

OPERATIONS AGREEMENT
ARTS AND SCIENCE DISTRICT PARKING FACILITY

THIS OPERATIONS AGREEMENT ("Agreement") is made and entered into this 3 day of October, 1989, by and between the Downtown Development Authority of the City of Fort Lauderdale, Florida, a governmental agency organized pursuant to Florida Statutes ("DDA"), the Performing Arts Center Authority, a body corporate and politic organized pursuant to Chapter 84-396 of the Laws of the State of Florida ("PACA"), the Discovery Center, Inc., a non-profit Florida corporation ("DC") and the City of Fort Lauderdale, a municipal corporation of the State of Florida ("City").

W I T N E S S E T H:

WHEREAS, the DDA, the PACA and the City (collectively "Contributing Parties") are presently engaged in the development of an Arts and Science District upon the property legally described in Exhibit "A" attached hereto ("District"); and,

WHEREAS, the Contributing Parties are developing a nine hundred fifty (950) space parking facility ("Garage") to be located upon land in the District which is jointly owned or to be owned by the DDA and the PACA and which is legally described in Exhibit "B" attached hereto ("Site"); and,

WHEREAS, the Contributing Parties have entered into Escrow and Construction Agreements providing for construction and completion of the Garage on or about the date of issuance of a Certificate of Occupancy for the Performing Arts Center within the District; and,

WHEREAS, the DDA, the PACA, the City and the DC (whose leased facility will be located adjacent to the Garage) wish to provide for operation and maintenance of the Garage.

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the DDA, the PACA, the City and the DC hereby agree as follows:

ARTICLE I - RECITALS

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

ARTICLE II - RATE SETTING

2.1 Garage Integration. The Garage shall be an integrated facility and there shall be no separation or identification of spaces, either by use or ownership except as otherwise hereinafter set forth.

2.2 Rates - Weekday Hours. The DDA and the City will have an equal voice in establishing a uniform rate structure for use of spaces in the Garage during Weekday Hours, as that term is hereafter defined. However, in the event the DDA and the City cannot agree on such a uniform rate structure for the Weekday Hours, the DDA shall have the right to set the rates for 800 spaces during the Weekday Hours (250 of which shall be for short term parking) and the City shall have the right to set the rates for the remaining spaces during the Weekday Hours.

2.3 Rates - Other Hours. The City will consult with the DC relative to the rates to be charged for use of spaces in the Garage during Other Hours (as hereafter defined). The City and the PACA shall then agree upon the rates to be charged for use of spaces in the Garage during Other Hours (as hereafter defined). In the event the City and the PACA cannot agree upon the rates to be charged, the PACA shall have the right to set the rates for 800 spaces during the Other Hours and the City shall have the right to set the rates for the remaining spaces during the Other Hours.

ARTICLE III - REVENUE DISTRIBUTION

Revenues from the Garage shall be combined and allocated (for the purposes set forth in Section 5.3 below) on the following basis:

End. Hours?
A. Eighty-four percent (84%) of revenues collected at the Garage during the hours of 6:00 A.M. through 6:00 P.M., Monday through Friday ("Weekday Hours"), shall be allocated to the DDA.

B. Remaining revenues from Weekday Hours, i.e., sixteen percent (16%) shall be allocated to the City.

C. Eighty-four percent (84%) of revenues collected at the Garage during all but Weekday Hours ("Other Hours") shall be allocated to the PACA.

D. Remaining revenues from Other Hours, i.e., sixteen percent (16%) shall be allocated to the City.

*Weekday
84% DDA
16% City*

*Other
84% PACA
16% City*

ARTICLE IV - OPERATIONS

4.1 General Operation. The City as operating agent ("Operating Agent") shall have full and exclusive responsibility for operation and maintenance of the Garage as an integrated, single facility and shall cause all areas of the Garage to be maintained in good condition and repair, adequately lighted, properly drained and free from rubbish and other hazards to persons. Such operation and maintenance may be performed by personnel employed by the City. The operation and maintenance of the Garage shall include, but not be limited to, collection of revenues, maintenance of the surface areas in a smooth and evenly covered condition, performance of maintenance of landscaping surrounding the Garage to maintain the same in a first-class condition, maintenance of the watering system necessary to keep the landscaping in a first-class condition, arranging for utilities and services furnished to or used in connection with the Garage including, without limitation, electricity, water, telephone services, trash collection, sewer services and for all connection charges pertaining thereto. Additionally, the City shall provide security for the Garage as deemed necessary and reasonable by City.

4.2 Insurance. City agrees to obtain the following insurance:

A. All Risk Property Coverage. City shall provide all risk property coverage on any improvements constructed and personal property located at the Garage in the same manner as provided at all City insured premises.

B. Workers' Compensation. City shall provide and pay for all necessary Workers' Compensation benefits as provided by law for City employees employed at the Garage.

C. Certification. Whenever, under the provisions of this Agreement, insurance is required of City, City, at the request of the PACA, DDA and/or DC shall provide the PACA, DDA and/or DC with Certificates of Insurance evidencing the required coverages.

