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**SECOND AMENDMENT**  
**TO THE**  
**PERFORMING ARTS CENTER USE AGREEMENT**  
**between**  
**THE CITY OF DALLAS**  
**and**  
**DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC.**  
**Dated as of December 10, 2008**

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**SECOND AMENDMENT  
TO THE  
PERFORMING ARTS CENTER USE AGREEMENT**

THIS SECOND AMENDMENT TO THE PERFORMING ARTS CENTER USE AGREEMENT (this "Amendment") is entered into as of December 10, 2008, by and between the City of Dallas, Texas, a municipal corporation of the State of Texas and a home rule city (the "City"), and Dallas Center for the Performing Arts Foundation, Inc., a Texas non-profit corporation (the "DCPAF").

**RECITALS**

A. The City and the DCPAF are parties to that certain Performing Arts Center Use Agreement dated as of December 15, 2005 (the "Use Agreement") concerning the management, maintenance, use and operation of certain improvements in the area commonly known as The Downtown Arts District. This Amendment is an amendment to the Use Agreement. Capitalized terms used but not defined in this Amendment shall have the meanings assigned to such terms in the Use Agreement.

B. The City and the DCPAF are parties to that certain Performing Arts Center Development Agreement dated as of December 15, 2005 (the "Development Agreement"), pursuant to which the DCPAF will construct the facilities described in the Development Agreement.

C. The Annette Strauss Artists Square (hereinafter called the "Strauss") is a significant part of the Downtown Arts District and is adjacent to the other Performing Arts facilities being constructed by DCPAF.

D. The City and the DCPAF have agreed to terms and conditions concerning the expansion and modification of the Strauss relating to design, construction, and other related responsibilities in a Second Amendment to the Development Agreement dated December 10, 2008, approved pursuant to Council Resolution No. 08-3432.

E. The City and DCPAF desire to agree on terms and conditions related to the use management, and operation of the Strauss by DCPAF as a venue for entertainment events.

F. On December 10, 2008, the City Council of the City approved Resolution No. 08-3432, authorizing the City Manager to execute this Amendment as said final comprehensive agreement on behalf of and as the official act of the City.

**AGREEMENT**

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual terms, conditions, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the parties to this Amendment, the parties have agreed and do hereby agree as follows:

1. Article 6 of the Use Agreement is amended to add Paragraph 6.15 as follows:

“6.15 Mitigation of Noise at the Strauss. The City and the DCPAF agree to jointly develop a series of administrative controls to collaboratively manage and minimize the sound impact of the Strauss on the Morton H. Meyerson Symphony Center (“MSC”). These administrative controls include:

- (a) Enforceable performer contracts that require the use of in-house audio system for all performing acts at the Strauss, together with trained sound system operators;
- (b) Well-defined technical limits specifying maximum allowable sound pressure levels, also to be included in the performer contracts;
- (c) Enforceable contractual performer liquidated damages clauses for violation of allowable sound limits, also to be included in the performer contracts;
- (d) A system or method to collect and distribute sound monitoring data and, as appropriate, make the appropriate modifications to the protocols and contracts to minimize material sound intrusion in the MSC.
- (e) A joint plan for annual scheduling at the MSC / Strauss that includes non-amplified sound events at the Strauss on certain primary dates at the including certain dates identified by the City with the Dallas Symphony Association. A copy of the joint plan for annual scheduling, also known as the “Booking Agreement” is attached to and made a part of the Second Amendment as Exhibit B.
- (f) Activities at the Strauss will be restricted as follows: during weekdays, Monday-Thursday from 9:00 A.M. – 5:00 P.M. and Fridays 9:00 A.M. - Noon. Only the following activities would be allowed at the Strauss during the restricted daytime hours: load-in, rigging, lighting set-up and focus; monitor set-up, tuning, equalization, balancing and trimmed out; main speakers may be tune, equalized and balanced with individual line checks; no sound checks will be allowed prior to 5 p.m. Monday-Thursday or 12:00 on Friday on the eligible dates for events at the Strauss (per joint plan outlined in (e) above. Sustained noise from any and all work being done at the Strauss in preparation for an event during these restricted hours is not to exceed 90dB (ambient noise level).”

