
FIRST 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 October 8, 2008

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

THIS FIRST AMENDMENT TO THE PERFORMING ARTS CENTER USE AGREEMENT (this "Amendment") is entered into as of October 8 , 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 Development Agreement contemplates the City constructing a Municipal Performance Hall on the Municipal Performance Hall Site (also referred to in this Amendment as the "Municipal Site"). The City has publicly announced its intention to move forward with construction of the Municipal Performance Hall.

D. The City and the DCPAF acknowledge that additional parking facilities in the Performing Arts Center will, in addition to benefitting patrons of the Center, benefit the students and other users of the Booker T. Washington High School for Performing and Visual Arts (the "Magnet School") located adjacent to the Municipal Site.

E. The City and the DCPAF have evaluated the feasibility of constructing a parking facility under the Municipal Site and the DCPAF has determined that the DCPAF has the ability to design, finance and construct a single-level, below-grade, approximately 256-space parking facility (as described in this Amendment, the "Additional Garage").

F. The City and the DCPAF acknowledge that the Additional Garage will be completed as a first step in the construction of the Municipal Performance Hall, but that the design, funding, construction, maintenance, and operation of the Municipal Performance Hall shall be the sole responsibility and obligation of the City and shall not be the obligation of the DCPAF.

G. The City and the DCPAF now desire to set forth in this Amendment the definitive terms and conditions pursuant to which the parties will undertake the management, maintenance,

use and operation, for the use and benefit of the public, the City of Dallas and its citizens, of the Additional Garage.

H. On October 8, 2008, the City Council of the City approved Resolution No. 08-2793, authorizing the City Manager to execute this Amendment as said final comprehensive agreement on behalf of and as the official act of the City.

A G R E E M E N T

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. The following Section 5.5 is added to Article 5 of the Use Agreement: "Subject to the terms and conditions set forth in the First Amendment to the Use Agreement and the First Amendment to the Development Agreement: (a) the City shall own the Additional Garage; (b) the DCPAF shall plan, design, develop, completely construct, and make operational the Additional Garage; (c) the DCPAF shall manage, maintain, use, and operate the Additional Garage for the benefit of the public pursuant to the Use Agreement as amended; and (d) the DCPAF shall fund the construction of the Additional Garage pursuant to the First Amendment to the Development Agreement."

2. Section 1.1 of the Use Agreement is amended to include the following as a part of the Land and the Improvements, collectively included in and referred to as a part of the Premises: (a) the Additional Garage, together with all of the other items set forth in Section 1.1 of the Use Agreement; and (b) the subsurface beneath the Municipal Site, located in the Downtown Arts District in the City of Dallas, Dallas County, Texas, and more particularly described in Exhibit A of the Use Agreement, incorporated by reference as a part of this Amendment for all purposes, which tract of land is reflected on the site plan (the "Site Plan") contained in Exhibit B of the Use Agreement, where the Additional Garage and the Municipal Performance Hall are to be located. The Municipal Performance Hall (which is to be constructed by the City) is not part of the Additional Garage, the Premises or the Improvements. Section 4.1 of the Use Agreement is also amended to provide that the term "Performing Arts Center" or "Center" shall also include the Additional Garage, as well as the other buildings and improvements provided for in the Use Agreement.

3. In further and additional consideration of the DCPAF's fully funding and constructing the Additional Garage as provided for in the First Amendment to the Development Agreement as well as this Amendment, the following terms and conditions are included as a part of Articles 3 and 6 of the Use Agreement:

- (a) There shall be no additional rent payable by the DCPAF under the Use Agreement as a result of or with respect to the use, management, or occupancy of the Additional Garage by DCPAF.
- (b) Any and all revenues, fees, charges, and other amounts paid to or received by the DCPAF in connection with or with respect to the operation of the Additional

Garage shall be for the sole benefit of and owned by the DCPAF, and the City shall have no right to receive any portion of such revenues, fees, charges or other amounts.