D. Damage to Garage and Collection of Insurance. In the event of destruction of or damage to any of the Garage and contents covered by insurance, the funds received from insurance policies for repair and reconstruction shall be deposited in a commercial national bank located in Fort Lauderdale, Florida, selected by City, as a trust fund, and such funds shall be used for the purpose of reconstruction or repair, as the case may be, of first, all or any portion of the Garage, second, improvements and third, personal property, so damaged or destroyed. City shall repair or restore such damage or destruction with reasonable promptness from the proceeds of such insurance, provided that within sixty (60) days after a casualty which would require substantial reconstruction of the Garage, the PACA, the City and the DDA may, by unanimous vote, elect to terminate this Agreement. Reconstruction and repair work shall be done by City (if City is Operating Agent) in conformity with the ordinances of the City and all governmental agencies having jurisdiction. Should the cost of reconstruction or repair exceed the

amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of reconstruction or repair and the Contributing Parties shall pay for the remaining cost of reconstruction or repair in accordance with the percentages set forth in Section 5.1 below. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to the PACA, the DDA and the City in the percentages set forth in Section 5.1 below.

E. Precautions. In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, City agrees that it will, at its expense, take all reasonable precautions to protect the Garage from such damage or destruction by the elements.

F. Primary Coverage. All insurance referred to in this Agreement shall apply as primary coverage and shall not be affected by any insurance which PACA, the DDA and/or the DC may carry in its own name(s).

4.3 Taxes and Assessments. City shall pay all taxes and assessments imposed or levied against the Garage by any governmental entity having jurisdiction to levy such taxes or assessments, together with any commercial lease tax or sales tax, if applicable. City shall, from time to time, upon reasonable request by the PACA and/or the DDA, exhibit vouchers and receipts for said payments and, in default of the payment of any such sums by City for ninety (90) days after any of said sums become due and payable, the PACA and/or the DDA may, at their option, upon fifteen (15) days written notice to City, pay the same. If the Contributing Parties unanimously agree, City shall in good faith review by appropriate legal or administrative proceedings or in such other manner as City deems suitable contest, at the expense of the Contributing Parties (in accordance with the percentages set forth in Section 5.1 below), any and all taxes, assessments, and other charges levied against the Garage which City is required to pay pursuant to this Section 4.3, provided that such protest or contest is conducted in the manner provided by law and provided, further, that the Garage is kept free from default for failure to pay such taxes, assessments or levies.

4.4 Indemnification. City shall, to the extent provided by law, indemnify, defend and hold harmless the PACA, the DDA, their officers, servants, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures, causes of action, judgments, orders, decrees, attorneys' fees, costs and expenses of any kind arising out of the operation and/or maintenance of the Garage and resulting or accruing from any negligent act, omission or error of City, its officers, servants, agents and or employees resulting in or relating to injuries to body, life, limb or property sustained in, about or upon the Garage. The covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as City's responsibility to indemnify the PACA, the DDA, their officers, servants, agents and employees for occurrences arising out of the operation and/or maintenance of the Garage during the term of this Agreement.

ARTICLE V - COLLECTION OF REVENUE AND PAYMENT OF EXPENSES OF OPERATION

5.1 Distribution. Expenses of operating and maintaining the Garage incurred by the City shall be borne by the Contributing Parties on the following percentage bases:

- (a) PACA - forty two percent (42%);
- (b) DDA - forty two percent (42%); and
- (c) City - sixteen percent (16%).

5.2 Initial Payment of Expenses. Notwithstanding Section 5.1 above, the City shall be originally responsible for payment of all expenses of operation and maintenance thereafter seeking reimbursement from the other Contributing Parties in accordance with the procedure set forth in Section 5.3 below.

5.3 Collection of Revenue and Reimbursement for Expenses. The City shall collect all revenues generated by use of the Garage. The City shall calculate revenues due the DDA, the City and the PACA for each month and shall deduct from such revenues expenses due from each party based upon the percentages set forth in Section 5.1 above. The City shall submit a monthly statement to the DDA and the PACA from the City Manager or her designee. The monthly statement shall set forth with specificity the various expenses incurred in connection with operation and maintenance of the Garage. Additionally, the monthly statement shall contain evidence of payment of such expenses by the City in the form of a letter from the City Manager. Finally, the monthly statement shall set forth revenues due the party and the extent to which same offset expenses. Upon receipt of the monthly statement, the DDA and the PACA, respectively, shall each, within thirty (30) days, deliver to the City funds to pay expenses not offset by revenues.

ARTICLE VI - RESIGNATION OR REMOVAL OF OPERATING AGENT

6.1 Resignation. The City may resign and thereby become discharged from the duties and obligations hereby created, upon giving written notice ("Notice") to the DDA and the PACA of not less than one hundred twenty (120) days before such resignation shall take effect. Such resignation shall take effect immediately upon the appointment of a new agent to operate the Garage hereunder ("Successor Operating Agent"), or upon the date set forth in the Notice, whichever is earlier, if such Successor Operating Agent shall be appointed before the time limited by such notice and shall then accept the duties and obligations thereof.