2. As a material inducement to the DCPAF for entering into this Amendment, the City hereby represents and warrants to the DCPAF that the representations and warranties contained in Section 16.1 of the Use Agreement remain valid and are also valid as to that portion of the Premises added by Section 1 of this Amendment.

3. As a material inducement to the City for entering into this Amendment, the DCPAF hereby represents and warrants to the City that that the representations and warranties

contained in Section 16.2 of the Use Agreement remain valid and are also valid as to that portion of the Premises added by Section 1 of this Amendment.

4. Notwithstanding any provision of the Agreement to the contrary, the terms of Section 2 of this Amendment, or any breach thereof, shall not constitute a breach of the Use Agreement that will entitle the City to terminate the Use Agreement or the DCPAF's rights under the Use Agreement.

5. Concurrently with the execution of this Amendment, the City and the DCPAF shall execute, acknowledge and deliver a memorandum of this Amendment (the "Memorandum of Second Amendment"), in the form attached hereto as Exhibit C and made a part of this Amendment for all purposes, which Memorandum of Second Amendment shall be recorded by the DCPAF in the Real Property Records of Dallas County, Texas. The recording costs relating to the Memorandum of Second Amendment shall be paid by the DCPAF. Upon termination of the entirety or any portion of the Use Agreement, the DCPAF shall execute and deliver to the City, at the City's request, an appropriate release in recordable form confirming termination of the entirety or any portion of the Use Agreement and release of the DCPAF's interest under same.


6. The City and the DCPAF each will use their good faith efforts to complete and execute, as soon as practicable following the execution of this Amendment, all documentation necessary, appropriate, or desirable to carry out the transactions agreed to by the parties in this Amendment.

7. Article 21 of the Use Agreement is amended to provide that the DCPAF and the City each shall comply with, and shall require that their respective agents, contractors, and subcontractors performing any kind of work at or delivering materials to the Strauss, before, during, and after construction at the Strauss, shall comply with all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials.

8. All other terms, covenants, conditions, and obligations of the Use Agreement between the City and DCPAF shall remain in full force and effect, and said Use Agreement, as previously amended, and this Amendment shall be construed together as a single contractual agreement.

This Amendment has been executed and delivered as of the date first written above. The City, signing by and through its City Manager, is duly authorized to execute this Amendment by Resolution No. 08-3432, adopted by the City Council on December 10, 2008.

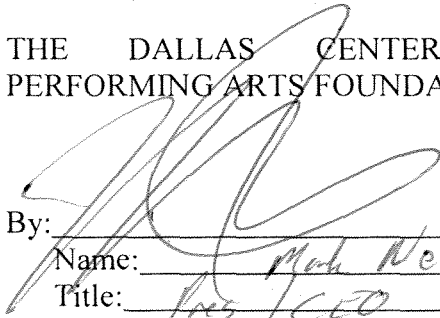
CITY OF DALLAS  
MARY K. SUHM, City Manager

By:   
Assistant City Manager

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR., City Attorney

By:   
Assistant City Attorney  
*Submitted to City Attorney* 

THE DALLAS CENTER FOR THE  
PERFORMING ARTS FOUNDATION, INC.

By:   
Name: Mark Werchhausen  
Title: Pres / CEO

**Exhibit "A"**

**Description of the Land Comprising Annette Strauss Artists Square**

INTENTIONALLY OMITTED

**Exhibit "B"**  
**The Booking Agreement**

## Meyerson Symphony Center / Strauss Square

### *Proposed Steps for Amended Booking Process*

#### 1. Initial DSA Submission of Confirmed Booking Periods and Hold Booking Periods.

##### A. DSA Initial Calendar.

No later than September 30 of each year, the Dallas Symphony Association (the "DSA") shall submit in writing to the General Manager of the Morton H. Meyerson Symphony Center (or designee) (as applicable, the "General Manager"), as the representative of the City of Dallas (the "City"), the DSA's calendar of initial Confirmed DSA Booking Periods (defined below) at the Meyerson Symphony Center (the "MSC") for the 12 months beginning September 1 of the next year (the "DSA Initial Calendar").

