

AMENDMENT TO ESCROW AGREEMENT, CONSTRUCTION AGREEMENT  
AND OPERATIONS AGREEMENT - ARTS AND SCIENCE DISTRICT PARKING FACILITY

THIS AMENDMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1991 by and between the Downtown Development Authority (of the City of Fort Lauderdale, a body corporate and politic ("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 ("DISCOVERY CENTER") and the City of Fort Lauderdale, a municipal corporation of the State of Florida ("CITY") to amend the following:

1. That certain Operations Agreement - Arts And Science District Parking Facility by and between the DDA, PACA, DISCOVERY CENTER and the CITY and executed by such entities on October 5, 1989, October 31, 1989, November 16, 1989 and September 15, 1989, respectively (the "Operations Agreement"); and
2. That certain Escrow Agreement by and between the PACA, CITY and DDA dated as of October 30, 1989 (the "Escrow Agreement"); and
3. That certain Construction Agreement - Arts And Science District Parking Facility by and between the PACA, DDA and CITY dated as of October 30, 1989 (the "Construction Agreement").

(hereinafter the Operations Agreement, Escrow Agreement and Construction Agreement are collectively referred to as the "Agreements").

W I T N E S S E T H:

WHEREAS, the parties have caused to be constructed a nine hundred fifty-six (956) space parking facility ("GARAGE") which was the subject of the Agreements; and

WHEREAS, the parties placed in escrow the amount of Three Million Eight Hundred Eighty-Nine Thousand Nine Hundred Eleven and no/100 (\$3,889,911.00) Dollars ("ESCROWED FUNDS") for the construction of the GARAGE; and

WHEREAS, it is projected that the total cost of the GARAGE (excluding the DDA Planning Monies, as that term is defined in the Escrow Agreement) will be approximately Four Million Twenty-Two Thousand Seven Hundred Forty and 82/100 (\$4,022,740.82) Dollars (exclusive of the ADDITIONAL IMPROVEMENTS, as that term is hereinafter defined) (the "TOTAL COST"); and

WHEREAS, Paragraph 3.2 of the Construction Agreement provides, in part, that decisions which may result in the cost of the GARAGE exceeding Three Million Eight Hundred Eighty-Nine Thousand Nine Hundred Eleven and no/100

(\$3,889,911.00) Dollars (Four Million (\$4,000,000.00) Dollars less the DDA Planning Monies) shall be made by a unanimous vote of the Contracting Parties ("DDA, PACA and CITY"); and

WHEREAS, a portion of the TOTAL COST is a result of certain change orders to the original contract for construction of the GARAGE; and

WHEREAS, the parties have approved the change orders more particularly described on Exhibit "A" attached hereto and by reference made a part hereof which total Two Hundred Forty-Two Thousand Nine Hundred Eighteen and no/100 (\$242,918.00) Dollars (the "APPROVED CHANGE ORDERS"); and

WHEREAS, the ESCROWED FUNDS were placed in an interest bearing account pursuant to the Agreements; and

WHEREAS, as of April 30, 1991, the ESCROWED FUNDS accrued interest in the amount of Three Hundred Forty-Eight Thousand Eighteen and 46/100 (\$348,018.46) Dollars; and

WHEREAS, the DDA, PACA and CITY agreed, subsequent to the approval of the initial design, that it would be more cost effective if during the construction of the GARAGE the foundation of the GARAGE was reinforced and additional couplers installed in order to have the ability to construct additional floors to the GARAGE at a subsequent date ("ADDITIONAL IMPROVEMENTS"), the additional cost of which was Three Hundred Twenty-Five Thousand and no/100 (\$325,000.00) Dollars; and

WHEREAS, the DDA, PACA and CITY have agreed to share in the payment of the costs of the ADDITIONAL IMPROVEMENTS as follows:

|       |              |
|-------|--------------|
| CITY: | \$111,833.34 |
| PACA: | 101,333.33   |
| DDA:  | 111,833.33   |

WHEREAS, the parties desire to set forth their agreements relative to:

- (i) the disbursement of the accrued interest on the ESCROWED FUNDS;
- (ii) the payment of the cost of the ADDITIONAL IMPROVEMENTS by CITY, PACA and DDA;
- (iii) the rights of the parties in and to the additional floors of the GARAGE together with the revenues therefrom, if and when such are constructed; and
- (iv) the obligations of the parties relative to the construction and funding necessary for the construction of additional floors of the GARAGE.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties intending to be legally bound hereby do agree as follows:

1. The above recitals are true and correct and are incorporated herein as a material part of this Agreement.
2. The interest accruing on the ESCROWED FUNDS shall be disbursed to pay for the portion of the TOTAL COST in excess of Three Million Eight Hundred Eighty-Nine Thousand Nine Hundred Eleven and no/100 (\$3,889,911.00) Dollars which is attributable to the APPROVED CHANGE ORDERS.
3. The remaining interest on the ESCROWED FUNDS being held in escrow by the CITY, as escrow agent ("ESCROW AGENT"), after payment of the cost of the APPROVED CHANGE ORDERS shall be disbursed to the parties in accordance with the following percentages:

|       |        |
|-------|--------|
| CITY: | 37.50% |
| PACA: | 43.75% |
| DDA:  | 18.75% |

within ten (10) days of the full execution of this Agreement.

