
USE AGREEMENT

between

THE CITY OF DALLAS

and

DALLAS CENTER FOR THE PERFORMING ARTS FOUNDATION, INC.

Dated as of December 15, 2005

**USE AGREEMENT
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Exhibits

- A Legal Description of the Land
 - B Site Plan of the Land
 - C Memorandum of Agreement
-

USE AGREEMENT

THIS USE AGREEMENT (this "Agreement") is made and entered into effective as of the 15th day of December, 2005 (the "Effective Date"), 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 entered into a Performing Arts Center Development Agreement dated December 15, 2005 (the "Development Agreement"), regarding the design, development, construction and financing of the Performing Arts Center (hereinafter defined) as a multi-venue, multi-use entertainment, performing arts, civic and cultural complex in the City of Dallas, Texas for the use and benefit of the public.

B. The City is the owner of the Performing Arts Center, including the land comprising same and all improvements existing or to be constructed thereon, and is authorized to execute this Agreement upon such terms as it may deem advisable.

C. The City and the DCPAF desire that the Performing Arts Center provide a multi-venue, multi-use performance arts complex for opera, theater and other cultural and entertainment events.

D. The DCPAF has supplied or will be supplying approximately \$250 Million to fund the design, development and construction of the Performing Arts Center.

E. The DCPAF is a Texas non-profit corporation established and existing under Texas law and as a foundation under the Internal Revenue Code for the purpose of designing, developing, constructing, equipping, maintaining, operating, and managing the Performing Arts Center and promoting the performing arts in Dallas, Texas;

F. The City and the DCPAF desire to enter into a long-term use agreement whereby the DCPAF would have possession of and manage, maintain and operate the Performing Arts Center.

AGREEMENT

In consideration of the agreements hereinafter set forth to be kept and performed by the parties hereto, the City hereby demises and leases to the DCPAF, and the DCPAF hereby takes and leases from the City, the Premises hereinafter described, for the Term, at the rental and subject to and upon the following terms, conditions and agreements:

ARTICLE 1

Premises

1.1 Premises. The premises subject to this Agreement consist of those certain tracts or parcels of land (hereinafter collectively called the "Land") that are located in the Downtown Arts District in the City of Dallas, Dallas County, Texas, that are more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes, and that are reflected on the site plan (the "Site Plan") attached hereto as Exhibit "B" and made a part hereof for all purposes, together with all rights, privileges, easements and appurtenances belonging or in any way pertaining thereto and all of the City's right, title and interest in and to the airspace above the Land and the subsurface beneath the Land, and together with any buildings and other improvements, including without limitation the Opera House, Theatre, Plaza, Parking Garage, Renovated Artist Square and Center Infrastructure (as hereinafter defined), that may now or hereafter be erected thereon (such buildings and other improvements being hereinafter collectively called the "Improvements") and any personal property that may hereafter be located at the Land, owned by the City and being necessary to the operation of the Improvements (such personal property being hereinafter called the "Personal Property"). The Land, the Improvements, the Personal Property and all of the other rights, privileges, easements and appurtenances referenced hereinabove are referred to collectively in this Agreement as the "Premises". The Premises shall include the Municipal Performance Hall Site (as hereinafter defined) subject to its possible future removal and deletion from this Agreement as provided below.

ARTICLE 2

Term

2.1 Term. The primary term (hereinafter called the "Primary Term") of this Agreement shall commence on the Effective Date and expire on the last day of the month in which the forty (40) year anniversary of the Rent Commencement Date occurs unless earlier terminated in accordance with the provisions of this Agreement or renewed and extended as provided in this Agreement. The "Rent Commencement Date" of this Agreement shall be the earlier to occur of (i) the date on which the DCPAF has received a certificate of occupancy for the use of the Opera House (as hereinafter defined) and a certificate of occupancy for the use of the Theatre (as hereinafter defined) and (ii) January 1, 2011.

2.2 Renewal Options. The City hereby grants to the DCPAF the right and option to renew and extend the Term of this Agreement for five (5) consecutive renewal terms of ten (10) years each (hereinafter collectively called the "Renewal Terms" and individually called a "Renewal Term"), with the first Renewal Term to begin upon the expiration of the Primary Term and subsequent Renewal Terms to begin upon the expiration of the immediately preceding Renewal Term. All of the other terms, provisions and covenants of this Agreement shall apply to each Renewal Term. Unless the DCPAF delivers to the City written notice of the DCPAF's election to not exercise a renewal option no later than ninety (90) days prior to the expiration of the Primary Term as to the first Renewal Term and no later than ninety (90) days prior to the

expiration of the Renewal Term then in effect as to the subsequent Renewal Terms, the DCPAF shall be deemed to have elected to exercise the renewal option and the Term shall automatically be extended to include the next succeeding Renewal Term. The Primary Term and any Renewal Term, which has been exercised, shall hereinafter collectively be described as the "Term".

2.3 Termination. The City agrees to notify the DCPAF in the event of non-appropriation of funds by the City at the earliest practicable time prior to the end of the City's then current fiscal year. In the event of a non-appropriation by the City, the DCPAF, at the DCPAF's option, shall have the right to (a) terminate this Agreement by delivering written notice of termination to the City, in which event the parties shall have no further duties, obligations or liabilities under this Agreement, (b) waive such non-appropriation, in which event the City shall not be liable or required to thereafter fund such non-appropriation and this Agreement shall continue in full force and effect (provided that said non-appropriation shall not be an Event of Default by the City), and/or (c) exercise the purchase option provided in Section 15.5 below.

ARTICLE 3

Rent

3.1 Annual Base Rent. The DCPAF shall pay an annual base rent of One Thousand and No/100 Dollars (\$1,000.00) per year during the Term, with one such annual installment to be due and payable on or before the Rent Commencement Date and a like annual installment to be due and payable on or before each succeeding annual anniversary of the Rent Commencement Date during the Term. All payments of rent shall be made to the City as the same shall become due, by check, cashier's check, bank wire or automated clearinghouse credit, at the address specified herein for Notices, or to such other address as may hereafter be designated by the City by written notice delivered to the DCPAF at least twenty (20) days prior to the next ensuing rental payment date.

3.2 Additional Rent. All amounts to be paid by the DCPAF under the terms of this Agreement are deemed to be and shall be herein referred to as "additional rent."

3.3 Further Consideration. As further and additional consideration for this Agreement, the DCPAF has and will do the following:

- (a) Development. Design, develop, construct and finance the Performing Arts Center in accordance with the Performing Arts Center Development Agreement (defined below), including but not limited to the historic and magnanimous raising and supplying of approximately \$250 Million in private funds for same.
- (b) Programming. Operate, maintain, and manage the Performing Arts Center in accordance with this Agreement, including without limitation the establishment of a home for a first-class opera company, development of community and educational programs available to the public, operation of open spaces within the Performing Arts Center available to the public, operation of parking in support of

the Performing Arts Center and the Downtown Arts District, and providing professional services in developing and implementing programming for the efficient utilization of the Performing Arts Center.

