

**THIS DOCUMENT PREPARED BY
AND RETURN TO:**
Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-2295

PARKING LICENSE AGREEMENT
CITY COMMONS GARAGE

THIS PARKING LICENSE AGREEMENT, (“LICENSE AGREEMENT” or “AGREEMENT”) is made and entered into on _____, 2014, by and among the **City of Orlando**, a municipal corporation existing by and under the laws of the State of Florida whose address is 400 S. Orange Avenue, Orlando, Florida 32802 (herein “CITY”), **CNL Plaza, Ltd.**, a Florida limited partnership whose mailing address is P.O. Box 4920, Orlando, FL 32802 (herein “CNL I”), and **CNL Plaza II, Ltd.**, a Florida limited partnership whose mailing address is P.O. Box 4920, Orlando, FL 32802, (herein “CNL II” and together with CNL I, “CNL”); (City and CNL are sometimes collectively referred to as “CITY/CNL”) and the **Dr. Phillips Center For The Performing Arts Inc.**, a Florida non-profit corporation, whose mailing address is 155 E. Anderson Street, Orlando, FL 32801 (herein “LICENSEE”).

WHEREAS, City/CNL own certain real property located at 460 Boone Avenue, Orlando, Florida, on the west side of Boone Avenue between South Street and Anderson Street, more particularly described in the attached **Exhibit “A”** and by reference incorporated herein (herein “PROPERTY”); and

WHEREAS, City/CNL own and operate a nine-story parking garage (the “GARAGE”) on the Property that consists of 2,219 parking spaces, pursuant to the terms of that certain Amended and Restated Parking Garage Ownership, Easement and Management Agreement dated May 26, 2004 (“GARAGE AGREEMENT”); and

WHEREAS, the Garage serves City and CNL by providing parking for City Hall and CNL Tower I and CNL Tower II, as well as CNL’s tenants and their respective employees, consultants, licensees and invitees located in CNL Tower I and CNL Tower II and visitors to both Towers and City Hall; and

WHEREAS, the Garage also provides parking for City employees working at the Amway Center on event nights; and

WHEREAS, City owns property bounded by Rosalind Avenue, Orange Avenue, South Street and Anderson Street, more particularly described in **Exhibit “B”** attached hereto and made a part hereof by reference (the “DPAC PROPERTY”); and

WHEREAS, the Dr. Phillips Performing Arts Center (the “CENTER”) has been constructed on the DPAC Property and Licensee shall operate the Center for the benefit of the public; and

WHEREAS, in conjunction with operation of the Center, Licensee has requested use of a portion of the Garage during non-Business Hours (as defined in the Garage Agreement) for parking purposes and pedestrian access between the Garage and the Center; and

WHEREAS, City/CNL have consented to Licensee’s request but only on the limited terms outlined in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City/CNL and Licensee agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

2. Licensed Space. City/CNL hereby grant Licensee the non-exclusive license to use up to One Thousand Two Hundred (1,200) parking spaces located in the Garage, except for any spaces marked or otherwise noted as 24-hour reserved, during the times specified elsewhere in this Agreement, (herein, “PARKING SPACES”) for the limited purpose of parking vehicles for customers and patrons of the Center during events held at the Center as set forth in this Agreement and for no other purpose whatsoever. City/CNL may, from time to time during the term of this Agreement, designate in writing certain Parking Spaces within the Garage for Licensee’s use, upon which designation, the license granted hereunder shall be limited to those designated Parking Spaces. The Parking Spaces shall not be used for Licensee’s employee parking. City/CNL, acting by and through the Garage Committee (as hereinafter defined) may revise and/or restrict the location of the Parking Spaces at any time and for any reason, either temporarily or permanently, upon seven (7) days written notice to Licensee.