##### B. Confirmed DSA Booking Periods.

A "Confirmed DSA Booking Period" is a time period for an event that is, as of the submission of the DSA Initial Calendar, actually scheduled and confirmed by the DSA, and will be identified by day of week, date and hours blocked for such event. The DSA Initial Calendar may list any or all of the following as Confirmed DSA Booking Periods:

- (i) DSA Classical and Pops season concerts and rehearsals/technical holds;
- (ii) DSA Christmas celebration concerts and rehearsals/technical holds;
- (iii) DSA summer Casual Classics concerts and rehearsals/technical holds;
- (iv) DSA fund development events (presently constituted by the Gold Bow, Black Tie, Annual Gala, and Debutante Ball but event type may be subject to change in future years);
- (v) up to 3 community concerts such as the Latino Festival and African American Festival and associated rehearsals/technical holds;
- (vi) up to 10 DSA auditions;
- (vii) up to 12 DSA daytime youth concert services; and associated rehearsals/technical holds.

##### C. DSA Hold Periods.

The DSA Initial Calendar also may include up to 60 DSA Hold Periods (defined below). A "DSA Hold Period" is a time period for an event that is, as of the submission of the DSA Initial Calendar, not actually scheduled and confirmed by the DSA, but which the DSA, in good faith, intends to schedule and confirm. Each DSA Hold Period will be identified by day of week, date and hours blocked for such event.

The DSA may designate in the DSA Initial Calendar up to 20 DSA Hold Periods (as part of, and not in addition to, the 60 DSA Hold Periods) that are designated by the DSA to be periods during which any simultaneous event at Strauss Square



(the "Strauss") must be presented without use of any electronic or similar system to increase sound level pressure at the Strauss (any such period being a "Non-Amplified Period").

The DSA will use reasonable efforts to ensure that no DSA Hold Period, conflicts with the traditional dates and times for City User Periods (defined below), as generally described in Section 2 below.

2. Initial City Submission of City User Periods; Resolution of Conflicts with DSA Events.

A. City Initial Calendar.

Between October 1 and October 15 of each year, the General Manager shall submit in writing to the [Executive Director of the] DSA, as the representative of the DSA, the City's calendar of initial City User Periods (defined below) at the MSC for the 12 months beginning September 1 of the next year (the "City Initial Calendar").

B. City User Periods.

A "City User Period" is a time period for an event that is, as of the submission of the City Initial Calendar, actually booked and confirmed by the City User (as described below), and will be identified by day of week, date and hours blocked for such event. The City Initial Calendar may list any or all of the following as City User Periods:

- (i) the Greater Dallas Youth Orchestra (generally 4 Sunday nights);
- (ii) the Dallas Wind Symphony (generally 6-8 Tuesdays and the 4<sup>th</sup> of July);
- (iii) the Turtle Creek Chorale (9 dates, generally Sundays and Wednesdays and available Holidays);
- (iv) the Children's Chorus of Greater Dallas (3 dates, generally Tuesdays or Sundays); and
- (v) the Black Academy of Arts & Letters (1 date, the Martin Luther King Concert).

C. Resolution of Conflicts.

If, upon delivery of the City Initial Calendar, any DSA Hold Period conflicts with any City User Period, the City will request in writing no later than October 15 that the DSA release the conflicting DSA Hold Period. The DSA shall have up to 5 business days from receipt of the request to reply in writing to the City whether the DSA Hold Period will be released. If the DSA Hold Period is released, the DSA may submit in its reply a replacement DSA Hold Period, as applicable, for a period otherwise available at the MSC, taking into account the DSA initial Calendar and the City Initial Calendar. If the DSA Hold Period is not released, the DSA Hold Period shall have priority over the proposed City User Period.