3.4 Ticket Surcharge. As further and additional rent, the DCPAF shall collect and deposit into an escrow account (as agreed upon by the parties) (the "Surcharge Reserve Account"), for use by the DCPAF or the City (as provided below) a ticket surcharge of \$1.00 per ticket for events at the Center ("Initial Surcharge"). The DCPAF shall deposit the surcharge into the Surcharge Reserve Account on a quarterly basis within 30 days of the end of each calendar quarter. Beginning five (5) years after the Rent Commencement Date, the surcharge will be adjusted on each five (5) year anniversary of the Rent Commencement Date (the "Surcharge Adjustment Date") to reflect increases in the Consumer Price Index for "All Urban Consumers, U. S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor. Adjustments will be determined by multiplying the Initial Surcharge by a fraction, the numerator of which is the index number for the last month before the Surcharge Adjustment Date and the denominator of which is the index number for the month of the Rent Commencement Date; provided, however, that each adjustment shall be to the nearest twenty-five cent (\$.25) increment so that each surcharge will at all times be increased or decreased only by multiples of twenty-five cents (\$.25). As an example and for illustration purposes only, if the adjustment on the first Surcharge Adjustment Date would increase the Initial Surcharge by thirty-six cents (\$.36), then the surcharge beginning on the five (5) year anniversary of the Rent Commencement Date would increase to \$1.25 and if the adjustment on the first Surcharge Adjustment Date would increase the Initial Surcharge by thirty-eight cents (\$.38), then the surcharge beginning on the five (5) year anniversary of the Rent Commencement Date would increase to \$1.50. If the product is greater than the Initial Surcharge, the DCPAF will collect and deposit this greater amount into the Surcharge Reserve Account as the surcharge until the next Surcharge Adjustment Date. The surcharge will never be less than the Initial Surcharge. The City will notify the DCPAF of each adjustment to the surcharge no later than sixty days after the Surcharge Adjustment Date. If the index is converted to a different standard reference base or otherwise revised, the determination of the index shall be made with the use of such conversion factor, formula or table for converting the index that may be published by the Bureau or, if the Bureau does not publish the same, then with the use of such conversion factor, formula or table as is published by any nationally recognized publisher of similar statistical information. If the index ceases to be published, then the City may substitute for it any independently published index of a reasonably comparable type. The DCPAF or the City shall thereafter retain and expend the amounts in such capital maintenance account only as Surcharge for Capital Maintenance (defined below) and for no other purpose.

3.5 No Abatement or Offset. Except as expressly provided in this Agreement, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve the DCPAF from its obligation to pay the rent or entitle the DCPAF to an abatement, reduction or right of offset as to the rent.

3.6 Independent Agreement Consideration. Concurrently with the execution of this Agreement, the DCPAF shall deliver to the City a check in the amount of Fifty and No/100 Dollars (\$50.00) (the "Independent Agreement Consideration"), which amount the parties have

bargained for and agreed to as consideration for the City's execution and delivery of this Agreement. The Independent Agreement Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement, is non-refundable, and shall be retained by the City notwithstanding any other provision of this Agreement.

ARTICLE 4

Improvements

4.1 Improvements. The DCPAF shall be responsible for and shall effect the design, development, financing, construction and furnishing / equipping of the Improvements as provided in the Development Agreement, and currently consisting of the approximately 2,200-seat Winspear Opera House (the "Opera House"), the approximately 600-seat Wyly Theatre (the "Theatre"), a landscaped Grand Plaza between the Opera House and the Theatre (the "Plaza"), (iv) an approximately 600-space underground parking garage (the "Parking Garage") that will serve the Opera House, the Theatre and the other adjacent performing arts facilities, (v) certain other site improvements to the Land including, without limitation, relocating utilities and making other changes to the above-ground and underground infrastructure supporting the Land and the Improvements located thereon (the "Center Infrastructure") and (vi) redesigning, renovating and improving Annette Strauss Artist Square (the "Renovated Artist Square"). The Opera House and the Theatre are hereinafter collectively called the "Center Buildings". The Center Buildings, the Center Infrastructure, the Plaza, the Parking Garage, the Renovated Artist Square and the remaining portions of the Land are hereinafter collectively referred to as the "Performing Arts Center" and/or the "Center". The design, planning, development, financing, construction, and furnishing / equipping of the Performing Arts Center shall be performed by the DCPAF in accordance with the Development Agreement.

4.2 Ownership. The City (and not the DCPAF) shall own title to the Improvements for public purposes upon completion of the Improvements; provided, however, that the DCPAF shall have the right to use the Premises (including, but not limited to, the Improvements) to the extent and as provided in this Agreement.

4.3 Condition of Property. **The DCPAF accepts the Premises for the DCPAF's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" basis and subject to all matters of record and zoning. The DCPAF hereby waives and the City hereby disclaims any and all warranties and representations not expressly made in this Agreement, including but not limited to the warranties of commercial habitability, merchantability, marketability, good and workmanlike construction, or fitness for a particular use or purpose. The DCPAF acknowledges that, having been given the opportunity to inspect the Premises, the DCPAF is relying solely on its own investigation of the Premises and not on any information provided or to be provided by the City and agrees to accept the Premises for use and waives all objections or claims against the City arising from or related to the Premises or to any hazardous materials (as defined below) on the Premises; provided, however, that this acknowledgment shall not limit the parties' commitment under Section 3.4 and 3.5 of the Development Agreement. The DCPAF further acknowledges that any information provided or to be provided with respect to the Premises was obtained from a**

variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person.

4.4 Alterations, Additions and Improvements.

(a) Material. Subject to written approval by the City of the proposed plans and specifications, proposed contractor(s), and the construction schedule (which approval shall not be unreasonably withheld or delayed) with respect to a Material Renovation (as hereinafter defined), the DCPAF may, at no cost to the City, undertake alterations, additions, future improvements and renovations to the Center consistent with the development, use and operation of the Premises as a multi-venue, multi-use performing arts complex; provided however, that the City's approval shall not be required for any alterations, additions, future improvements and renovations that are not a Material Renovation. All such additional, future improvements and renovations shall become the property of the City, free and clear of all liens and encumbrances subject to the terms of this Agreement. No improvements or any subsequent change, modification or addition to the Performing Arts Center shall be undertaken until the DCPAF shall have procured and paid for all required permits, licenses, and authorizations, as appropriate, and in the case of Material Renovations shall have furnished the City evidence thereof before beginning construction. All improvements and subsequent changes, modifications and additions shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. If the work constitutes a Material Renovation, the DCPAF shall submit the proposed plans and specifications, proposed contractor(s), and the construction schedule to the Director for advance written approval (which approval shall not be unreasonably withheld or delayed). With respect to a Material Renovation and contracts in excess of \$25,000.00, (i) the contractor(s) performing the work shall meet the insurance, indemnification, and defend and hold harmless requirements of the City, (ii) the contractor(s) shall provide performance and payment bonds equivalent to what the City requires of its contractors on like projects, with the City to be named as an additional insured, indemnitee, and obligee, respectively, and (iii) if the City's funds are being used for such work, the DCPAF shall comply with the City's bidding requirements. Upon completion of construction on Material Renovation, the DCPAF shall furnish the City with a certificate of substantial completion executed by the architect or other supervising party for the project, and a complete set of as-built plans for the improvements. The DCPAF shall thereafter furnish the City with copies of the updated plans showing all changes and modifications thereto. The DCPAF shall also furnish to the City copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable laws

(b) Non-Material. The DCPAF shall have the right to repair, renovate, and/or improve the Center Buildings and the Center without the approval thereof by the City unless such repair, renovations and/or improvements would constitute a Material Renovation. For purposes hereof, a "Material Renovation" shall mean a renovation, or a series of related

renovations, which costs more than \$100,000.00 or alters the structural integrity, capacity, or fundamental character or appearance of the Center Buildings.