3. Fees.

A. Licensee shall sell and distribute parking vouchers (herein, “VOUCHERS”) to customers and patrons of the Center for use of the Parking Spaces. Each Voucher shall be for the use of one (1) of the Parking Spaces during a particular event at the Center. For each of the Vouchers sold during and prior to the Initial Term, Licensee shall pay to the Operator (as that term is defined in the Garage Agreement) for the benefit of City/CNL the sum of TEN DOLLARS (\$10.00) (herein, “VOUCHER FEE”). The form and content of the Vouchers shall be similar to the sample set forth in **Exhibit “C”**. Licensee shall make payments on a monthly basis and each payment shall include amounts for all Vouchers sold during the prior month. With each Voucher Fee payment, Licensee shall provide information showing the total number of Vouchers sold during

the prior month, including the number of Vouchers for each individual event or performance. Use of the Parking Spaces by patrons of the Center, other than by Voucher, shall be at the standard rates established by City/CNL for all non-Business Hours parking.

B. The Operator shall deduct from the Revenue (as defined in Paragraph 4 herein) received in a month, the sum of the monthly Maintenance Costs (as defined in Paragraph 4 herein) for such month, and, only during the first year of the Initial Term, shall pay to Licensee a discount fee for such month for placing event parking in bulk in the Garage (the “DISCOUNT FEE”), according to the following calculation:

- i. The maximum cumulative Discount Fee to be paid to Licensee during the first year of the Initial Term shall be the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the “MAXIMUM DISCOUNT FEE”).
- ii. If the total Revenue paid in any month does not exceed the Maintenance Costs for such month, the Discount Fee for that month shall be \$0.00.
- iii. If the total Revenue paid in any month exceeds the Maintenance Costs for such month plus any Maintenance Costs from previous months that were not covered by the Revenue for such previous months, then Licensee shall be paid a Discount Fee equal to Sixty Percent (60%) of the excess, but the Maximum Discount Fee shall not be exceeded.
- iv. After Licensee is paid the Maximum Discount Fee, Licensee shall not be entitled to receive further monthly payments of the Discount Fee.
- v. The Discount Fee shall apply only to the first year of the Initial Term of this Agreement, and shall not apply to any remaining portion of the Initial Term nor to any renewal of this Agreement.

4. Maintenance Costs and Disbursements of Revenue. The parties acknowledge that City/CNL will incur additional costs arising from Licensee’s use of the Garage, including without limitation costs of administration, cleaning and security (herein, “MAINTENANCE COSTS”). An estimate of the annual Maintenance Costs is attached as **Exhibit “D”**. The parties acknowledge that Maintenance Costs from year to year shall be based on actual costs as determined by City/CNL. City/CNL agree that the Maintenance Costs will be paid from the revenue generated through the sale of Vouchers and from the non-Voucher sale of Parking Spaces to patrons of events at the Center (herein “REVENUE”). The parties agree that the Garage Committee shall direct the Operator to use its best efforts to separately track all non-Voucher sale Revenue relating to events at the Center. Revenue net of Maintenance Costs and the Discount Fee (if applicable) will be allocated to CNL I, CNL II and City according to their respective “Proportionate Share of Operating Revenues generated during non-Business Hours” pursuant to the first paragraph of Section 9.4 of the Garage Agreement (i.e., CNL I - 37.4%, CNL II - 29.75%, and City - 32.85%).

5. Opening Period. City/CNL shall also invoice Licensee and Licensee shall pay for cars left in the Garage after 6:00 a.m., as described in Section 7, below, which payments shall not be considered as part of Revenue. Notwithstanding anything to the contrary contained in this Section 5, the parties hereby agree to review, upon expiration of the Opening Period (as hereinafter defined), a reconciliation of the amount of Revenue paid by Licensee and the Maintenance Costs incurred by City/CNL during the Opening Period. City/CNL 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 the Parking Spaces under this Agreement.