4. The parties shall pay to the ESCROW AGENT within ten (10) days of the full execution of this Agreement the following amounts in order for the ESCROW AGENT to pay the invoice(s) for the ADDITIONAL IMPROVEMENTS:

|       |              |
|-------|--------------|
| CITY: | \$111,833.34 |
| PACA: | \$101,333.33 |
| DDA:  | \$111,833.33 |

(hereinafter referred to as the "ADDITIONAL CONTRIBUTIONS"). In the event the cost of the ADDITIONAL IMPROVEMENTS is less than \$325,000, ESCROW AGENT shall disburse the excess funds to the parties in proportion to their ADDITIONAL CONTRIBUTIONS, that being as follows:

|       |        |
|-------|--------|
| CITY: | 34.41% |
| PACA: | 31.18% |
| DDA:  | 34.41% |

5. The ESCROW AGENT, in its discretion, may offset the amounts to be paid to ESCROW AGENT by DDA, PACA and the CITY pursuant to Paragraph 4 hereof against any ESCROWED FUNDS and/or interest thereon to be disbursed by ESCROW AGENT to DDA, PACA and the CITY pursuant to Paragraph 3 hereof.

6. The construction of additional floors to the GARAGE shall take place upon the placing in escrow with a party to be determined by the contributing parties sufficient funds for said construction.
7. The revenues derived from the use of any such additional floors shall be allocated between the parties based upon the percentage of each party's respective contribution toward the total cost of the construction of such additional floors. For purposes of calculating the percentage of contributions, each party's ADDITIONAL CONTRIBUTIONS paid pursuant to Paragraph 4 hereof shall be considered a contribution by that party toward the cost of the construction of such additional floors.
8. In the event the cost of the GARAGE (exclusive of the ADDITIONAL IMPROVEMENTS) exceeds Four Million One Hundred Thirty-Two Thousand Eight Hundred Twenty-Nine and 82/100 (\$4,132,829.82) Dollars, no expenses in excess of \$4,132,829.82 shall be incurred until additional funds sufficient to pay for such expenses have been received by ESCROW AGENT.
9. Section 5.1 of the Operations Agreement is hereby amended to read as follows:

"5.1 Allocation of Expenses. Expenses of operating and maintaining the GARAGE incurred by the CITY shall be borne by the Contributing Parties as follows: All expenses that will vary by usage (variable expenses) shall be borne 100% by the parties creating the usage. By way of example, PACA and the CITY shall pay 84% and 16%, respectively, of the compensation for GARAGE personnel and lighting for the Other Hours, as that term is defined in the Operations Agreement; and the DDA and CITY shall pay 84% and 16%, respectively, of compensation for GARAGE personnel during the Weekday Hours, as that term is defined in the Operations Agreement.

All expenses that will not vary by usage shall be borne by the Contributing Parties on the following percentage basis:

|     |      |     |
|-----|------|-----|
| (A) | PACA | 42% |
| (B) | DDA  | 42% |
| (C) | CITY | 16% |

10. All amendments contained herein shall be retroactive back to the date of the respective Agreements which they amend.
11. Except to the extent modified herein, the Agreements are hereby ratified and reaffirmed and shall remain in full force and effect as provided by their respective terms.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year set forth under their respective signatures.

DOWNTOWN DEVELOPMENT AUTHORITY

Signed, sealed and delivered  
in the presence of:

DOWNTOWN DEVELOPMENT AUTHORITY OF THE  
CITY OF FORT LAUDERDALE

Barbara R. Powell

By: [Signature]  
Vice-Chairman

[Corporate Seal]  
(CORPORATE SEAL)

ATTEST:

[Signature]  
FRANK SCHNIDMAN, Executive Director

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Barbara R. Powell and FRANK SCHNIDMAN, as Vice-Chairman and Executive Director, respectively, of the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, and acknowledged they executed the foregoing Agreement as the proper officials of the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF FORT LAUDERDALE, for the use and purposes mentioned in it and they affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

WITNESS my hand and official seal this 10 day of July, 1991.