3. MSC Master Calendar; Delivery to DCPA.

As promptly as practicable after completion of the process described in Sections 1 and 2 above, and in any event not later than October 31 of each year, the General Manager will

prepare a master MSC events calendar (the "MSC Master Calendar"), listing, by day of week, date and hours blocked, all City User Periods, all Confirmed DSA Booking Periods and all DSA Hold Periods, and identifying which of the DSA Hold Periods are designated as the 20 Non-Amplified Periods described in Section 1.C above. Not later than November 1 of each year, the General Manager will deliver the MSC Master Calendar to the Chief Operating Officer (or designee) of the Dallas Center for the Performing Arts Foundation, Inc. (the "DCPA"), as the representative of the DCPA.

4. Strauss Calendar; Coordination.

A. Strauss Calendar.

No later than December 15 of each year, the DCPA shall deliver to the General Manager the DCPA's calendar of events to be held at the Strauss during the 12 months beginning September 1 of the next year (the "Strauss Calendar"). The Strauss Calendar will identify by day of week, date and booking period each Confirmed Strauss Event (defined below) and each Strauss Hold Period (defined below).

A "Confirmed Strauss Period" is a time period for an event that is, as of the submission of the Strauss Calendar, actually scheduled and confirmed with a presenter, and will be identified by day of week, date and hours blocked for such event.

The DCPA may list in the Strauss Calendar up to 25 Strauss Hold Periods. A "Strauss Hold Period" is a time period for an event that is, as of the submission of the Strauss Calendar, not actually scheduled and confirmed with a presenter, but which the DCPA, in good faith, intends to schedule and confirm. Each Strauss Hold Period will be identified by day of week, date and hours blocked for such event.

Events listed on the Strauss Calendar may overlap, or be scheduled simultaneously with, events listed on the MSC Calendar, subject to the terms of Section 4.B below regarding Non-Amplified Periods.

B. Coordination with MSC Master Calendar.

Each Confirmed Strauss Period and each Strauss Hold Period listed on the Strauss Calendar will be identified as either a Non-Amplified Period or an Amplified Period. An "Amplified Period" is a period during which a presenter or performer at the Strauss will use electronic or similar systems to increase sound level pressure at the Strauss, subject to the administrative controls required to be imposed under the terms of the Use Agreement between the City and the DCPA, dated as of December 15, 2005, as amended.

No Confirmed Strauss Period or Strauss Hold Period will be listed (or presented) as an Amplified Period if it conflicts with the day of week, date and booking period of an MSC Priority Period (defined below) listed on the MSC Master Calendar.

An "MSC Priority Period" is a City User Period described in Section 2.B above, the DSA Confirmed Booking Periods described in Section 1.B(i)-(vii) above, and the 20 DSA Hold Periods described in Section 1.C above, in each case as listed on the MSC Master Calendar delivered to the DCPA under Section 3 above.

C. Notification of MSC Presenters/Performers regarding Amplified Periods.

The General Manager shall be solely responsible for, and shall, notify in writing each presenter and/or performer who schedules through the City (or its designee) any event at the MSC that is not an MSC Priority Event, and that is scheduled to occur during any Amplified Period, advising the presenter/performer that there will be amplified sound at the Strauss during such MSC event.

The DSA shall be solely responsible for, and shall, notify in writing each performer (other than the DSA) who schedules through the DSA (or its designee) any event at the MSC that is not an MSC Priority Period, and that is scheduled to occur during any Amplified Period, advising the performer (if not the DSA) that there will be amplified sound at the Strauss during such MSC event.

5. Confirming DSA Hold Periods.

The DSA will notify the General Manager promptly upon confirmation that the DSA (or its assignee or designee) will hold an event during a DSA Hold Period, and the General Manager will promptly update the MSC Master Calendar and will forward notice of such event to the DCPA.

