as shown on the

attached Exhibit "A" without the City's prior written approval. DPC shall provide for security for the Plaza, including having at least one person present within the Center or Plaza at all times, 24 hours a day, 7 days a week. DPC has the right to control the Plaza, including establishing the hours of operation, at all times and shall follow normal trespass procedures through the Orlando Police Department.

3) MAINTENANCE AND REPAIRS. During the term of this Agreement, DPC shall ensure that the Plaza is maintained and repaired in a good, reasonable and aesthetically pleasing manner, which determinations are at the City's sole and reasonable discretion. Maintenance of the Plaza shall include regular pressure washing, trash pick-up, landscaping, lighting, irrigation, sound system and furnishing maintenance and repairs. DPC shall promptly repair any damage to the Plaza. DPC shall be responsible for obtaining any necessary permits for repair or maintenance work and shall ensure that all work is performed in accordance with applicable laws, rules and regulations. In the event that DPC fails to maintain and repair the Plaza in good condition and in accordance with applicable laws, rules and regulations, the City may give DPC written notice thereof and DPC shall be obligated to conduct such maintenance and correct the deficiency within sixty (60) days or, at a minimum, commence correction of such deficiency within thirty (30) days of receipt of such notice. In the event DPC fails to maintain and repair the Plaza and correct the deficiency within sixty (60) or, at a minimum, commence to correct any such deficiency within the thirty (30) days after such written notice by the City, then the City may correct any such deficiency and DPC shall then reimburse the City for the City's reasonable expenses in connection therewith, no

less than sixty (60) days after written request by the City. This obligation will survive the termination of this Agreement with respect to any damage occurring before the Agreement is terminated.

- 4) ACTIVITIES WITHIN THE PLAZA. All activities within the Plaza must comply with City Code, including obtaining any required permits such as tent permits, sound amplification permits, and related permits or approvals. During events that have gated access points, DPC shall provide for accessibility by persons with mobility impairment and pedestrian access to the Center and to and from the Plaza. Events must not be configured in any way which denies access to any owner, tenant or invitee to Parcel 3 or Parcel 4. Such access may be provided outside the boundaries of the Plaza through the colonnades contemplated by the Planned Development Ordinance for the Orlando Performing Arts Center. DPC may establish and charge usage fees to persons or entities for approved events within the Plaza. However, the City shall not be charged a usage fee to use the Plaza for City/CRA/DDB sponsored events, but shall promptly pay out of pocket expenses subject to the conditions that (a) DPC gives the City a written estimate of the out of pocket costs; and (b) the City promptly reviews and approves the costs in writing; and (c) DPC delivers the final invoices and back up to the City with respect to said agreed expenses. The City shall be guaranteed no more than six large scale events open to the public per year to be held within, the Plaza and shall be allowed to book such events no more than 8 months and no less than two months in advance, with reasonable access to available dates and subject to any advance booking for the Plaza including existing commitments to the “Resident

Organizations” (Orlando Philharmonic, Orlando Ballet and the University of Central Florida). For events to be held within the Plaza (including Lots 1, 3 or 4 or Magnolia Avenue, as applicable for the specific event) at which less than three hundred (300) people are anticipated to attend or at which there will be no alcoholic beverages served or consumption allowed in the Plaza, such events are exempt from the provisions of Chapter 18A related to obtaining an outdoor assembly. Additionally, events co-incidental with an event or performance at the Center, without alcoholic beverages being served or consumption allowed, occurring in the Plaza thirty (30) minutes or less before the lobby opens for an event or performance in the Center and no more than sixty (60) minutes or less after the end of the event or performance in the Center which is being conducted in order to provide outdoor entertainment for those attending a Center event or performance shall also be exempt from the provisions of Chapter 18A related to obtaining an outdoor assembly permit. For events within the Plaza with anticipated attendance of greater than three hundred (300) persons or events at which any alcoholic beverages will be served or consumption allowed in the Plaza, at least thirty (30) days in advance of such event, DPC must notify the Chief of Police of such event by completing an application for outdoor public assembly and paying the related fee as contemplated in Chapter 18A of the City Code, to determine necessary additional security and other safety measures that may be prescribed by the City (i.e., police, fire, restroom facilities). Additionally, for events which include any use of the sidewalks or rights-of-way (other than Magnolia as addressed in Section 8 hereof) near or adjacent to the Plaza, the