6.2 Removal. The City may be removed as Operating Agent, with or without cause but upon thirty (30) days notice, by the DDA relative to 800 spaces during the Weekday Hours and by the PACA relative to 800 spaces during all but Weekday Hours. The City may be removed at any time by any court of competent jurisdiction upon the application of the DDA and the PACA for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Agreement with respect to duties and obligations.

6.3 Appointment of Successor. If at any time hereafter the City or a Successor Operating Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the City, the PACA and the DDA shall appoint a Successor Operating Agent to fill such vacancy. If no appointment of a Successor Operating Agent shall be made pursuant to the foregoing provisions, the DDA, the PACA or the retiring City or retiring Successor Operating Agent may apply to any court of competent jurisdiction to appoint a Successor Operating Agent. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a new Successor Operating Agent.

ARTICLE VII - MISCELLANEOUS PROVISIONS

7.1 Attorneys' Fees. In the event of any litigation or other proceeding arising hereunder, the prevailing party(ies) shall be entitled to an award of attorneys' fees and costs, through and including any and all appeals.

7.2 Condemnation. In the event the Garage or any part thereof, is taken by eminent domain, this Agreement shall be considered terminated as to the Garage or that portion thereof. PACA, the DDA and the City shall be entitled to any apportionment made in connection with such condemnation or taking and the payment of any other compensation based upon the percentages set forth in Section 5.1 above.

7.3 Waiver. Failure of either party to insist upon strict performance of any covenant or condition of this Agreement or the exercise of any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained.

7.9 Independent Contractor. The City or the Successor Operating Agent is an independent contractor under this Agreement. The services provided by the City or the Successor Operating Agent shall be by employees of the City or the Successor Operating Agent and subject to the supervision by the City or the Successor Operating Agent, and not as officers, employees or agents of the PACA, the DDA or the DC. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, travel, per diem policies, purchasing policies and other similar administrative procedures applicable to services rendered pursuant to this Agreement shall be those of the City or the Successor Operating Agent.

7.10 Principal/Agent. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between City, the DDA, the DC and/or the PACA, it being expressly understood that any of the provisions contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between the parties except as provided by the terms of this Agreement.

7.11 Entire Agreement. This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. It is further understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written.

7.12 DDA/PACA Agreement. To the extent this Agreement conflicts with that certain Agreement between the DDA and the PACA dated January 15, 1986, as amended, the terms of this Agreement control.

7.13 Contingency. This Agreement is contingent upon the Contributing Parties funding the escrow as described in that certain Escrow Agreement of even date herewith and a Certificate of Occupancy being issued for the Garage.

IN WITNESS WHEREOF, the parties have caused this Operations Agreement to be executed the day and year first above-written.

Witnesses:

Downtown Development Authority of
the City of Fort Lauderdale, Florida

Barbara R. Pared
[Signature]

By: [Signature]
Charles L. Palmer, Chairman

Performing Arts Center Authority

Louise DeStoye
[Signature]

By: [Signature]
Robert B. Lochrie, Jr., Chairman

The Discovery Center, Inc.

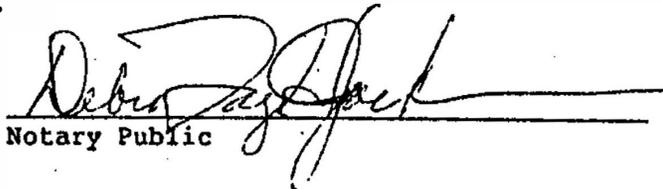
Faith Hamby
Tracy J. Burke

By: [Signature]
Edward Rudder, President

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, personally appeared Edward Rudner, President of The Discovery Center, Inc., to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 16th day of December, 1989.


Notary Public

My Commission Expires: **Notary Public**
State of Florida at Large
My Commission Expires Aug. 21, 1992

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, personally appeared Robert O. Cox, Mayor, Constance Hoffmann, City Manager and Kris L. Anderson, City Clerk of the City of Fort Lauderdale, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of September, 1989.


Notary Public

My Commission Expires: |

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP JULY 19, 1992
BONDED THRU GENERAL INS. UNO.

DESCRIPTION OF ARTS & SCIENCE DISTRICT

The parcel of land bounded as follows:

On the north by West Broward Boulevard; on the east by Southwest 4th Avenue; on the south by Northwest River Drive and West Las Olas Boulevard; and, on the West by Southwest 7th Avenue.

EXHIBIT "A"

LEGAL DESCRIPTION OF
PARKING FACILITY SITE

All of Lots 25, 26, 27, 28, 29, 30, 31, 32, 33, 40, 41, 42, 43, 44, 45, 46, 47 and 48, Block 19 of BRYAN'S SUBDIVISION OF BLOCKS 5, 8 & 19 of the TOWN OF FORT LAUDERDALE, according to the Plat thereof, as recorded in Plat Book 1, Page 18 of the Public Records of Dade County, Florida; TOGETHER with those portions of that certain 10 foot alley lying adjacent to said Lots, East of Southwest 6th Avenue within said Block 19; said lands situate, lying and being in Broward County, Florida.

EXHIBIT "B"