If the DSA Hold Period was not listed on the MSC Master Calendar as one of the 20 DSA Hold Periods that are Non-Amplified Periods, and if the Strauss Calendar previously listed such period as a Confirmed Strauss Period or a Strauss Hold Period, in either case as an Amplified Period, then the confirmation by the DSA that the DSA will hold an event during such DSA Hold Period shall not affect the DCPA's right to use such period as an Amplified Period, unless the DCPA has not yet confirmed such Strauss Hold Period and the DCPA consents to the Strauss Hold Period being re-classified as a Non-Amplified Period (which typically would occur only if the DSA proposes an equivalent period that then can be an Amplified Period).

6. Confirming Strauss Hold Periods.

The DCPA will notify the General Manager promptly upon confirmation that the DCPA (or its assignee or designee) will hold an event during a Strauss Hold Period, and the General Manager will promptly update the Strauss Calendar and will forward notice of such event to the DSA.

The DCPA's notice to the General Manager will indicate whether the Strauss Hold Period is being confirmed as a Non-Amplified Period or an Amplified Period. If the Strauss Hold Period was listed on the Strauss Calendar as a Non-Amplified Period because of a conflicting MSC Priority Period, then the Strauss Hold Period may be confirmed as an Amplified Period only if the applicable sponsor of the MSC Priority Period has previously notified the General Manager that the sponsor now will not conduct such event at the MSC.

7. Challenges to Strauss Hold Periods Scheduled as Amplified Periods.

The DSA may "challenge" any Strauss Hold Period that is listed on the Strauss Calendar as an Amplified Period (a "Challenged Strauss Period") on or after the 60<sup>th</sup> day before the date of the Strauss Hold Period. Any such challenge shall be made in writing (a "DSA Challenge Notice") delivered to the General Manager and the DCPA, stating the day of week, date and time period the DSA (or its assignee or designee) wishes to use the MSC, the event/presenter/performer the DSA proposes to schedule in the MSC for such period and the DSA's desire for the period to be a Non-Amplified Period.

The DCPA shall have up to 5 business days after the DCPA's actual receipt of the DSA Challenge Notice, to respond in writing to the General Manager and the DSA (the "DCPA Challenge Response"), stating whether:

- A. The DCPA (or its assignee or designee) has confirmed an event for the Strauss for such Challenged Strauss Period that reasonably needs to be held during an Amplified Period;
- B. The DCPA (or its assignee or designee) is negotiating with an artist or presenter for an event for such Challenged Strauss Period for an event that reasonably needs to be held during an Amplified Period; or
- C. The DCPA has determined not to use the Strauss for an amplified event during the Challenged Strauss Period, or will conduct any event during the Challenged Strauss Period as a Non-Amplified Event.

If the DCPA Challenge Response includes a response described in item A or B above, then the DSA's challenge shall fail and there shall be no change in the Challenged Strauss Period. If the DCPA Challenge Response includes a response described in item C above, then the DSA's challenge shall succeed and the Challenged Strauss Period shall be deemed a Non-Amplified Period.

8. Challenges to DSA Hold Periods Scheduled as Non-Amplified Periods.

The DCPA may "challenge" any DSA Hold Period that is listed on the Strauss Calendar as a Non-Amplified Period (a "Challenged DSA Period") on or after the 60<sup>th</sup> day before the date of the DSA Hold Period. Any such challenge shall be made in writing (a "DCPA Challenge Notice") delivered to the General Manager and the DSA, stating the day of week, date and time period the DCPA (or its assignee or designee) wishes to present an event at the Strauss as an Amplified Period.

The DSA shall have up to 5 business days after the DSA's actual receipt of the DCPA Challenge Notice, to respond in writing to the General Manager and the DCPA (the "DSA Challenge Response"), stating whether:

- A. The DSA (or its assignee or designee) has confirmed an event for the MSC for such Challenged DSA Period that reasonably needs to be conducted during a Non-Amplified Period;
- B. The DSA (or its assignee or designee) is negotiating with an artist or presenter for an event for such Challenged DSA Period for an event that reasonably needs to be conducted during a Non-Amplified Period; or
- C. The DSA has determined not to use the MSC for an event during the Challenged DSA Period that reasonably needs to be conducted during a Non-Amplified Period, or will conduct any event at the MSC during the Challenged DSA Period as an Amplified Period.