4. Section 5.3 of the Use Agreement is amended to add the following sentences at the end of the paragraph: "Future phases of development of the Municipal Performance Hall contemplate approximately 81,000 additional square feet of building and are subject to funding and future action of the City Council. The DCPAF agrees that the provisions of Article 5 apply to all future construction at the Municipal Performance Hall Site. City reserves the right to temporarily close or limit use of a portion of the Additional Garage, to the extent reasonably necessary to perform future construction work and for the safety and convenience of the public. City also reserves the right, with the involvement, review, and concurrence of DCPAF (such involvement, review, and concurrence not to be unreasonably withheld), to modify the Additional Garage where necessary to accommodate a future phase of development, but only to the extent required by applicable law, regulation or building code; provided, however, that (i) the DCPAF may reasonably withhold consent to any such modification that would reduce the total number of parking spaces in the Additional Garage by more than seven spaces, and (ii) any reduction of parking spaces under this sentence shall have the effect, first, of proportionately reducing the number of parking spaces reserved for use by the City. . Notwithstanding the foregoing, the City shall: (a) use best efforts to minimize closures of the Additional Garage and use good faith efforts to schedule all closures in a manner to minimize times when the Additional Garage is, in whole or in part, unavailable for active use as a parking structure; and (b) furnish written notice to the DCPAF of reasonably anticipated closures of the Additional Garage, which written notice shall be given not less than one hundred eighty (180) days in advance for anticipated full closures of the Additional Garage (a "full closure" being any time at which the City prohibits parking in half or more of the parking spaces in the Additional Garage) and not less than ninety (90) days for partial closure of the Additional Garage (a "partial closure" being any time at which the City prohibits parking in fewer than half of the parking spaces in the Additional Garage)."

5. Section 6.4 of the Use Agreement is hereby deleted in its entirety and the following is substituted:

"6.4 Parking. The DCPAF shall operate and control the Parking Garage and the Additional Garage or may contract with an operator/manager for such services. The DCPAF may use the Parking Garage and the Additional Garage to accommodate Performing Arts Center patrons, visitors, personnel and performers when at the Performing Arts Center and the DCPAF may use the Additional Garage to accommodate Magnet School students, faculty, administrators and visitors when at the Magnet School (collectively, "Center Parking"), including without limitation providing reserved or designated spaces as the DCPAF reasonably deems appropriate. When and to the extent not needed for Center Parking, the Parking Garage and the Additional Garage shall be made available to accommodate the parking needs of other public venues in the Downtown Arts District, including, without

limitation, the Municipal Performance Hall (when constructed), the Meyerson Center and the Dallas Museum of Arts (collectively, "Arts District Parking"). When and to the extent not needed for Center Parking or Arts District Parking, the Parking Garage and the Additional Garage shall be generally made available to the general public, on an unassigned, unreserved, first-come, first-served basis. The DCPAF shall establish fees to be charged for parking in the Parking Garage and the Additional Garage. Such fees shall not greater than the prevailing market rates for comparable parking. All revenues derived from parking shall belong to the DCPAF, subject to this Use Agreement. In addition, effective upon the issuance of a Certificate of Occupancy for Phase I of the Municipal Performance Hall, the DCPAF shall reserve five (5) parking spaces in the Additional Garage, free of charge, for the exclusive use of City staff and contractors working at the Municipal Performance Hall on a twenty-four (24) hour per day, seven (7) days a week basis; provided, however, that effective upon the issuance of a Certificate of Occupancy for Phase II of the Municipal Performance Hall, the number of parking spaces reserved for the City in the Additional Garage shall be increased by five (5) spaces, to a total of ten (10) spaces. Any required modification to the Additional Garage that reduces the total number of parking spaces in the Additional Garage shall proportionately reduce the number of spaces reserved for use by the City in the Additional Garage as described in Section 5.3 above"