regular terms of Chapter 18A must be followed with respect to obtaining an outdoor public assembly permit, which currently requires an application to be filed more than sixty (60) days prior to the event. Notwithstanding the foregoing, if either non pre-packaged food is being served or cooked within the Plaza during an event or more than ten (10) 10' x 10' tents or any number of tents larger than 10' x 10' are being located in the Plaza for an event, DPC shall notify the Fire Marshall at least thirty (30) days prior to such event to determine if an inspection is required and shall bear the cost of any fees for such inspection.

- 5) SALE OF GOODS. DPC and its agents are hereby authorized to sell goods, including food and beverages within the Plaza and the Center, and DPC may allow for the sale of such goods by event vendors within the Plaza and the Center. DPC shall control any and all rights to sponsorships within the Plaza.
- 6) ALCOHOLIC BEVERAGES. The consumption, sale and possession of alcoholic beverages by DPC, its agents, vendors, event vendors or their invitees is permitted within the Center and within the Plaza during events for which an outdoor public assembly permit has been obtained pursuant to Chapter 18A of the City Code. Whenever alcoholic beverages are served in the Plaza or Building, DPC or its agents must follow City policies regarding alcoholic beverages as well as follow relevant State law and regulations, including the restriction of ingress and egress to areas in which alcoholic beverages are being served or consumed.
- 7) PARCEL 1-LAWN AREA. The lawn area adjacent to Parcel 1, as shown on the attached Exhibit "A", on which the Center is not yet constructed, but on which Phase II of the Center is planned to be constructed, may be used for events under

Section 4 and shall be treated as part of the Plaza until such time as construction of Phase II is commenced and shall be maintained by DPC in a manner consistent with the maintenance of the Plaza grass and landscaping to ensure visual consistency.

- 8) MAGNOLIA AVENUE. At times when closed to vehicular traffic, such portion of Magnolia Avenue shall be considered part of the Plaza for purposes of this Agreement.
- 9) PARCELS 3, 4 and 5. The parties acknowledge that as of the Effective Date, construction is still occurring on Parcels 3, 4 and 5 and that such Parcels are under the control of City contractors. Once the City accepts control of the Parcels back from the contractors and until each parcel is sold or leased to a third party, DPC may use Parcels 3 and 4, as shown on attached Exhibit "A", for events upon entering into a facility use agreement with the City for and paying the applicable fee. In such instances, the Parcel(s) shall be considered part of the Plaza for purposes of this Agreement. The City agrees to maintain Parcels 3 and 4 to the City's standards and DPC agrees to maintain Parcel 5.
- 10) NO WAIVER OF REGULATORY AUTHORITY/NO VESTING. DPC acknowledges that the City is the primary entity responsible for issuing permits for events and activities within the Plaza and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable City Code provisions, laws, rules or

regulations. Furthermore, nothing herein operates to legally vest the right to conduct any particular activity within the Plaza.

11) RELIANCE. DPC understands and acknowledges that the City is relying on DPC's representations in this Agreement and would not have entered into this Agreement except for DPC's assumption of obligations described herein, particularly with respect to insurance and indemnification.

12) INDEMNIFICATION. In consideration for the City's agreement to allow the activities within the Plaza and Building as contemplated herein, DPC shall indemnify, release and hold the City, its agents, employees, and appointed and elected officials, harmless from and against any and all liability, claims, expenses, causes of action, or damages that may arise, directly or indirectly, under this Agreement, from the activities conducted pursuant to this Agreement or due to the City's termination of this Agreement or the issuance of, or failure to issue, other permits or approvals affecting the Plaza or Building. Notwithstanding the foregoing to the contrary, DPC shall not be obligated to indemnify if the matter is a result of the gross negligence or willful misconduct of the City, its agents, employees, and appointed and elected officials.

13) INSURANCE. Section 7.1.15 and Exhibit I of the Orlando Performing Arts Center Agreement established insurance requirements which are attached hereto as Exhibit "C" and incorporated herein by this reference. The parties agree that such already established insurance coverages under the Orlando Performing Arts Center Agreement shall also apply to the Plaza at all times during the term of this Agreement.