6. Term. The initial term (“INITIAL TERM”) of this Agreement shall begin on November 1, 2014 and shall continue for two (2) years from the Effective Date of this Agreement. Either party may terminate this Agreement, for any reason, prior to the expiration of the Initial Term or any extension thereof by giving the other party thirty (30) days written notice. If the Agreement is not terminated at the end of the Initial Term, the Agreement shall be automatically extended for additional one-year periods. After the first year of the Initial Term, CITY/CNL may increase the rate charged for the Parking Spaces upon thirty (30) days written notice to Licensee. City/CNL shall not increase the rate more than ten (10) percent in any (12) twelve month period. The period beginning on November 1, 2014 through and including January 5, 2015 shall be the “OPENING PERIOD”. Notwithstanding anything to the contrary contained herein, City/CNL shall honor all Vouchers sold by the Licensee before receipt of written notice of termination.

7. Use of Garage; Signage. The Garage shall be used by Licensee’s guests and patrons only for the parking of vehicles by customers and patrons of the Center. The time period during which the Licensee’s guests and patrons are authorized to utilize the Garage and the Parking Spaces during any term of this Agreement is from 6:00 p.m. to 12:00 a.m. on any business weekday on which there is an event at the Center, and from 11:30 a.m. to 12:00 a.m. during any non-business weekday or any weekend day (the “GARAGE LICENSE PERIOD”). Any car remaining within the Garage in a reserved parking space after 6:00 a.m. shall be subject to towing in addition to payment of the applicable parking assessment. The preceding sentence shall be included in bold type on the Licensee’s website page that provides the sale of the Voucher. No parking for employees or independent contractors of Licensee or any personnel working at the Center is authorized by this Agreement. Licensee on its own behalf and that of its employees, customers, patrons and contractors, hereby accepts the Garage and the Parking Spaces in their present (“As Is”) condition, and warrants that the Garage and the Parking Spaces shall not be used by Licensee for any purposes other than as specifically described herein. Licensee shall utilize and keep the Garage and Parking Spaces in a safe and sanitary manner and condition during the Garage License Period. City/CNL shall ensure that the Anderson Street access point to the Garage remains open during the Garage License Period. In addition to the parking of vehicles, Licensee may also utilize the Garage for the temporary placement of interior, collapsible and removable signage on interior walls and within the Garage elevators, regarding entry locations, pedestrian pathways and events at the Center. The location, duration and content of all such signage must be approved by the Management Team appointed by the City and CNL to make decisions related to the operation and maintenance of the

Garage under the terms of the Amended and Restated Parking Garage Ownership, Easement and Management Agreement (the “GARAGE COMMITTEE”) and must be consistent with City Codes and policies. Commercial advertising in any form is prohibited on the signage, except to the extent that Center sponsors may, at City/CNL’s discretion, be referenced consistent with standards utilized by the City of Orlando’s Appearance Review Board.

8. Livery Service. During the term of this Agreement, Licensee may decide to operate a livery service between the Center and the Garage for the benefit of customers and patrons of the Center events. In conjunction therewith, Licensee is authorized, under this Agreement, to utilize the Garage for pick up and drop off of said customers and patrons at designated locations pre-approved by City/CNL. In so doing, Licensee shall ensure that the livery vehicles enter the Garage from Anderson Street and exit onto Boone Avenue. Licensee shall purchase a monthly parking pass at standard rates for each livery vehicle utilizing the Garage for the aforementioned purposes. City/CNL shall be added as additional insureds to the liability insurance policy required by Licensee from the livery service provider (or separately carried by Licensee) and shall submit proof of said insurance to City/CNL for review and approval prior to use of the Garage for livery service purposes. Licensee is solely responsible and liable for operation of the livery service and shall ensure that said service is operated in a safe and reasonable manner and consistent with all applicable laws, rules and representations. Licensee shall ensure that operation of the livery service does not impair traffic flow within the Garage and shall submit a plan of circulation to City/CNL for review and approval prior to utilization of the Garage for livery service.

9. Standards and Rules for Use of Garage. Licensee shall comply, and shall ensure that it has advised that its customers and patrons should comply, with the following conditions relating to use of the Garage and Parking Spaces, which conditions shall be referenced on the website page that provides the sale of the Voucher:

- A. Speed limit of 10 mph.
- B. Parking only within the Parking Spaces, as defined herein.
- C. Unless Licensee is otherwise directed in writing by City/CNL, access to the Garage may occur from either South Street, Anderson Street or Boone Avenue.