6. Section 6.11 of the Use Agreement is amended to renumber the existing paragraph as subparagraph (1) and to add the following subparagraph (2): "The name given to the Additional Garage shall not include any reference to any proper geographic name, unless such reference: (a) is to "Dallas" or the "City of Dallas"; or (b) is part of the proper name of a person or entity selected as a sponsor pursuant to this Section. If any sponsor selected by the DCPAF as a named sponsor of the Additional Garage is a for-profit commercial entity and is not an individual, a trust, a non-profit organization or a similar charitable or philanthropic organization or entity, the DCPAF's selection of such for-profit commercial entity as a naming sponsor shall be subject to the prior consent of the City Manager, which consent shall not be unreasonably withheld or delayed and which consent shall be given without economic compensation to the City or other conditions. Any rejection by the City Manager of any such proposed for-profit commercial sponsor shall be given in writing and the reason shall be specified in reasonable detail. If the City Manager has not delivered a notice rejecting a proposed commercial naming sponsor within thirty (30) days after the DCPAF delivers written notice to the City Manager of such proposed commercial naming sponsor, then the DCPAF may complete its arrangements with such proposed sponsor and the City Manager's right to reject such sponsor shall be deemed terminated. The parties acknowledge that the City Manager's right to reject a proposed commercial sponsor is limited to significant commercial naming sponsors whose business (for example, a sexually oriented business), reputation for business ethics (for example, a business that is under public investigation or indictment relating to bribery, public corruption

or any similar offense) or similar attributes cause such commercial enterprise to be an improper commercial sponsor for a municipality such as the City of Dallas; provided, however, that such consent is not intended to be withheld by the City for any commercial enterprise primarily because such enterprise then is involved in a commercial dispute with the City, because such enterprise competes with an enterprise that has a commercial relationship with the City or because such enterprise is not located in or headquartered in the City. Any such sponsorship agreements entered into by the DCPAF shall be assumable by the City at its election upon any termination of the Use Agreement pursuant to which the DCPAF ceases to occupy and use the Performing Arts Center."

7. Section 7.1 of the Use Agreement is amended to provide that DCPAF is also responsible for any costs, fees, assessments, or charges of all utilities and utility services provided or used at the Additional Garage, as provided in Section 7.1.

8. 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 2 of this Amendment.

9. 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 2 of this Amendment.

10. 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 First Amendment"), in the form attached hereto as Exhibit C and made a part of this Amendment for all purposes, which Memorandum of First Amendment shall be recorded by the DCPAF in the Real Property Records of Dallas County, Texas. The recording costs relating to the Memorandum of First 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.

11. 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.


12. 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 Municipal Site, before, during, and after construction at the Municipal Site, shall comply with all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials.

13. The City acknowledges that the Dallas Independent School District (the "DISD") is providing certain assistance to the DCPAF in connection with the Additional Garage. In consideration for such assistance, the DCPAF has agreed to provide parking in the Additional Garage for students, faculty, administrators and visitors to the Magnet School (the "School Patrons"). The City further acknowledges that the DCPAF intends to enter into a written agreement with the DISD (the "DISD Parking Agreement") providing that the spaces in the Additional Garage (other than the spaces in the Additional Garage reserved for City use as provided in Section 6.4 of the Use Agreement, as amended by this Amendment) are generally reserved for use by School Patrons on school days during the school year, from 7:30 A.M. to 6:00 P.M. The DISD Parking Agreement will include non-disturbance provisions to ensure the City will not disturb the DISD's right to ensure School Patrons can park in the Additional Garage, as provided in the DISD Parking Agreement, even if the DCPAF defaults under the Use Agreement and thereafter ceases (in accordance with the terms of the Use Agreement) to control the day-to-day management of the Additional Garage. The DCPAF will submit the DISD Parking Agreement to the City for approval, which approval shall not be unreasonably withheld, delayed, or conditioned by the City. Upon approval by the City of the DISD Parking Agreement and the execution and delivery of the DISD Parking Agreement by the DCPAF and the DISD, the City shall cause an authorized City representative to execute the DISD Parking Agreement solely to acknowledge the City's obligations under the non-disturbance provisions in the DISD Parking Agreement.

14. 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 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. 08-2793, adopted by the City Council on October 8, 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.

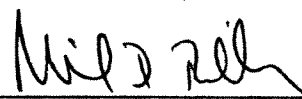
By: 
Name: MICHAEL D. RILEY
Title: SR VP & COO

Exhibit "C"

Memorandum of First Amendment



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PARKING RIGHTS AGREEMENT

THIS PARKING RIGHTS AGREEMENT (this "Agreement"), dated as of December 22, 2008, is hereby entered into by and between the Dallas Center for Performing Arts Foundation, Inc. (hereafter referred to as the "DCPA"), and the Dallas Independent School District (hereafter referred to as the "Dallas ISD"). The City of Dallas (the "City") executes this Agreement solely for the purpose of affirming the covenant set forth in Section 12 of this Agreement.