4.5 Easements and Dedications. In order to develop the Land for the Performing Arts Center and other improvements, it may be necessary or desirable that (i) street, water, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights be granted or dedicated over or within portions of the Center by plat, replat, grant, deed or other appropriate instrument or acquired on other properties, or (ii) existing street, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights on, in the vicinity of or affecting the Center or portions thereof be vacated or abandoned. With respect to the Land owned by the City, the City shall, on written request of the DCPAF, and subject to the City's reasonable discretion, join with the DCPAF in executing and delivering such documents or otherwise cooperating with or assisting the DCPAF (at the DCPAF's expense with respect to the City's actual out-of-pocket expenses incurred with respect thereto), from time to time throughout the Term, as may be appropriate or necessary for the development of the Center or to reasonably facilitate future Improvements on the Center. The City shall be free to grant such easements, right-of-ways and access rights as it deems reasonably necessary and /or convenient to the development of the Performing Arts Center and the Downtown Arts District, including without limitation the Municipal Performance Hall Site and other properties in and around the Downtown Arts District and this Agreement shall be subject to same.

4.6 Zoning and Permits. In the event that the DCPAF deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from any governmental entity having jurisdiction over the Center or any part thereof, the City, from time to time on request of the DCPAF and to the extent necessary as fee owner of the Center, shall reasonably cooperate with such efforts; provided, however, it shall not have to incur any cost or expense related to same.

4.7 Personal Property. All items of Personal Property (if any) that are purchased with the City Construction Contribution (as defined in the Development Agreement) will be owned by the City in accordance with the terms hereof. Items of personal property purchased by the DCPAF that are attached to the Improvements in the Performing Arts Center that are essential to the operation of any such Improvements (for example, elevators, escalators, HVAC systems, sound and lighting equipment, acoustic materials, curtains and stage rigging) will be owned by the City in accordance with the terms hereof. The DCPAF may place or install in or on the Performing Art Center other items of personal property (for example, furniture, removable trade fixtures and equipment) as the DCPAF shall deem desirable for its operation. Such items of personal property placed by the DCPAF on or in the Performing Arts Center shall not become part of the real property, even if nailed, screwed, or otherwise fastened to the improvements or buildings, but shall retain their status as personal property. Such personal property may be removed by the DCPAF at any time, so long as the DCPAF is not in default under this Agreement and so long as any damage occasioned by such removal is thereupon repaired. Items of personal property purchased by performing arts groups or private citizens (for example and without limitation, musical instruments, sets, music, recordings and computers) shall not be owned by the City.

ARTICLE 5

Municipal Performance Hall

5.1 The Project. The parties acknowledge that the City intends to construct a municipal performance hall (the "Municipal Performance Hall") on a portion of the Performing Arts Area as shown on Exhibit "B" (such area, the "Municipal Performance Hall Site").

5.2 Use of Municipal Performance Hall Site. The parties acknowledge and agree that the Municipal Performance Hall Site initially shall be part of the Performing Arts Area and shall be controlled, developed, maintained, and used by the DCPAF pursuant to the Development Agreement and this Agreement. If, on or before the five-year anniversary of the Rent Commencement Date, the City presents to the DCPAF written documentation that the City has completed the design of the Municipal Performance Hall, has issued bonds or otherwise obtained all funds required to construct the Municipal Performance Hall, and has initiated the public bid process to collect bids from potential general contractors for the construction of the Municipal Performance Hall, then the Municipal Performance Hall Site shall automatically be deleted from and shall not be part of the Performing Arts Area for purposes of the Development Agreement and this Agreement without need of further action by the parties. If the Municipal Performance Hall Site has not been removed from the Performing Arts Area as described above by the five-year anniversary of the Commencement Date, then the DCPAF shall thereafter be entitled to retain the Municipal Performance Hall Site as part of the Performing Arts Area and the DCPAF thereafter may (with the consent of the City Manager, which consent shall not be unreasonably withheld or delayed and which consent shall be given by the City Manager without economic compensation to the City or other conditions) use, develop and operate the Municipal Performance Hall Site for any use the DCPAF reasonably determines from time to time will benefit the Performing Arts Center that is consistent with the multi-venue, multi-use, public performing arts complex contemplated herein.

5.3 DCPAF Activities. Prior to the earlier of the removal from the Development Agreement and this Agreement of the Municipal Performance Hall Site and the five-year anniversary of the Rent Commencement Date, (i) the DCPAF may develop and use the Municipal Performance Hall Site for paved surface parking, landscaping, lighting, sidewalks, fencing, planters or similar improvements consistent with and complimenting the Performing Arts Center and the Downtown Arts District as a whole, and (ii) the DCPAF will not construct on the Municipal Performance Hall Site any building or similar permanent improvement that would materially interfere with or materially increase the cost or time to complete the City's construction of the Municipal Performance Hall. The DCPAF shall be responsible for the use, operation and maintenance of the Municipal Performance Hall Site along with the rest of the Performing Arts Center until such removal of the Municipal Performance Hall Site.

5.4 City Development. If the City exercises its right to remove the Municipal Performance Hall Site from the Development Agreement and this Agreement, the DCPAF shall have no further rights or responsibilities with respect to same. Upon request by the DCPAF, the City will grant to the DCPAF reasonable easements for ingress, egress, utilities and other matters that may be necessary or advisable in the DCPAF's reasonable discretion in order for the

DCPAF to continue to operate the Performing Arts Center as previously operated while the Municipal Performance Hall Site was part of the Land and subject to this Agreement. The DCPAF shall likewise consent to the City's granting of reasonable easements for ingress, egress, utilities and other matters as to the Center that may be necessary or advisable in the City's reasonable discretion in order for the City to operate the completed Municipal Performance Hall as an integrated part of the Downtown Arts District and the Performing Arts Center.

ARTICLE 6

Use, Revenues and Expenses

6.1 Use. During the Term, the DCPAF shall have the sole right, power, responsibility and authority to use, manage and operate the Premises as a public multi-venue, multi-use entertainment, performing arts and cultural facility (including related incidental uses). The DCPAF shall not use the Premises for any purpose that is materially incompatible with the uses described in the first sentence of this Section without the City's prior written consent; provided, however, that the DCPAF shall be entitled to use the Premises for any and all uses that are similar to the use of the Meyerson Symphony Center and no such use shall be deemed incompatible with the uses described in the first sentence of this Section. The DCPAF shall have the sole right, power, responsibility and authority to retain any and all revenue, income, proceeds and other amounts that may be generated at or from the Premises. The DCPAF shall be liable and obligated to pay all of the costs to operate, maintain, repair and use the Premises during the Term except for those items expressly provided to be paid directly by the City or reimbursed to the DCPAF by the City.