10. Use and Term of the Bridge and Tower I. In addition to use of the Garage and the Parking Spaces, this Agreement also authorizes Licensee’s use, at the sole cost of the City/CNL or CNL as the case may be, of the pedestrian bridge, (herein, the “BRIDGE”) from the Garage to CNL Tower I as well as the portion of the CNL Tower I building, (herein, “TOWER I”) that is necessary to access Orange Avenue, all as shown in **Exhibit “E”**, attached hereto and made a part hereof by reference. The period of use of the Bridge and Tower I (herein, the “BRIDGE LICENSE PERIOD”) shall be on event days only, from after 6:00 p.m. on business weekdays and after 11:30 a.m. on any non-business weekday or on any weekend day to ninety (90) minutes after the conclusion of the applicable event at the Center or as otherwise determined by City/CNL.

Licensee's use of the Bridge and Tower I shall be limited to customers, invitees and patrons of the Center who have self-parked in the Garage, as well as Personnel (defined as employees of Licensee or independent contractors under contract with Licensee) to provide security direction, information and entertainment along the Bridge and Tower I. Licensee's use under this Agreement is strictly limited to the area designated on **Exhibit "E,"** and no other area whatsoever. Prior to use of the Bridge or Tower I by Personnel of Licensee, Licensee shall submit a list of said Personnel, including their location within the Bridge and Tower I and their purpose, to City/CNL for review and approval by the Garage Committee or its designee, in its sole and absolute discretion. Licensee on its own behalf and that of its employees, customers, patrons, invitees and contractors, hereby accepts the Bridge and Tower I in their present "As Is" condition, and warrants that the Bridge and Tower I shall not be used for any purposes other than as specifically described herein. Licensee shall utilize and keep the Bridge and Tower I in a safe and sanitary manner and condition during the Bridge License Period. Licensee has a continuing obligation throughout the term of this Agreement to coordinate its use of the Bridge and Tower I with City/CNL to ensure that the security and convenience of patrons, invitees and customers of the Center as well as employees, customers and tenants of CNL and the City.

11. Security, Administration and Maintenance. City/CNL shall determine, in their reasonable discretion, the amount of security, administration or maintenance personnel and/or equipment/materials and utilities that are necessary due to Licensee's use of the Garage and the Parking Spaces under this Agreement. Any such costs that are beyond the customary and usual costs for use of the Garage shall be paid by Licensee which shall be included in Maintenance Costs.

12. Modification of License. Licensee understands and acknowledges that circumstances and events at the Amway Center and downtown Orlando may require temporary or permanent modification of this Agreement by City/CNL, including, though not exclusively, (i) revisions to the location of the Parking Spaces, (ii) revisions to the access route to and from the Garage, (iii) revisions to the access through the Bridge and/or Tower I and (iv) the hiring of additional security, administrative or cleaning personnel, as described in Section 11, above, to accommodate the Licensee's use of the Garage, the Parking Spaces, the Bridge and Tower I, under this Agreement. City/CNL and Licensee shall amend this Agreement, as necessary to incorporate modifications. Temporary modifications of less than one year duration may be memorialized upon mutual agreement in writing by the parties without the necessity of an amendment to this Agreement.

13. Indemnification. Licensee agrees to and shall release, indemnify, defend and hold harmless the City, CNL and their respective agents, employees, consultants, officers, directors, owners, appointed and elected officials and representatives, from any and all liability, claims, damages, expenses, actions, and costs of actions (including attorney's fees and costs, and attorneys' fees and costs on appeal), of any kind and nature arising or growing out of or in any way connected with Licensee's negligence, willful misconduct or default under this Agreement or connected with the use, occupancy, maintenance, or control of the Garage, the Parking Spaces, the Bridge and

Tower I, by (i) Licensee, any of its agents, contractors, assigns, and employees, and (ii) customers, patrons or invitees of the Center. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability provided under law.