RECITALS:

- A. The City and the DCPA are parties to that certain Performing Arts Center Development Agreement dated as of December 15, 2005, as amended by that certain First Amendment to the Performing Art Center Development Agreement (the "Development Agreement Amendment") (said Performing Arts Center Development Agreement, as amended by the Development Agreement Amendment, being referred to herein as the "Development Agreement"), pursuant to which the DCPA will construct the facilities described in the Development Agreement.
- B. The City and the DCPA are parties to that certain Performing Arts Center Use Agreement dated as of December 15, 2005, as amended by that certain First Amendment to the Performing Art Center Use Agreement (the "Use Agreement Amendment") (said Performing Arts Center Use Agreement, as amended by the Use Agreement Amendment, being referred to herein as the "Use Agreement") concerning the management, maintenance, use and operation of certain improvements in the area commonly known as The Downtown Arts District (the "Arts District").
- C. The Development Agreement and the Use Agreement (as applicable to the parking facilities described in this Agreement, the "Garage Agreements") provide for the construction by the DCPA of, among other facilities, an approximately 600-space, below-ground parking garage to be constructed in the Arts District between the Winspear Opera House and the Wyly Theatre (the "Primary Garage"), and an approximately 252-space, single-level, below-ground parking garage to be constructed in the Arts District beneath the proposed Municipal Performance Hall in the block bounded by Ross Avenue, Jack Evans Street, Flora Street and Routh Street (the "Additional Garage" and together with the Primary Garage, the "Garages").
- D. The City will own the Garages, subject to the rights and privileges of the DCPA as described in the Garage Agreements and to the rights of the Dallas ISD set forth in this Agreement. The DCPA will operate and control the Garages pursuant to the Garage Agreements and this Agreement.
- E. Under the Garage Agreements, any and all revenues, fees, charges, and other amounts paid to or received by the DCPA in connection with the operation of the Garages shall be for the sole benefit of the DCPA.

- F. The DCPA, the Dallas ISD and certain other entities that support the Booker T. Washington High School for the Performing and Visual Arts are parties to that certain Parking Garage Memorandum of Understanding dated as of December 5, 2008 (the "MOU") regarding the financing and construction of the Additional Garage.
- G. The Additional Garage will be for the primary benefit of (1) the students, faculty, administrators and visitors (collectively, "School Patrons") of the Dallas ISD's Booker T. Washington High School for the Performing and Visual Arts (the "School") during specified hours on school days, (2) the patrons (collectively, "DCPA Patrons") of the DCPA's Wyly Theatre, the Winspear Opera House and other DCPA-controlled venues in the Arts District and (3) subject to the foregoing uses, other Arts District visitors.
- H. The DCPA and the Dallas ISD now desire to set forth in this Agreement the terms and conditions pursuant to which the DCPA, as the operator of the Garages, shall allow School Patrons, DCPA Patrons, and Arts District visitors to use the Garages.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Scheduling. On or before May 31 of each year during the term of this Agreement, the DCPA shall deliver to the Dallas ISD a calendar (the "Master Calendar") outlining the DCPA's scheduled uses of the Garages for the twelve-month period beginning on the immediately following August 1. On or before June 15 of each year during the term of this Agreement, the Dallas ISD shall deliver to the DCPA a calendar (the "School Calendar") listing (i) scheduled evening and weekend events at the School, including those for which the Dallas ISD is requesting evening parking access to one of the Garages in accordance with availability shown on the Master Calendar, and (ii) proposed school holidays and summer days when the Additional Garage can be made available to the DCPA for use by patrons other than School Patrons during the daytime, in whole or in part. The DCPA and the Dallas ISD each shall use reasonable efforts, including causing their respective Representatives (defined below) to meet in person, if necessary, to resolve any scheduling conflicts between the Master Calendar and the School Calendar by July 1 of each year. Thereafter, during the course of the year, the DCPA and the Dallas ISD shall use reasonable efforts to accommodate subsequent requests by the other party for additional access to, and use of, the Additional Garage. If scheduling conflicts cannot be resolved by the parties by the means set forth above, such conflicts shall be resolved according to the priority usage rights set forth in Sections 2 and 3 below.