14) TERMINATION. This Agreement is effective as of November 3, 2014. For issues contained within the Orlando Performing Arts Center Agreement, this Agreement shall be effective for the Term set forth in that Agreement. For all other issues addressed in this Agreement, the City may re-open any such issues by providing DPC with forty-five (45) days notice. Should the parties be unable to reach agreement related to such issue, the provisions related to such issue shall automatically terminate ninety (90) days thereafter. Notwithstanding the foregoing, if at any point in time DPC ceases to be the operator of the Center, this Agreement shall terminate at such point in time, and DPC shall no longer have the responsibilities and rights contemplated herein. Upon termination, both parties are relieved of further obligations hereunder, except as otherwise provided in this Agreement

15) NOTICE. All notices which are required or permitted under this Agreement shall be given to the parties by certified mail, return receipt requested, hand delivery or express courier, and shall be effective upon receipt when delivered to the parties at the addresses set forth herein below (or such other address as provided by the parties by written notice delivered in accordance with this paragraph):

If to City:

City of Orlando
Attn: Chief Administrative Officer
With copy to: City Attorney's Office
400 S. Orange Avenue
Orlando, FL 32801

If to DPC:

Dr. Phillips Center for the
Performing Arts, Inc.
Attn: President
With copy to: Executive Director
155 E Anderson Street

- 16) LITIGATION AND ATTORNEYS' FEES. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, each party shall be responsible for its own attorneys' fees, experts' fees and costs, in addition to any other relief granted as a result of such litigation.
- 17) COMPLIANCE WITH LAWS. DPC agrees to comply with all other applicable requirements imposed by Federal, State, Regional, and local governments and the City of Orlando, including the payment of any and all applicable fees.
- 18) WAIVER OF BREACH. The waiver by either party of a breach of any provision, agreement or covenant of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision, agreement or covenant by such other party.
- 19) GOVERNING LAW. This Agreement shall be controlled according to the laws of the State of Florida and all duly adopted ordinances, regulations and policies of the City, now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies and disputes arising out of or relating to this Agreement or any breach thereof, shall be Orange County, Florida.
- 20) NON-WAIVER OF SOVEREIGN IMMUNITY. Nothing contained in this Agreement or in instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the City of its sovereign immunity under the Constitution and laws of the State of Florida.
- 21) ASSIGNMENT. DPC shall not assign any of its rights, duties or interest in this Agreement without the prior written consent of the City.

- 22) THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a party hereto. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and any successors and assigns.
- 23) ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties. Any amendments to this Agreement must be in writing, executed by both parties.
- 24) NEGOTIATION. The parties acknowledge that all terms of this Agreement were negotiated at arms length and that this Agreement and any documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted by all parties and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions, or provisions of this Agreement in favor of or against any person or party who drafted this Agreement. Both parties acknowledge that they had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement and DPC represents and warrants that it has either sought such independent legal counsel or has knowingly and voluntarily waived such right.
- 25) LICENSE. This Agreement constitutes a License and does not rise to the level of a real property interest in the Plaza.

26) EFFECTIVE DATE. This Agreement shall become effective upon full and complete execution by all parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date and year first above written.

Signed in the presence of two witnesses:

DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC., a Florida non-profit corporation (Corporate Seal)

Signature
Print Name: _____

By: _____

Name: _____

Signature
Print Name: _____

Title: _____

Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING was acknowledged before me this _____ day of _____ 2014, by _____, on behalf of _____, a _____ for profit/non- profit corporation. He/She is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC
Print Name: _____
My Commission Expires:

CITY OF ORLANDO

By: _____
Mayor / Mayor Pro Tem

ATTEST:

Alana C. Brenner, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____ and _____, well known to me and
known by me to be Mayor _____ and City Clerk, respectively, of the City of Orlando,
Florida, and acknowledged before me that they executed the foregoing on behalf of the City of
Orlando as its true act and deed, and that they were duly authorized to do so.

WITNESS MY hand and official seal this ____ day of _____, 2014.

Notary Public - State of Florida at Large
Print Name: _____
My commission expires:

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

Assistant City Attorney
Orlando, Florida