14. Insurance.

A. Licensee shall purchase, maintain and keep in full force and effect and good standing, and shall cause its independent contractors to purchase, maintain and keep in full force and effect and good standing, insurance coverage for the Garage, the Parking Spaces, the Bridge and Tower I during the entire term of this Agreement and Licensee's use of the Garage, the Parking Spaces, the Bridge and Tower I, for not less than the limits of liability specified on the attached **Exhibit "F"** and incorporated by this reference herein, or as required by law, whichever is greater.

B. Insurance certificates evidencing all required insurance coverages and attaching key endorsements including, but not limited to, additional insured, waiver of subrogation and notice of cancellation shall be submitted to City/CNL for review and approval prior to the final execution of this Agreement. Licensee shall provide at least sixty (60) calendar days prior written notice to City/CNL prior to any cancellation, modification, non-renewal or reduction in coverage. Each of the required policies, with the exception of Workers' Compensation/Employer's Liability shall contain a contractual liability endorsement in favor of City/CNL and shall name City/CNL, their respective officers, agents, elected and appointed officials and employees of City or CNL as additional insureds as respects any and all liability arising from work or operations performed by or on behalf of Licensee and operation, maintenance or use of vehicles by or on behalf of Licensee. Licensee shall, upon five (5) days written request from City/CNL, deliver copies to City/CNL or make copies available for City/CNL's inspection, of any and all insurance policies required by this Agreement. Licensee's failure to comply with the above insurance requirements shall constitute a default under this Agreement. It is the intent of the parties that the insurance coverage required herein shall protect City/CNL from any and all liability arising directly or indirectly under this Agreement. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability provided under law.

15. Assignment. Licensee shall neither assign this Agreement nor any part of it without the prior written consent of City/CNL, which may be withheld for any or no reason.

16. Termination; Survival. This Agreement may be terminated by mutual consent of the parties hereto, or upon default. In addition, either party may terminate this Agreement for any reason as provided in Paragraph 6. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except all Vouchers sold by the Licensee before receipt of notice of termination shall be honored by City/CNL as otherwise provided herein, including without limitation any remaining invoicing payment or other obligations pursuant to Section 3. Licensee shall remove its property from the Garage within seven (7) days of expiration or earlier termination of this Agreement. If Licensee

fails to remove said property within seven (7) days, City/CNL may do so and in such case, Licensee shall reimburse City/CNL for City/CNL's reasonable expenses in connection therewith, no less than thirty (30) days after written request by City/CNL. The terms of Paragraphs 11-14 and 23 shall survive termination of this Agreement.

17. Default. Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within ten (10) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default and providing the defaulting party 30 days in which to cure the default, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein including, but not limited to the obligation that City/CNL shall honor all Vouchers sold by the Licensee before receipt of written notice of termination.

18. Conditions of Default. In addition to other terms, conditions, covenants, agreements or obligations contained in this Agreement, the following actions or inactions on the part of Licensee may, at City/CNL's discretion, be deemed a default under the terms of this Agreement:

- A. The failure to maintain insurance coverage as required in this Agreement.
- B. Significant damage to the Garage, Bridge or Tower I by Licensee's independent contractors, agents, employees, customers, patrons or invitees of the Center.

19. Time is of the Essence. Time is of the essence in this Agreement, and in all terms and conditions contained herein.

20. Notices. All notices of any kind, whether required, anticipated, or convenient, related to this Agreement, shall be in writing, and shall be deemed sufficiently made or given when delivered personally, or by courier service or, if mailed, by certified mail, postage prepaid, return receipt requested, addressed as follows, or as may be requested by either party hereto from time to time by like notice given to the other party:

- A. If to the City: City of Orlando, Florida
ATTN: City Clerk
Orlando City Hall
400 S. Orange Avenue
Orlando, Florida 32802

And

City of Orlando, Florida
ATTN: Real Estate Manager
Orlando City Hall
400 S. Orange Avenue
Orlando, Florida 32801