If the DSA Challenge Response includes a response described in item A or B above, then the DCPA's challenge shall fail and there shall be no change in the Challenged DSA Period. If the DSA Challenge Response includes a response described in item C above, then the DCPA's challenge shall succeed and the Challenged DSA Period shall be deemed an Amplified Period.

9. DSA Secondary Hold Period Procedures.

A. DSA Secondary Hold Period Submission.

After December 15 of each year, the DSA may submit, in writing to the General Manager, DSA Secondary Hold Periods (defined below), for any period not already identified on the MSC Master Calendar as a City User Period. Any such written notice is referred to herein as a "DSA Secondary Notice").

A "DSA Secondary Hold Period" is a time period for an event that is, as of the submission of the request for such period, not actually scheduled and confirmed with a performer (which may be the DSA), but which the DSA, in good faith, intends to schedule and confirm. Each DSA Secondary Hold Period will be identified by day of week, date and hours blocked for such event.

B. Notice to the DCPA if Proposed as a Non-Amplified Event.

The General Manager (or his designee) shall promptly deliver to the Chief Operating Officer (or designee) of the DCPA, each DSA Secondary Notice received by the General Manager, but only to the extent the DSA Secondary Notice requested that any DSA Secondary Hold Period be treated as a Non-Amplified Period.

C. DCPA Challenge Right; Confirmation if No Challenge Notice.

The DCPA shall have the right to challenge the DSA's request that any DSA Secondary Hold Period be treated as a Non-Amplified Period, by delivering a written notice (a "DCPA Secondary Challenge Notice") to the General Manager, not later than 5 business days after the DCPA's actual receipt of a DSA Secondary Notice, to the effect that the DCPA is negotiating with a performer for an event to be presented at the Strauss as an Amplified Period during the applicable DSA Secondary Hold Period. The General Manager shall promptly deliver to the DSA the DCPA's Secondary Challenge Notice.

If the DCPA does not timely deliver a Secondary Challenge Notice, then the DSA shall deliver a written notice to the General Manager (which the General Manager shall promptly deliver to the DCPA) promptly after the DSA has entered into a written agreement with a performer for an event to be held in accordance with the DSA Secondary Notice or has confirmed the DSA will perform at such event (in either case, a "DSA Secondary Confirmation"), upon which the DSA's event shall be deemed confirmed and shall become an MSC Priority Event.

D. Resolution of Secondary Challenge.

If the DSA delivers a DSA Secondary Confirmation, not later than 5 business days after the DSA's receipt of the DCPA Secondary Challenge Notice, then the DSA's event shall be deemed confirmed and shall become an MSC Priority Event.

If the DSA fails to deliver a DSA Secondary Confirmation, not later than 5 business days after the DSA's receipt of the DCPA Secondary Challenge Notice, then the DSA's event shall not be confirmed as an MSC Priority Event and the DCPA shall be free to hold an event at the Strauss as an Amplified Event.

10. Open Booking Periods.

After December 31 of each year, any period at the MSC that is not booked as a Confirmed DSA Booking Period, a DSA Hold Period or a City User Period will be available for booking by the DSA or the City, through procedures to be determined by the General Manager, provided, however, that no such booking shall be deemed a Non-Amplified Period.

**Exhibit "C"**

**Memorandum of Second Amendment**

## MEMORANDUM OF USE AGREEMENT

STATE OF TEXAS                   §  
  §  
COUNTY OF DALLAS           §

This Memorandum of Use Agreement (this “Memorandum”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF DALLAS, TEXAS, a municipal corporation of the State of Texas and a home rule city (hereinafter called the “City”), and DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC., a Texas non-profit corporation (hereinafter called the “DCPAF”).

1. The City and the DCPAF have executed and entered into that certain Use Agreement (the “Original Agreement”) dated December 15, 2005 whereby the City, subject to the terms and conditions of the Agreement, granted the DCPAF the right to possess, manage, maintain and operate the Performing Arts Center (as defined in the Agreement) on those certain tracts or parcels of land that are located in Dallas, Dallas County, Texas and are more particularly described on Exhibit “A” attached hereto and made a part hereof for all purposes (the “Premises”).