2. Daytime Parking. Subject to the terms and conditions of this Agreement, use of the Additional Garage during Daytime Hours (defined below) shall be subject to the following priority rights:

- a. School Year Weekdays. On Monday, Tuesday, Wednesday, Thursday, and Friday (collectively, "Weekdays"), when student activities are being held at the

School, the Additional Garage shall be reserved for use by School Patrons between 7:00 a.m. and 6:00 p.m. ("Daytime Hours").

- b. School Holidays. On school holidays, the Dallas ISD shall use reasonable efforts to make the Additional Garage available (in whole or in part) to the DCPA for use by patrons other than School Patrons during Daytime Hours.
 - c. Summer Weekdays. On summer Weekdays when the Dallas ISD is not conducting student class sessions and not hosting student-related events (such as summer camps or similar events) at the School, the Dallas ISD shall use reasonable efforts to make the Additional Garage available (in whole or in part) to the DCPA for use by patrons other than School Patrons during Daytime Hours.
 - d. Primary Garage. The Dallas ISD shall not have any priority usage rights in the Primary Garage.
3. Evening Parking. Subject to the terms and conditions of this Agreement, use of the Additional Garage on Weekends (defined below) and during Evening Hours (defined below) on Weekdays shall be subject to the following priority rights:
- a. Weekends. From 6:00 p.m. on Friday through 7:00 a.m. on Monday (collectively, the "Weekend"), the Additional Garage shall be reserved for use by the DCPA for patrons other than School Patrons.
 - b. Weekday Evenings. On Weekdays during which the Additional Garage has been reserved for use by School Patrons pursuant to Section 2 above, the Additional Garage shall be reserved from 6:00 p.m. until 7:00 a.m. ("Evening Hours") the following morning for use by the DCPA for patrons other than School Patrons.
 - c. Primary Garage. The DCPA shall have exclusive priority usage rights in the Primary Garage 24 hours per day, every day of the year.
 - d. Open Times. During Open Times (defined below), if the Dallas ISD is hosting an event at the School, the DCPA shall use reasonable efforts to make either the Additional Garage (in whole or in part) or the Primary Garage (in part) available for use by School Patrons; provided, however, that the DCPA may charge School Patrons ordinary parking fees (i.e., fees not greater than amounts customarily charged to DCPA Patrons) for parking in the Primary Garage or the Additional Garage during such Open Times. As used herein, "Open Times" means times during the Weekend and/or Evening Hours on Weekdays when either the Additional Garage (in whole or in part) or the Primary Garage (in part) is not being used by DCPA Patrons. At the request of the Dallas ISD, the DCPA shall use reasonable efforts to determine whether access to the Additional Garage can be provided to School Patrons without charge (and without a garage attendant or other out-of-pocket cost to the DCPA) for School events during Open Times by limiting access to only those School Patrons possessing a valid access card.

4. Access Cards. Access to the Additional Garage for School Patrons will be controlled by access cards or similar devices. Generally, there will not be an attendant on duty at the Additional Garage on Weekdays. The Dallas ISD shall require each recipient of an access card (or such recipient's parent or guardian, if applicable) to comply with all requirements typically imposed by the Dallas ISD in connection with student access to parking lots controlled by the Dallas ISD. The DCPA shall deliver access cards to the Dallas ISD (or will enable a similar device, such as a "tolltag", provided by a School Patron) in an amount equal to the number of parking spaces in the Additional Garage available for School Patron use. The Dallas ISD shall handle distribution and control of the access cards and shall process requests for replacement access cards (or enabling of replacement devices), which the Dallas ISD will forward to the DCPA for fulfillment. The Dallas ISD may charge an access card fee to School Patrons in connection with their access to the Additional Garage via an access card or similar device; provided, however, that the Dallas ISD shall not sell parking rights in either Garage at any time to any person. Except as set forth above, the DCPA shall control the Garages and shall be the sole party entitled to charge for parking in the Garages.