B. If to CNL: CNL Plaza, Ltd.
ATTN: Chief Legal Officer
450 S. Orange Ave.
Orlando, FL 32801

And

CNL Plaza II, Ltd.
ATTN: Chief Legal Officer
450 S. Orange Ave.
Orlando, FL 32801

With copy to

CNL Commercial Real Estate, Inc.
ATTN: Chief Operating Officer
420 S. Orange Ave., Ste. 950
Orlando, FL 32801

C. If to DPAC: Dr. Phillips Center for the Performing Arts
ATTN: President
155 E Anderson Street
Orlando, FL 32801

21. Cumulative Rights. The rights of City/CNL under the foregoing shall be cumulative, and in addition to any other rights which City/CNL may have by statute or common law. Failure on the part of City/CNL to exercise any of its rights hereunder shall not operate to forfeit or waive any of those rights as defined and outlined in this Agreement. Failure on the part of the Licensee to exercise any of its rights hereunder shall not operate to forfeit or waive any of those rights as defined and outlined in this Agreement.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all written or oral agreements or understandings that may have been had between the parties. This Agreement may be amended only by the mutual written agreement of the parties.

23. Release. Licensee hereby releases the City, CNL and their respective agents, employees, consultants, officers, directors, owners, appointed and elected officials and representatives from any and all damages, claims, or liability arising from this Agreement or the use of the Garage, the Parking Spaces, the Bridge and Tower I including, though not exclusively, any damages, claims or liability arising from (i) City/CNL's termination of this Agreement and (ii) City/CNL's operation and maintenance of the Garage, the Parking Spaces, the Bridge and Tower I except for damages, claims or liability arising from the negligence or willful misconduct of the City or CNL.

24. No Waiver/No Vesting. This Agreement does not constitute a waiver of the City's regulatory authority and the DPAC Property and the Center remain subject to all applicable laws, rules, codes and regulations.

25. Independent Contractors. Licensee, its agents, employees, assigns, contractors, subcontractors, invitees and any party for whom Licensee is responsible, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of City/CNL, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon City/CNL either directly or indirectly related to the operation of Licensee's livery service.

26. Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

27. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all 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 jointly 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.

28. Hazardous Materials Licensee shall use its best efforts to ensure that no hazardous material, or other toxic material is located in, on or under the Garage, the Parking Spaces, the Bridge and Tower I and shall use its best efforts to ensure that same are not used for the manufacturing, handling, storage, distribution or disposal of any hazardous material or other toxic material. If Licensee breaches its obligations set forth herein, Licensee shall release, indemnify, defend and hold City/CNL harmless from an against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including reasonable attorneys' fees which may arise during or after the term of this Agreement as a result of such contamination. If Licensee becomes aware of the presence of any hazardous material in or on the Garage, the Parking Spaces, the Bridge

or Tower I, Licensee shall notify City/CNL and City/CNL shall carry out and complete any repair, closure, detoxification, decontamination or other cleanup.

29. Liability. City/CNL shall not be liable for any loss or damage to the property of Licensee or the property of the patrons, invitees, and customers of the Center, and employees and contractors of Licensee, whose vehicles are parked in Parking Spaces under this Agreement.

30. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

31. Taxes/Fees. Except as set forth in Paragraph 5 above, Licensee shall be responsible for the payment of all taxes or fees which may be assessed or levied against the Garage, the Parking Spaces, the Bridge or Tower I or any other property located thereon, that are associated with Licensee's use of said property.

32. Effective Date. The effective date of this Agreement (the "EFFECTIVE DATE") is the date of its execution by the last party to execute it.

33. License. This Agreement constitutes a license and does not rise to the level of a real property interest in the Garage, the Parking Spaces, the Bridge or Tower I.

34. Simultaneous Execution. The City is executing this Agreement simultaneously with that certain Second Amendment to Option for Ground Lease with Option to Purchase by and between City and CNL Dickinson, Ltd., a Florida limited partnership (the "AMENDMENT"), which Amendment provides for a two (2) year extension of an option in favor of CNL Dickinson, Ltd. as described in that certain Option for Ground Lease With Option To Purchase dated May 26, 2004, as amended, for a payment of \$82,125.00 in the first year of the extension, and a payment of \$250,000.00 in the second year of the extension.