6.2 Programming. The parties acknowledge that a primary objective of this Agreement is to provide a first-class venue for opera and other performing arts, including without limitation dance, music and theater events and productions. The DCPAF shall take all reasonable actions to efficiently utilize the Center's performance venues. The DCPAF shall also use reasonable efforts to institute programs of outreach to youth, seniors and underserved segments of the community and educational opportunities consistent with the public nature of the Center.

6.3 Revenues. The DCPAF shall have and control all revenue generating opportunities at the Center. The DCPAF shall use said opportunities in a manner consistent with the public, community entertainment, performing arts, and cultural events purpose of the Center and the DCPAF's non-profit foundation status.

6.4 Parking. The DCPAF shall operate and control the Parking Garage or may contract with an operator / manager for such services. The DCPAF may use the Parking Garage to accommodate Performing Arts Center patrons, visitors, personnel and performers when at the Performing Arts Center ("Center Parking"), including without limitation providing reserved and/or designated spaces as the DCPAF reasonably deems appropriate. When and to the extent not needed for Center Parking, the Parking 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 ("Arts District Parking"). When and to the extent not needed for Center Parking or Arts District Parking, the Parking Garage shall generally be 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 not greater than the prevailing market rates for comparable parking. All revenues derived from parking shall belong to the DCPAF, subject to this Agreement.

6.5 Grand Plaza, Artist Square and Other Open Areas. The DCPAF shall maintain, operate and control the Grand Plaza, Artist Square, and all other open areas in the Performing Arts Center. The DCPAF shall make every reasonable effort to institute and hold programs, activities and events utilizing the Grand Plaza, Artist Square and the other open areas in the Performing Arts Center, harmonizing and coordinating same with activities at the Center Buildings and within the Downtown Arts District. The DCPAF shall make every reasonable effort to maintain and make said areas available to the members of the public (individuals and groups) as open space subject to DCPAF programming and reasonable rules and regulations established by the DCPAF.

6.6 Compliance with Laws. The DCPAF agrees not to use the Center for any use or purpose in violation of any applicable law, regulation or ordinance of the United States, the State of Texas, the City of Dallas or other lawful governmental authority having jurisdiction over the Center, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by the DCPAF of this provision (i) so long as the DCPAF shall, in good faith within a reasonable time after the DCPAF acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (ii) until the DCPAF has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; and (iii) so long as neither the City nor any portion of the Center, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture. The DCPAF shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by the DCPAF, its officers, agents, or employees, in or upon or connected with the Center, and shall pay for the costs of compliance.

6.7 Prohibited Uses. Without in any way limiting the foregoing Section, the DCPAF shall not permit the Center to be used in any manner that would render the insurance thereon void or the insurance risk more hazardous. The DCPAF shall not use or occupy the Center, or permit the Center to be used or occupied, (i) contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto or (ii) in any manner which would violate any certificates of occupancy or permit affecting same, cause structural injury to then existing improvements, cause the usefulness of the Center to diminish, constitutes a public or private nuisance or waste or is a threat to the welfare of the general public. The DCPAF shall not use or occupy the Center or allow the Center to be used or occupied in any manner that would violate or otherwise invalidate the tax-exempt status of the Performing Arts Center, the DCPAF and/or the City.

6.8 Additional Requirements. The DCPAF shall be responsible for and shall take all reasonable action necessary for the operation, maintenance, and management of the Performing Arts Center, including without limitation the following:

- (a) manage and operate the Center as a first-class multi-venue, multi-use public entertainment and performance facility for the holding of opera, theater, dance, and concert performances and other events;
- (b) provide professional management to schedule and promote the efficient utilization of the Center;
- (c) provide tickets takers, ushers, security guards and other personnel necessary for the efficient and first-class operation of the Center;
- (d) establish operating policies and procedures for the Center;
- (e) pay all management, maintenance, repair, and operating expenses, and all other costs of the Center, except as otherwise expressly provided in this Agreement;
- (f) prepare and submit to the City annual financial reports, in accordance with this Agreement;
- (g) collect and account for all Center revenue, using all reasonable efforts to obtain all fees, rents and other amounts due from users, vendor, concessionaire, advertiser, sponsors and tenants and to achieve reasonable financial and operational success in light of the objectives of the City and the DCPAF for the Center;
- (h) commence, defend and settle in good faith, at no cost or liability to the City, such legal actions or proceedings concerning the management and operation of the Center as are necessary or required in the opinion of the DCPAF; provided, however, no such legal action by the DCPAF that requires joinder of the City will be required of the DCPAF unless the City so participates;
- (i) employ, pay, supervise and discharge all personnel the DCPAF determines to be necessary for the management, maintenance, and operation of the Center;
- (j) maintain and make available to the public a schedule of basic rates, fees and charges for the use of the Center and its related services and programs;
- (k) purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the management, maintenance and operation of the Center;
- (l) maintain the Center in a good, safe, attractive, sanitary order and repair consistent with the industry standards and practices;

- (m) establish, coordinate and administer a preventative maintenance program for the Center and its machinery and equipment;
- (n) arrange for all utility and other services for the Center and pay or caused to be paid when due all charges for water, sewer, gas, lights, heat, telephone, electricity, refuse disposal, and other utilities and services rendered to or used in, on or about the Center, except as otherwise expressly provided in this Agreement;
- (o) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Center;
- (p) pay all legally due taxes and assessments attributable to the Center or operation under this Agreement. In no event shall the City be obligated to pay any tax or assessment or any portion thereof levied or created during the Term, irrespective of whether such tax or assessment or any portion thereof was specifically allocated to the Center or the City's interest therein. All payments by the DCPAF of taxes and/or assessments shall be made by the DCPAF on or before thirty (30) days before the last day on which such payments may be made without penalty or interest; provided, however, the DCPAF shall have the right to contest such payment in good faith and to take all such action as it deems reasonable under the circumstances to vigorously contest such payment (including but not limited to litigation), and during the period of such contest the DCPAF shall not be obligated to make such payments. The DCPAF shall furnish to City receipts or other appropriate evidence establishing the payment of such amounts;
- (q) promptly furnish to the City such reports and other information concerning the Center and the management, maintenance and operation thereof as may be reasonably requested from time to time by the City;
- (r) procure and maintain in force all insurance policies relating to the Center and in connection with the DCPAF's operation of same, as may be required by this Agreement;
- (s) develop and implement a meaningful program of community outreach, enrichment and education in coordination with performance offerings and events at the Center, with a particular emphasis on youth, seniors, and historically underserved communities;
- (t) provide janitorial service and repair and maintenance of the interior and exterior areas of the Center;
- (u) maintenance of the heating, ventilation and cooling systems; and
- (v) maintenance of the Center grounds and structures in a good, safe, clean and attractive condition and in compliance with applicable laws.