5. Security and Supervision. The DCPA may install security cameras in the Additional Garage that may be connected to monitors in the Winspear Opera House or in another DCPA-controlled facility. The cameras will be designed to capture a record of events, but will not be monitored in real-time for security or crime prevention. To the extent desired by the Dallas ISD, the Dallas ISD will be responsible for providing, at the Dallas ISD's sole expense, onsite security in the Additional Garage and/or in the Primary Garage during periods of use by School Patrons.

6. "Holdover" Automobiles. Automobiles that overstay their prescribed parking period (including without limitation School Patron vehicles) shall be subject to being towed, at the vehicle owner's expense, to clear the Additional Garage (or the Primary Garage, as applicable) for the next scheduled event. In addition to, or as an alternative to towing any particular vehicle, the DCPA may impose reasonable fines and/or may revoke any individual patron's right to park in the Additional Garage (or the Primary Garage, if applicable) for overstaying the patron's prescribed parking period.

7. Insurance/Indemnity. Neither the DCPA nor the Dallas ISD shall be required to provide insurance or any indemnity to the other party in connection with this Agreement.

8. City Reserved Spaces. The DCPA and the Dallas ISD acknowledge and agree that, upon the completion of the initial phase of the Municipal Performance Hall, the City shall have the right, on all days and at all times, to use five (5) reserved parking spaces in the Additional Garage. Upon completion of the final phase of the Municipal Performance Hall, the City shall have the right to use an additional five (5) spaces in the Additional Garage, for a total of ten (10) spaces. As provided in the Garage Agreements, any reduction in the number of spaces in the Additional Garage due to a required modification of the Additional Garage shall reduce the City's reserved parking spaces proportionately.

9. Additional Garage Closures. The DCPA and the Dallas ISD acknowledge and agree that the Additional Garage may be closed, in whole or in part, from time to time due to construction of the Municipal Performance Hall, including future phases thereof.

10. Designated Representatives. The following named individuals (together with said individuals' duly appointed successors, the "Representatives") are hereby appointed as official representatives of their respective parties vested with full authority to negotiate and resolve any scheduling conflict or other matter arising under this Agreement on behalf of the party they represent. Each party hereto may replace its Representative by written notice to the other party. The initial Representatives are:

For the Dallas ISD:	Principal Booker T. Washington High School for the Performing and Visual Arts 2501 Flora Street Dallas, TX 75201
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For the DCPA:	Chief Operating Officer Dallas Center for the Performing Arts Foundation, Inc. 2100 Ross Avenue, Suite 650 Dallas, Texas 75201
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11. Term. The primary term of this Agreement shall commence on the date (the "Commencement Date") which is the earlier to occur of (i) the date on which the DCAP has received a certificate of occupancy for the use of the Winspear Opera House and a certificate of occupancy for the use of the Wyly Theatre, and (ii) January 1, 2011, and shall expire on the expiration of the Use Agreement (provided, however, that the Dallas ISD's rights hereunder shall expire on the later of the maximum term of the Use Agreement or the date on which the Dallas ISD ceases to use the School site for the education of students).

12. Effect of Termination of the DCPA's Rights. In the event that the DCPA ceases to control and operate the Garages, due to the termination of the Use Agreement or otherwise, the City hereby covenants to the Dallas ISD that the City will not disturb the rights of School Patrons to park in the Additional Garage and/or the Parking Garage as provided in Sections 2, 3 and 11 of this Agreement

13. Miscellaneous.

- a. **GOVERNING LAW. THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN TEXAS.**