2. The Original Agreement has been amended pursuant to that certain First Amendment to the Performing Arts Center Use Agreement (the “First Amendment”) dated as of October 8, 2008 between the City and the DCPAF and by that certain Second Amendment to the Performing Arts Center Use Agreement (the “Second Amendment”) dated as of December 10, 2008 between the City and the DCPAF (the Original Agreement, as amended by the First Amendment and the Second Amendment, being hereinafter called the “Agreement”).

3. The primary term of the Agreement shall expire on the last day of the month in which the forty (40) year anniversary of the Rent Commencement Date (as defined in the Agreement) occurs, and the DCPAF has the right to exercise up to five (5) renewal terms of ten (10) years each.

4. The DCPAF has an option to purchase the Performing Arts Center from the City if the City fails to fund the City’s obligations under the Agreement, upon the terms and conditions provided in the Agreement.

5. The Agreement sets forth the names and addresses of the City and the DCPAF as follows:

If to City:	City of Dallas 1500 Marilla 4E North Dallas, Texas 75201 Attn: City Manager Telephone: 214-670-4268 Facsimile: 214-670-3946
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With copy to: City of Dallas  
City Attorney's Office  
1500 Marilla, Room 7CN  
Dallas, TX 75201  
Attn: J. Arthur Hudman  
Telephone: 214-670-5940  
Facsimile: 214-670-0622

If to the DCPAF: Dallas Center for the Performing Arts Foundation, Inc.  
2106 Boll Street  
Dallas, Texas 75204  
Attn: President and Chief Executive Officer  
Telephone: 214-954-9925  
Facsimile: 214-954-9936

with copies to: Haynes and Boone, LLP  
901 Main Street  
Suite 3100  
Dallas, Texas 75202  
Attn: Michael M. Boone and Tom D. Harris  
Telephone: 214-651-5630  
Facsimile: 214-651-5940

6. This Memorandum shall inure to the benefit of and be binding upon the City and the DCPAF and their respective successors and assigns; provided, however, that this Memorandum is not intended to, and shall not, modify, amend, limit or expand any of the terms or provisions of the Agreement or any of the rights granted to the City or the DCPAF under the Agreement. In the event of any conflict between the terms and provisions of this Memorandum and the terms and provisions of the Agreement, the terms and provisions of the Agreement shall prevail.

Executed and effective as of the Effective Date.

**THE DCPAF:**

DALLAS CENTER FOR THE PERFORMING  
ARTS FOUNDATION, INC., a Texas non-profit  
corporation

By: 

Name: Mark Aerenhausen

Title: President / CEO

**THE CITY:**

CITY OF DALLAS, TEXAS  
MARY K. SUHM, CITY MANAGER

By: [Signature]  
Name: Mary K. Suhm  
Title: City Manager

Approved as to form:  
THOMAS P. PERKINS, JR., CITY ATTORNEY

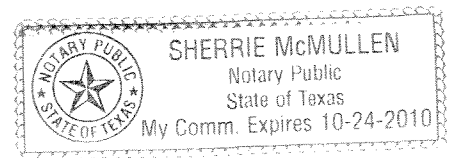
By: [Signature]  
Name: \_\_\_\_\_  
Title: Assistant City Attorney  
*Submitted to City Attorney*  
[Signature]

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

This instrument was acknowledged before me this 18 day of May, 2009, by Mary K. Suhm, the City Manager of the City of Dallas, Texas, a municipal corporation of the State of Texas and a home-rule city, on behalf of said City.

[Signature]  
Notary Public Signature

(PERSONALIZED SEAL)



STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

This instrument was acknowledged before me this 6<sup>th</sup> day of May, 2009, by Mark K. Nerenhausen, President / CEO of Dallas Center for the Performing Arts Foundation, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

[Signature]  
Notary Public Signature

(PERSONALIZED SEAL)