Barbara R. Powell  
Notary Public, State of Florida

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
My Commission Expires [unclear]



THE PERFORMING ARTS CENTER

Signed, sealed and delivered  
in the presence of:

[Signature]  
Brenda Adair  
(CORPORATE SEAL)

PERFORMING ARTS CENTER AUTHORITY

By: Carl L. Mayhue  
CARL L. MAYHUE, Chairman

ATTEST:  
William Farkas  
WILLIAM FARKAS, Executive Director

STATE OF FLORIDA

COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Carl Mayhue and William Farkas as Chairman and Executive Director, respectively, of the PERFORMING ARTS CENTER AUTHORITY, and acknowledged they executed the foregoing Agreement as the proper officials of the PERFORMING CENTER AUTHORITY, for the use and purposes mentioned in it and they affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

WITNESS my hand and official seal this 11<sup>th</sup> day of July, 1991.

Marilyn Manson  
Notary Public, State of Florida

My Commission Expires: Notary Public, State of Florida at Large  
My Commission Expires Aug. 25, 1991  
Bonded thru Alan Insurance Agency  
DISCOVERY CENTER, INC.

Signed, sealed and delivered  
in the presence of:

[Signature]  
Jessie K. Spauldy  
(CORPORATE SEAL)

DISCOVERY CENTER, INC.

By: Ebhidna Pres.

ATTEST:  
K. L. Maho  
Executive Director

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared EDWARD B. RUONER and Kim L. Maher, as PRESIDENT and Executive Director, respectively, of the DISCOVERY CENTER, INC., and acknowledged they executed the foregoing Agreement as the proper officials of the DISCOVERY CENTER, INC. for the use and purposes mentioned in it and they affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

WITNESS my hand and official seal this 26<sup>th</sup> day of July, 1991.

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

[Signature]  
Notary Public State of Florida

My Commission Expires:

d.004  
07/09/91

SUMMARY OF CHANGE ORDERS FOR  
ARTS AND SCIENCE DISTRICT PARKING STRUCTURE

CHANGE ORDER No. PS-100:  
Alternate No. 1

Paint three sides of all exterior columns with two coats of approved paint

Add: \$19,200.00

Alternate No. 5

Omit sealer and paint the exterior face and exposed edges of all architectural precast panels, two coats of an approved concrete paint.

Add: \$10,000.00

Total add: \$ 29,200.00

CHANGE ORDER No. PS-101:

Perform structural, architectural and mechanical changes to the correct drawings as required by the owner, Design Review Committee of Fort Lauderdale, and the City of Fort Lauderdale, from December, 1989, through July 31, 1990

Add: \$20,177.00

Total add: \$ 20,177.00

CHANGE ORDER No. PS-102:

Perform the following modifications to the contract plans in accordance with approved requests for proposals outlined in Construction Manager's letter to Design/Builder, date April 3, 1990

Add: \$43,303.00

Total add: \$ 43,303.00

EXHIBIT "A"

CHANGE ORDER No. PS-103:

Additional payment to Design/Builder for:

- (1) Employment of full-time field superintendent to monitor contractor's work
- (2) Provide full-time secretary to work in contractor's field office
- (3) Provide field office facilities for contractor and owner's representative in Broward Center for the Performing Arts structure
- (4) Provide on-site office management personnel to monitor program of work to assist in the timely completion of the parking structure

Total add: \$ 50,000.00

CHANGE ORDER No. PS-105:

Reimbursement to contractor for owner's responsibility charge on building permit fee

Add: \$9,388.00

Total add: \$ 9,388.00

CHANGE ORDER No. PS-106:

Add slop sink and chain link fence (TGHCCO. No. 810006) requested by City garage operator

Add: \$5,844.00

Install conduits and connection for future irrigation controller as requested by the City (TGHCCO. No. 810008)

Add: \$11,377.00

Install conduit and wire including hook-up of owner furnished open/close entrance and exit lights - previous allowance items (TGHCCO. No. 81009)

Add: \$100.00

Total add: \$ 7,321.00

CHANGE ORDER No. PS-107:  
Partial Payment

Excavate trench under footing lines  
to bottom of unsuitable soil. Replace  
unsuitable soil with stockpiled  
material

Add: \$35,000.00

Total add: \$ 35,000.00

CHANGE ORDER No. PS-108:  
Unsuitable Soil Conditions

Complete all work required to  
install stone piles in unsuitable  
soil conditions, per TGHCCO,  
Proposal No. 1300-810004

Add: \$59,229.00

Total add: \$ 59,229.00

CHANGE ORDER No. PS-109:

Delete the security and perimeter  
fencing per TGHCCO. Proposal No.  
13000-810021

Deduct: (\$8,293.00)

Furnish and install conduit in  
elevator pit for Elevation No. 3

Add: \$539.00

Provide electrical outlet for public  
telephone request by City of Fort  
Lauderdale

Add: \$334.00

Total deduct: (\$ 7,420.00)

Less contingency: (3,280.00)

TOTAL TO DATE: \$ 242,918.00