- b. Venue for Actions. The venue for any legal action arising out of this Agreement shall lie exclusively in Dallas County, Texas.
- c. Dispute Resolution. The parties commit to use reasonable efforts to cooperate and resolve in good faith all issues and disputes that may arise out of this Agreement. Prior to instituting any legal action against any other party in relation to any matter arising out of this Agreement, each party shall submit each material dispute to non-binding mediation under reasonable and customary practices to be agreed to in each instance by the parties.
- d. Obligations to Defend Validity of Agreement. If litigation is filed by a third party against any party hereto in an effort to enjoin a party's performance of this Agreement, the parties hereto shall take all reasonable steps to support and defend the validity and enforceability of this Agreement. Any party hereto may intervene in any such matter in which another party hereto has been named as a defendant. Each party shall be responsible for its attorneys' fees and costs of litigation.
- e. Successors and Assigns. This Agreement may not be assigned by any party without the express written consent of each other party hereto. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- f. Entire Agreement; Amendment. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersedes any prior or contemporaneous, written or oral agreements or discussions between the parties. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the parties hereto.
- g. Waiver. No term or condition of this Agreement shall be deemed to have been waived, except by written instrument of the party charged with such waiver.
- h. Notices. Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be hand-delivered or given by mail. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified mail, return receipt requested, postage prepaid, and addressed to the party to be served at the last address given by that party under the provisions of this Section. The initial addresses for notice are as follows:

If to the DCPA: Dallas Center for the Performing Arts Foundation, Inc.
 2100 Ross Avenue, Suite 650
 Dallas, Texas 75201
 Attn: President and Chief Executive Officer
 Telephone: 214-954-9925

with copies to: Haynes and Boone, L.L.P.
 2323 Victory Avenue
 Suite 700
 Dallas, Texas 75219
 Attn: Tom D. Harris
 Telephone: 214-651-5630

If to the Dallas ISD: Dallas Independent School District
 3700 Ross Avenue
 Dallas, Texas 75204
 Attn: Superintendent of Schools

with copies to: General Counsel, Office of Legal Services
 Dallas Independent School District
 3700 Ross Avenue
 Box 69
 Dallas, Texas 75204

Booker T. Washington High School for the Performing and
 Visual Arts
 2501 Flora Street
 Dallas, TX 75201
 Attn: Principal

- (i) No Third-Party Beneficiaries. The parties hereto intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the DCPA and the Dallas ISD and successors or permitted assignees of such parties.
- (j) No Joint Venture. Nothing contained in this Agreement or any other agreement between the parties hereto is intended by the parties to create a partnership or joint venture between any party, on the one hand, and any other party, on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any party as an agent of any other for any purpose whatsoever. No party shall in any way assume any of the liability of any other for acts of the other or obligations of any other. Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.
- (k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- (l) Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

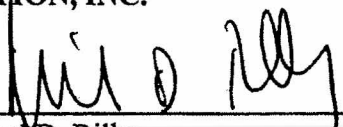
- (m) Limited Recourse. No officer, director, employee, agent, attorney or representative of any party hereto shall be deemed to be a party to this Agreement or shall be liable for any of the obligations created hereunder. No elected official of the Dallas ISD shall be deemed to be a party to this Agreement or shall be deemed to be liable for any of the contractual obligations created hereunder.

* * * * *

IN WITNESS WHEREOF, the undersigned have executed this Agreement as the date first above written:

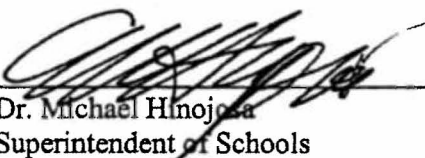
**DALLAS CENTER FOR THE PERFORMING ARTS
FOUNDATION, INC.**

By: _____


Michael D. Riley
Senior Vice President and Chief Operating Officer

DALLAS INDEPENDENT SCHOOL DISTRICT

By: _____

 12/17/08
Dr. Michael Hinojosa
Superintendent of Schools

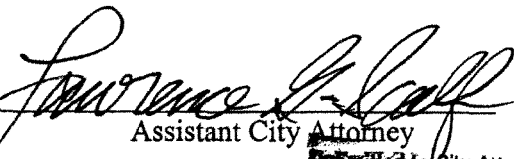

LIMITED AFFIRMATION OF THE CITY

The City, being the sole owner of fee simple title to the Garages, executes this Agreement solely for the purpose of affirming the covenant contained in Section 12 of this Agreement. The City, signing by and through its City Manager, is duly authorized to execute this Agreement by Resolution No. 08-2793, adopted by the City Council on October 9, 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