[continued on next page]

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

CITY OF ORLANDO, FLORIDA

By: _____
Mayor / Pro Tem

ATTEST:

Alana C. Brenner, City Clerk

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

_____, 2014.

Chief Assistant City Attorney

“CNL”

Signed in the presence of Two Witnesses:

CNL PLAZA, LTD., a Florida limited partnership (Corporate Seal)

Signature
Print Name: _____

By: _____
Name: _____

Signature
Print Name: _____

Title: _____

Signed in the presence of Two Witnesses:

CNL PLAZA II, LTD., a Florida limited partnership (Corporate Seal)

Signature
Print Name: _____

By: _____
Name: _____

Signature
Print Name: _____

Title: _____

“LICENSEE”

Signed in the presence of Two Witnesses:

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

Signature
Print Name: _____

By: _____
Name: _____

Signature
Print Name: _____

Title: _____

EXHIBIT "A"

Property

CITY COMMONS 74/93 LOT 1 BLK A, CITY COMMONS 74/93 LOT 2 BLK A, CITY COMMONS 74/93 LOT 3 BLK A

Parcel IDs: 35-22-29-1354-01-010, 35-22-29-1354-01-020 and 35-22-29-1354-01-030

EXHIBIT "B"

DPAC Property

EXHIBIT "C"

Sample Voucher

EXHIBIT "D"

Garage Maintenance Costs

**City Commons
Costs**

DPAC Impact

Estimated Revenue	10.00	200.00	325.00	650,000.00
Lanier Incentive Fee			0.095	61,750.00
Security Officer	10.00	14.49	2,600.00	37,681.16
Maintenance		12.00	1,040.00	12,480.00
Cashiers/Booth	4.00	8.00	1,040.00	33,280.00
Assistant Manager		12.00	2,080.00	24,960.00
<hr/>				
				170,151.16

EXHIBIT "F"

Bridge and Tower I

EXHIBIT "G"

Insurance and Indemnifications

1. Insurance

- a. During the term of this Agreement, Licensee shall carry and maintain, at its expense, insurance of the following types and minimum amounts with such company or companies, rated at least A VII in the most current edition of *Best's Insurance Reports* and lawfully authorized to do business in the state of Florida.
- b. Licensee shall cause the insurance company or companies to furnish City/CNL with Certificates of Insurance and additional insured endorsements to be delivered to City/CNL prior to or concurrently with execution of this document by Licensee and at each renewal hereafter.
- c. Licensee's policies of insurance shall name CNL and the City of Orlando, as an additional insured, except for worker's compensation and employer's liability.
- d. Licensee shall cause such policies to be properly endorsed to provide that the insurance company or companies will give to CNL and the City of Orlando, thirty (30) days written notice of termination, alteration, or change therein, such notice to be given by certified mail.
- e. Licensee shall not be permitted to satisfy any of its insurance obligations set forth in this document through any self-insurance or self-insured retention in excess of \$1,000.00.
- f. Insurance Rates. Neither Licensee nor its employees, agents, or independent contractors, shall commit any act, or shall fail to act, in a manner that will (i) cause CNL's insurance premiums to increase, or (ii) cause CNL's insurance policies to be canceled or (iii) prevent CNL from procuring policies from companies and in a form satisfactory to CNL. If any breach of the preceding sentence by Licensee causes the rate of insurance to be increased, Licensee shall pay the amount of such increase within thirty (30) days after being invoiced (with supporting documentation) by CNL.
- g. This Section sets forth the minimum amounts and scope of insurance coverage required under this Agreement and should not be construed in any way as a limitation of Licensee's liability under this Agreement. By requiring insurance herein, City/CNL does not represent that coverage and limits will be adequate to protect Licensee. Licensee shall not commence any Services until Licensee has fulfilled all of the insurance requirements herein. Throughout the Term of this Agreement, Licensee shall maintain in full force and effect the insurance coverages set forth below, at its sole cost and expense, covering the activities of Licensee, its employees, and agents under this document:
 - i. General Liability. Licensee, at its expense, shall keep in effect commercial general liability insurance on an occurrence form, with such coverages including and without limitation, bodily injury, property damage, blanket contractual liability, Products/Completed Operations, and personal injury liability covering Licensee's use of the Center, with limits of liability as CNL may reasonably