6.9 Promotion. The DCPAF shall plan, prepare, implement, coordinate and supervise all advertising, public relations and other promotional programs for the Center and shall negotiate, execute (in its own name and not the name of the City) and perform all contracts for such Center promotions. Any such arrangements shall (i) either not exceed the Term of this Agreement unless the City in writing waives this requirement or terminate upon the expiration of this Agreement, (ii) in no way obligate, commit or bind City unless assumed by the City, (iii) be of a first-class quality and suitable for public facilities of this nature, and (iv) be on commercially reasonable terms and consistent with industry standards and good practices. Cross-promotion of the Center with other Downtown Arts District venues, institutions and events is a prime objective and shall be exploited by the DCPAF whenever reasonably practical.

6.10 Concessionaire and Vendor Contracts. The DCPAF shall have the sole right to negotiate and execute (in its own name and not the name of the City) and perform vendor contracts involving the Center. The DCPAF may, by itself or through concessionaires and licensees, provide such concessions, products, services and facilities at the Center as it deems appropriate and consistent with the nature of the Center. Any and all concessionaires and licensees that operate within the Center under contract with the DCPAF shall (i) operate under contract terms commercially reasonable for the type of concession, product, service or facility offered, (ii) comply with all federal, state, and local laws concerning their operations, (iii) be subject to the terms of this Agreement, (iv) carry insurance appropriate to its activities and acceptable to the DCPAF, and (v) indemnify and hold harmless the City from and against any and all loss, cost, claim, liability, expense or damage, including without limitation attorney's fees and court costs, in any way related to or arising from its activity at the Center.

6.11 Naming and Sponsorship. During the Term of this Agreement, the DCPAF shall have exclusive authority, control and rights in selecting the name of the Performing Arts Center and each of its venues and their constituent parts, the sponsor or sponsors for which the Performing Arts Center and each of its venues and their constituent parts will be named from time to time, and the right to retain all proceeds and other benefits or consideration received from granting any such rights; provided, however, that the name given to the Opera House, the Theatre, the Plaza and the Center Parking Garage shall not include any reference to any proper geographic name, unless such reference (i) is to "Dallas" or the "City of Dallas" or (ii) is part of the proper name of a person or entity selected as a sponsor pursuant to this Section. If any such sponsor selected by the DCPAF as a name sponsor of the Opera House, the Theatre, the Plaza or the Center Parking 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 reasons shall be specified in reasonable detail. If the City Manager has not delivered a notice rejecting a proposed commercial naming sponsor within thirty 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 this Agreement pursuant to which the DCPAF ceases to occupy and use the Performing Arts Center. The DCPAF shall not materially alter or supplement the name of the Renovated Artist Square without the City's prior written consent.

6.12 Fees and Charges. The DCPAF may specify and control any and all fees, deposits, charges and consideration for goods, services, concessions, admission, use, advertising, sponsorship, naming rights or any other designated purposes involving the Center provided that they are commercially reasonable and consistent with industry standards and good industry practices. It is expressly understood and agreed that any and all revenue from such sources shall be applied by the DCPAF toward the design, development, construction, renovation, equipping, operation and maintenance of the Center and the DCPAF's promotion and operation of the performing arts at the Center and its performance under this Agreement; provided, however, that the DCPAF, at its option, shall have the right to use the revenue to establish a reserve for the benefit of the Center and/or to pay principal and interest relating to any loans secured in whole or in part by the DCPAF's interest in this Agreement and the Center.

6.13 Contracts Related to Management and Operation of the Center; General Provisions.

- (a) General Requirements. Subject to the terms of this Agreement, the DCPAF shall be the exclusive manager and operator of the Center with sole responsibility for, and full control and discretion in, the operation, direction, management, licensing and supervision of the Center and the Center staff. All the DCPAF contracts (sometimes hereinafter collectively referred to as the "Management Contracts") in connection with the operation and management of the Center, including without limitation major vendor and concessionaire contracts (but expressly excluding all employment contracts with the DCPAF and all contracts with performing arts groups) shall: (i) require the contractor to use good faith efforts to comply with the City's Good Faith Effort Plan, (ii) terminate upon termination of this Agreement unless the City, at its sole option, elects to assume the specific Management Contract, (iii) provide the right to the City to assume the contract upon termination of this Agreement without liability for any obligation arising prior to said assumption, (iv) if applicable, contain insurance requirements for coverages and limits not less than those which are customarily required by the City of its like contractors, naming the City and its officers and employees as additional insureds, (v) indemnify the City and its officers and employees against

any costs or liabilities thereunder, using language substantially similar to the DCPAF's indemnification of the City found in this Agreement, (vi) if applicable, contain vendor qualification requirements sufficiently broad so as not to exclude minority vendors as a class and general contract specifications sufficiently broad so as not to favor a single vendor, and (vii) contain the following provision (or substantially similar wording approved by the City) in bold print, underlined and uppercase lettering:

"THIS AGREEMENT IS SUBJECT TO THE TERMS AND PROVISIONS OF THE USE AGREEMENT FOR THE PERFORMING ARTS CENTER BETWEEN THE CITY OF DALLAS AND THE DCPAF (THE "USE AGREEMENT"), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE, IN THE EVENT OF THE TERMINATION OF THE USE AGREEMENT, UNLESS THIS AGREEMENT IS ASSUMED OR EXTENDED BY THE CITY. THE CITY OF DALLAS SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY UNDER THIS AGREEMENT, AND THE PARTIES HERETO RELEASE THE CITY OF DALLAS FROM LIABILITY FOR ANY CLAIMS, SUITS, OR JUDGMENTS IN CONNECTION WITH THIS AGREEMENT."

- (b) City Review. A current list of all Management Contracts, including the parties thereto, the primary purpose thereof and applicable contract, agreement or license fees, shall be maintained by the DCPAF, and, upon the request of the City, the DCPAF shall provide the City a copy of such list, delivery of which shall not be withheld or unreasonably delayed. The City shall be entitled to review the Management Contracts for compliance with the requirements of this Agreement at the DCPAF's office during normal business hours.
- (c) Commercial Reasonable. All Management Contracts shall be commercially reasonable and consistent with good practices and industry standards for facilities and operations of this type.

6.14 City Use. In addition to the rights of access reserved elsewhere herein, to the extent that the Center is available, as determined by the DCPAF, in its reasonable discretion, the City shall have the right to use and occupy the Center, or parts thereof, as provided in this Section 6.14. The City shall give the DCPAF not less than thirty (30) calendar days nor more than 180 calendar days written notice of its desire to use the Center. The notice shall describe the location, time and purpose of such use. The City's desired use shall not be unreasonably denied, hindered or delayed. For up to ten (10) days during each calendar year during the Term of this Agreement, the City may use the Center or a part thereof and the City shall not have to pay any use or rental fee but shall reimburse the DCPAF for costs incurred directly related to the City's use of the Center pursuant to this Section, including without limitation personnel and utility costs, damages to facilities, etc. except that the costs to be reimbursed by the City shall not be duplicated with the Annual City Operating Expenses paid by the City during such calendar year. If the City uses the Center or any part thereof more than ten (10) days during any calendar year during the Term of this Agreement, then, commencing on the eleventh (11th) day, for each

subsequent use by the City, the City's use shall be on the same terms and conditions and at the same price as the DCPAF makes the Center available to unrelated not-for-profit third parties. The City shall coordinate its use through the DCPAF as manager of the Center; provided, however, the City shall have no right to use the Center or any part thereof if the Center or such part has been booked by the DCPAF.