require, but not less than \$1,000,000 per occurrence and \$5,000,000 general aggregate (which general aggregate limit may be satisfied by an umbrella/excess liability policy); however, such limits shall not limit Licensee's liability hereunder.

- ii. Automobile Liability. Business Auto Coverage form or equivalent, including all owned, non-owned, leased and hired vehicles, with minimum limits of liability to meet all requirements of the federal Motor Cargo Safety Administration Financial Responsibility rules and any state rules which may supersede the federal requirements but not less than \$1,000,000 combined single limit per occurrence.
- iii. Worker's Compensation. Worker's compensation, occupational diseases and disability benefits in accordance with applicable statutory requirements and providing coverage for any Licensee employee entering onto the Center's property, even if not required by statute.
- iv. Employer's Liability. Coverage "B" Employer's Liability with limits of at least \$1,000,000 per accident per employee; \$1,000,000 per disease per employee; and \$1,000,000 per disease policy limit.
- v. Employee Fidelity Bond or Commercial Crime Insurance. Employee Fidelity Bond or Commercial Crime Insurance of not less than \$500,000. CNL and City of Orlando shall be named as "Loss Payee(s), as its Interests May Appear" regarding such Fidelity Bond or crime coverage.
- vi. Other Insurance. Such other insurance coverages and in such amounts as City/CNL may require from time to time.

In the event of a conflict or inconsistency between this Section 1 of Exhibit "G" and Paragraph 14 of this Agreement, the terms of Paragraph 14 shall prevail.

2. Liability; Indemnifications

a. Intellectual Property

- i. Licensee hereby assumes all costs and liability arising from the use of the intellectual property of others, including, without limitation, patented, trademarked, franchised or copyrighted music, materials, devices, processes and/or dramatic and other rights used by, in connection with, or incorporated in any Event covered by this Agreement. Licensee shall defend, indemnify and hold harmless CNL and the City of Orlando, and its affiliates and its and their respective trustees, officers, patrons, donors, employees, elected and appointed officials, contractors, representatives and agents (the "Indemnitees") from and against any and all damages arising out of or related to any unauthorized or unlawful use or allegation of unauthorized or unlawful use of any intellectual property.

b. Liability; Damage and Injury; Indemnification

- i. Licensee hereby assumes all costs and liability arising from any injury to any person (including death) and/or damage to any property occurring in the course of, or as a result of, the acts or omissions of (including the use or unauthorized use of the Licensed Premises or the Center) by Licensee, its employees, members, trustees, agents, officers, contractors, representatives, donors, patrons and/or members of the public in connection with any Event provided such damages or injuries are not caused solely and exclusively by the negligence or willful misconduct of CNL or the City.
- ii. Licensee agrees to defend, indemnify and hold harmless the Indemnitees, from and against any and all damages, which may be asserted against, imposed upon, or incurred by any Indemnitee, and arising out of or in connection with, whether in whole or in part (i) loss of life, personal injury or damage to property in or about CNL's property or City property or arising out of the use of CNL's property or City property by Licensee, its employees, members, trustees, agents, officers, contractors, representatives, donors, patrons and/or members of the public (ii) any act or omission of Licensee its employees, members, trustees, agents, officers, contractors, representatives, donors, patrons and/or members of the public during the date of the Event, (iii) the breach of any term of this Agreement by Licensee.
- iii. In the event of a conflict or inconsistency between this Section 2 of Exhibit "G" and Paragraph 13 of this Agreement, the terms of Paragraph 13 shall prevail.