ARTICLE 7

Utilities and Impositions

7.1 Utilities. During the Term, the DCPAF shall be liable and obligated to pay all charges, fees, costs and assessments incurred for the use of all utilities and utility services at the Premises, including, without limitation, gas, electricity, water, sewer, telephone, telecommunications and cable. Said amounts shall constitute additional rental hereunder. Notwithstanding the DCPAF's ultimate obligation to pay utilities, the DCPAF shall undertake all reasonable efforts to minimize utility expenses at the Center and institute utility efficiencies.

7.2 Payment of Impositions. The DCPAF shall pay as additional rental all ad valorem taxes, assessments, other taxes and/or impositions relating to or arising from the Premises, this Agreement or the DCPAF's activities ("Impositions") before the same become delinquent, and the DCPAF, at the request of the City, shall furnish to the City receipts or copies thereof showing the payment of such Impositions. The DCPAF shall be entitled to pay any Impositions in installments as and to the extent permitted by the applicable taxing authority or claimant. The City agrees to cooperate with the DCPAF in seeking the delivery of all notices of Impositions to the DCPAF directly from the applicable taxing authorities. In no event shall the DCPAF be in default under this Agreement for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been delivered to the City and not forwarded or delivered to the DCPAF at least 30 days before the date the same become delinquent.

7.3 Contest of Impositions. If the levy of any of the Impositions shall be deemed by the DCPAF to be improper, illegal or excessive, or if the DCPAF desires in good faith to contest the Impositions for any other reason, the DCPAF may, at the DCPAF's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as the DCPAF shall deem necessary or appropriate; provided, however, that the DCPAF shall not permit any lien which may be imposed against the Center for contested Impositions to be foreclosed and, within 60 days after the commencement of such contest, the DCPAF shall provide to the City reasonable security therefor. Subject to the foregoing, any item of contested Imposition need not be paid until it is finally adjudged to be valid. The City shall reasonably cooperate with the DCPAF's effort, but shall be under no obligation to incur any cost or expense in such effort.

7.4 Certain Provisions Related to Ad Valorem Taxes and Special Impositions.

(a) Intended Tax Exempt. The City and the DCPAF acknowledge that it is anticipated and intended that the Center and improvements constructed thereon be

and remain exempt from ad valorem taxes, and it is the intention of the parties that during the Term, the DCPAF not incur any ad valorem taxes relating to the Center or the DCPAF's interest in the Center. The City, at the request and expense of the DCPAF, agrees to cooperate fully in seeking and preserving said tax exempt status.

- (b) Change in Status. If the Center or the interest of the City or the DCPAF in and to any of the Center should no longer be exempt from ad valorem taxes, for any reason, including, but not limited to, a change of law, change of activity at the Center by the DCPAF, loss of the DCPAF's non-profit status, or change of the operating entity under this Agreement due to assignment or foreclosure or otherwise, then the DCPAF shall pay such taxes and Impositions before delinquent, subject to the DCPAF's right of contest as provided in this Article.

ARTICLE 8

City Funding Obligation

8.1 Annual City Operating Expense. The DCPAF shall be responsible for any and all operation, management, ordinary maintenance, repair and utilities ("Operation and Utilities Costs") for the Center. The City as the property owner and in consideration of the historic and magnanimous construction of the Center by the DCPAF, the professional services rendered by the DCPAF for the Center, and the management of the Center as provided in this Agreement shall pay a portion of the Operation and Utilities Cost of the Center ("Annual City Operating Expenses"). The Annual City Operating Expenses to be paid by the City (subject to the Annual Cap defined below and annual appropriation) shall be the amount of said expenses evidenced by DCPAF's paid receipts and/or invoices (or such other reasonable evidence of payment as the City shall deem appropriate) for the following category of expenses: (i) water, sewer, gas and electric utility costs ("Utility Costs") and (ii) ordinary maintenance and repair (including, but not limited to, landscaping). The City shall pay or reimburse said amounts on a quarterly basis within 30 days of the end of each such calendar quarter.

8.2 Annual Cap. Notwithstanding anything herein to the contrary, the Annual City Operating Expenses shall be limited to and shall under no circumstances exceed \$2,500,000 per calendar year ("Initial Annual Cap"); provided, however, that the Initial Annual Cap will be adjusted on an annual basis as follows: The City shall pay or reimburse the DCPAF for the actual annual amount paid by the DCPAF for Utility Costs for each of the first three full years of operation of the Center, subject to the Initial Annual Cap. After the end of the first three full years of operation, the average annual amount of actual Utility Costs for such three-year period shall be the "Baseline Utility Cost." Thereafter, the Initial Annual Cap shall be increased annually (on a cumulative basis) by the actual increase in Utility Costs over the Baseline Utility Cost based on the increase (if any) in utility rates paid by the DCPAF for such year (but not by increases in usage by the DCPAF during such year). During the first three full years of operation of the Center, the amount of the Annual City Operating Expense available to the DCPAF for permitted uses other than Utility Costs shall be an amount equal to \$2,500,000 minus the actual Utility Cost for such year. Beginning in the fourth full year of operation and at all times

thereafter during the Term of this Agreement, the amount of the Annual City Operating Expenses available to the DCPAF for permitted uses other than Utility Costs shall be an amount equal to \$2,500,000 minus the Baseline Utility Cost as determined at the end of the third full year of operation (such amount the "Baseline Other Operating Cost"). The Baseline Other Operating Cost shall not thereafter be decreased by increases in the Baseline Utility Cost that are calculated based on rate increases.

8.3 Start-Up Expenses. For the period from the date on which any of the Opera House, the Theatre or the Renovated Artist Square first becomes officially open for public performance until the official opening of all such venues for public performances ("Pre-opening Period"), the Annual City Operating Expenses shall be limited to an annual cap of \$2,500,000 (the "Pre-opening Cap") prorated based on the number of days actually elapsed in the Pre-opening Period, if fewer than 365 days, and prorated based on when the Opera House, the Theatre and the Renovated Artist Square first become officially open for public performance. For proration purposes, 50% of the Pre-opening Cap shall be allocable to the Opera House, 25% of the Pre-Opening Cap shall be allocable to the Theatre and 25% of the Pre-Opening Cap shall be allocable to the Renovated Artist Square. The City shall not be obligated to make any payments for Annual City Operating Expenses for or attributable to any period prior to the date on which all such venues first become officially open for public performance.

8.4 Total Funding. The Annual City Operating Expenses provided in this Article, the Capital Maintenance expense provided in Section 10.3, and the cost of property insurance provided in Section 9.1 represent the City's total funding requirements under this Agreement and are subject to annual appropriation and funding by City Council, in its discretion. All other necessary expenses of the Center shall be paid by the DCPAF. Notwithstanding the foregoing, the DCPAF from time to time may apply to Office of Cultural Affairs ("OCA") for additional funding for programs or special projects, all in accordance with OCA's established funding policy for cultural institutions, as such policy may change from time.

ARTICLE 9

Insurance and Indemnification

9.1 The City's Insurance Obligation. The City, at the City's expense, shall procure and at all times from and after the Rent Commencement Date maintain property insurance against loss or damage by fire and other casualties to the Premises (Improvements and the Personal Property) as are customarily included in the so-called "Extended Coverage Endorsement" in an amount not less than one hundred percent (100%) of the replacement value thereof and with such other endorsements and additions as the City may deem necessary or advisable. Such property insurance shall name the City and the DCPAF (and/or the DCPAF's lender, if any) as the named insureds and the loss payees and shall provide for payment of all of the proceeds jointly to the City and the DCPAF (and the DCPAF's lender, if any), which proceeds [together with applicable deductibles (which deductibles shall be paid by the City)] shall be deposited into a separate segregated escrow account and shall be applied and disbursed in accordance with Section 9.5.

9.2 The DCPAF's Insurance Obligation. As additional rent for the Premises, the DCPAF shall, at the DCPAF's sole cost and expense, procure and maintain, or cause to be procured and maintained, during the Term of this Agreement, the insurance described in this Section (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Texas.

- (a) Liability Insurance. The DCPAF agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term of this Agreement with responsible insurance companies, legally authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$10,000,000 Combined Single Limit (but with a minimum limit of \$1,000,000 for business automobile insurance) protecting the City and the DCPAF against any liability, damage, claim or demand arising out of or connected with the condition or use of the Center. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It must be maintained by any combination of single policies and umbrella policies and may be obtained and maintained by the DCPAF with respect to that portion of the Center subleased by it through the respective subtenant. The City shall be named as an additional insured on all insurance policies required in this Section, whether provided by the DCPAF or by any subtenant, including policies providing higher limits of liability or other coverages. The DCPAF, at least every five years during the Term, shall adjust the above referenced limits of liability to reflect percentage increases during such period in similar coverages at comparable performance venues in the United States.
- (b) Workers' Compensation Insurance. The DCPAF agrees, at its sole expense, to obtain and maintain workers' compensation insurance, but only if and to the extent required by applicable law, during the Term, and if so required, with statutory limits and employer's liability with limits of \$100,000 each accident, \$100,000 disease each employee and \$100,000 disease per policy. The policy will be endorsed to provide a waiver of subrogation as to the City.
- (c) Property Insurance. At all times during the Term of this Agreement, the DCPAF shall, at its sole expense, keep all of its personal property located in the Center insured against "all risk" of loss for full replacement cost coverage, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery, and flood. Coverage must be written by responsible insurance companies legally authorized to transact business in the State of Texas.
- (d) Builder's Risk Insurance. Contingent liability and builder's all-risk insurance in an amount reasonably satisfactory to the City during construction of any improvements, renovations or additions to the Center and during any subsequent restorations, alterations, or changes in the Premises that may be made by the

DCPAF at a cost in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) per job.

9.3 Policies. All insurance policies required by this Article shall provide for at least thirty (30) days written notice to the City and the DCPAF before cancellation and certificates or copies of policies of insurance shall be delivered to the City and the DCPAF. If any blanket general insurance policy of the DCPAF complies with the terms of these provisions, the naming of the City therein as additional named insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. The City and the DCPAF hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party by subrogation or otherwise may now or hereafter have against the other party or any of the other party's partners, directors, officers, employees, or agents, for bodily injuries (including death) to persons, or loss or damage to property of the City and the DCPAF whether caused by the negligence or fault of the City and the DCPAF or their partners, directors, officers, employees or agents or otherwise, to the extent that the injuries, loss or damages either (a) are covered by the proceeds of insurance policies maintained by either party or (b) should have been covered by an insurance policy that is required to be maintained under this Agreement.

9.4 Adjustment of Losses. At the request of the DCPAF at any time during the Term of this Agreement, any leasehold mortgagee contemplated by this Agreement may be named as a mortgagee or an additional insured, as appropriate, under any of said insurance policies required under this Article, as its interest may appear. Any loss under any such insurance policy shall be made payable to the parties jointly, to the end that the parties shall collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Center, to be applied pursuant to Section 9.5. Any accumulation of interest on the insurance proceeds collected shall be added to, and become a part of, the fund being held for the benefit of the City and the DCPAF. The adjustment of losses with the insurer shall be made by the City in coordination and cooperation with the DCPAF.

9.5 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provisions of any policies of property insurance required to be carried under the terms of this Agreement (net of reasonable expenses of collection) shall be received and held in trust in a separate segregated escrow account and applied and disbursed for the following purposes and in the following manner:

- (a) All such net proceeds shall first be made available and disbursed for the rebuilding, restoration and repair of the portion of the Center which has become destroyed or damaged for which such proceeds are payable; and
- (b) Following completion of all work under subsection (a) above or if the DCPAF elects not to rebuild, restore or repair the Center, any such proceeds not disbursed pursuant to subsection (a) above shall be paid over to and be the property of the City.

9.6 The City's Acquisition of Insurance. If the DCPAF at any time during the term fails to procure or maintain the insurance required of it under this Agreement or to pay the premiums therefor, the City shall have the right to procure such substitute insurance as the City deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and the DCPAF shall pay to the City upon demand the full amount so paid and expended by the City together with interest thereon at the rate provided in this Agreement, from the date of such expenditure by the City until repayment thereof by the DCPAF.

9.7 Indemnity. During the Term, the DCPAF agrees to defend, indemnify and hold harmless the City, its officers, employees, representatives and agents from and against any and all claims, injuries (including death), demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from (i) the DCPAF's failure to perform its obligations under this Agreement, including any insurance obligation, and (ii) the negligence of the DCPAF, its officers, agents, employees, representatives or contractors. The City shall give the DCPAF written notice of any claim filed, made or asserted against the City by any person or entity other than the DCPAF that could result in liability of the DCPAF under the provisions of this Section ("Indemnity Liability") reasonably promptly after the City becomes aware that such claim has been filed, made or asserted against the City. The City, without the prior written consent of the DCPAF, shall not compromise or settle any claim that could result in Indemnity Liability or take any action that could materially interfere with, jeopardize or adversely affect the defense by the DCPAF or the City against any such claim. The City, to the extent reasonably requested by the DCPAF, and at the DCPAF's expense, shall cooperate with the DCPAF in the defense against any such third party claim and shall assert (and authorizes the DCPAF to assert) any good faith defenses that the City or the DCPAF may have against such third party claim. The DCPAF shall be subrogated to any and all rights of the City to assert any claim, right or action related to any claim that could or does result in Indemnity Liability. The provisions of this Section shall survive the termination of this Agreement and are solely for the benefit of the City and the DCPAF and shall not be deemed for the benefit of any other person or entity.

ARTICLE 10

Repair, Maintenance and Security

10.1 DCPAF Obligation. The DCPAF shall keep the Premises and all permanent Improvements that from time to time may be on or a part of the Center in a state of good, safe, and attractive repair on a regular and ongoing basis consistent with the standards of maintenance and repair of "Class A" commercial properties in Downtown Dallas, Texas and performance facilities comparable to the Center. At all times during the Term the DCPAF shall neither commit nor suffer any waste to the Center. In the event this Agreement shall terminate, the DCPAF shall deliver up the Center as then constituted in good condition, reasonable wear and tear, obsolescence, and loss by casualty and condemnation excepted (except to the extent that the DCPAF is required under this Agreement to repair casualty damage). If the Premises is not in substantial conformity with this Section, the City may, at its option and in addition to any other remedies under this Agreement, direct the DCPAF to remove non-complying improvements constructed by the DCPAF on the Center and return that portion of the Center to its condition

existing on the Effective Date, and the DCPAF shall be obligated to promptly comply at its sole cost and expense.

10.2 Routine Maintenance and Security. The DCPAF shall maintain and provide janitorial, trash collection, landscaping and security service for the Premises during the Term, including repairs and Capital Maintenance (as hereinafter defined) to the interior, exterior and structural portions of the Improvements. The DCPAF further agrees to take care of the grounds at the Performing Arts Center, including without limitation, the mowing of grass, care of shrubs, and general landscaping.

10.3 Capital Maintenance. The City is not required, obligated or entitled to make any changes, alterations, additions, improvements, or repairs in, on, or about the Center, or any part thereof, during the Term without the DCPAF's prior written consent. The DCPAF (and not the City) shall be required to perform all Capital Maintenance that the DCPAF deems necessary or advisable with respect to the Premises during the Term; provided, however, that (subject to prior City approval of the timing, scope and cost of the Capital Maintenance and appropriation of funds by the City Council) the City (and not the DCPAF) shall be liable and obligated to pay for all Capital Maintenance (to the extent not covered by the Surcharge Reserve Account) to the Premises within thirty (30) days after completion of the Capital Maintenance by the DCPAF and the City's receipt of an invoice therefor; provided, however, that if the City has not then appropriated funds for such Capital Maintenance, then the City's payment obligation shall be delayed until the following year in which such funds have been appropriated in the City's budget. For purposes hereof, "Capital Maintenance" shall mean those certain repairs and improvements to the Premises, consistent with then-existing industry standards for "Class A" commercial properties in Downtown Dallas and performance facilities comparable to the Center, that the DCPAF, in its reasonable discretion, determines would increase the capacity or operating efficiency of an asset and would be treated as a capital item and not as an expense under generally accepted accounting principles; provided, however, that the determination as to whether a repair or improvement is Capital Maintenance shall be subject to the approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned and shall be deemed approved by the City if the City fails to deliver to the DCPAF, within thirty (30) days after the City's receipt of a request for Capital Maintenance, written notice that the City has determined that any proposed repair or improvement is not Capital Maintenance.

Notwithstanding the foregoing, the DCPAF, at the DCPAF's option, shall have the right to request the City (subject to prior City approval of the timing, scope and cost of the Capital Maintenance and appropriation of funds by the City Council) to perform certain Capital Maintenance on behalf of the DCPAF, in which event the City shall perform such Capital Maintenance in a timely manner and the City shall not be required to pay the DCPAF for such Capital Maintenance performed by the City; provided, however, that the City may use and apply any funds then existing in the Surcharge Reserve Account.

10.4 The DCPAF's Repairs. The DCPAF shall make any and all additions, alterations or repairs in and about the Center that may be required or permitted by this Agreement in a good and workmanlike manner and shall otherwise observe and comply with all public laws, ordinances, and regulations that from time to time are applicable to the Center. Before the

DCPAF commences a Material Renovation, plans and specifications for same shall be submitted to the City director for approval and the DCPAF shall furnish to City (i) an estimate of the cost of the proposed work; (ii) satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering the Center, builder's risk insurance, and workers' compensation insurance; (iii) a performance and payment bond satisfactory in form and substance to the director; and (iv) such other security as the City may reasonably require to insure completion of or payment for all work free and clear of liens.

10.5 Right of The City to Make Repairs. After reasonable prior notice to the DCPAF, the City, its agent and employees shall have the right to enter the Premises for the purpose of inspection or, if the DCPAF is in default after the expiration of any applicable cure period or in the event of an emergency, making any repairs or alterations to the Premises or any improvements thereon, both interior and exterior, and of every kind or nature which are required of the DCPAF under this Agreement but which the DCPAF has failed to perform; and the DCPAF shall not offer any obstruction, or hindrance to any such repairs or alterations; provided; however, that nothing contained in this Section shall be deemed to impose on the City any obligation to so act.

10.6 Equipment, Fixtures and Signs. The DCPAF shall have the right to erect, install, maintain and operate on the Premises such equipment, trade and business fixtures, signs and other personal property as the DCPAF may deem necessary or appropriate, and such shall not be deemed to be part of the Premises, but shall remain the property of the DCPAF unless necessary to the reasonable and efficient operation of improvements. At any time during the Term and within thirty (30) days after the expiration or termination of the Term, the DCPAF shall have the right to remove all or any part of the DCPAF's equipment, removable fixtures, signs and other personal property from the Premises. Any property remaining on the Premises after such thirty (30) day period shall be deemed to have been abandoned by the DCPAF and may be disposed of by the City at the DCPAF's cost.

ARTICLE 11

Casualty and Condemnation

11.1 Casualty.

- (a) Notice. If all of the Improvements, or any material part thereof, are destroyed or damaged by fire or other casualty, the DCPAF shall promptly deliver written notice thereof to the City.
- (b) Restoration Obligation. With regard to casualty damage to the Center, the DCPAF will as soon as practical, but in no event later than 180 days after the date on which the insurance company, the DCPAF and the City have reached an agreement concerning the amount of the insurance proceeds to be paid as a result of such casualty, commence the work of repair, reconstruction or replacement of the damaged Improvement, provided that the DCPAF's obligation in this regard shall be limited to the amount of insurance proceeds received by the parties.

Notwithstanding the foregoing sentence, if the casualty occurs after the 40th year of this Agreement and the extent of damage to the Center is greater than 20% of the then replacement value thereof (exclusive of the Land value), then the DCPAF shall have the option, within 180 days from the date of the occurrence of such casualty damage, to terminate this Agreement by giving written notice of such termination to the City within said 180-day period, in which event this Agreement shall terminate as of the termination date specified in such notice, which shall not be less than 30 days after the date of such notice, and the DCPAF shall pay all Base Rental for the year in which the Agreement is terminated and all other payments due and owing as of the termination date, the DCPAF shall not be required to repair the damage, and all insurance proceeds available as a result of such damage shall be paid to and be the property of the City.

- (c) Application of Proceeds. All insurance proceeds payable under insurance policies maintained by the City and/or the DCPAF by reason of the occurrence of such fire or other casualty to the Improvements shall be paid and applied as provided in Article 9 hereof. In the event the DCPAF is in default under the terms of this Agreement after the expiration of any applicable cure period at the time such damage or destruction occurs, the City may elect to terminate this Agreement and the City shall thereafter have the right to receive and retain all insurance proceeds payable as a result of such damage or destruction. Insurance proceeds in excess of the cost of such restoration shall be paid to and be the property of the City.
- (d) Precondition to Material Renovation. Before the DCPAF commences a Material Renovation, plans and specifications for same shall be submitted to the City for approval and the DCPAF shall furnish to the City (i) an estimate of the cost of the proposed work; (ii) satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering the Center, builder's risk insurance, and workers' compensation insurance; (iii) a performance and payment bond satisfactory in form and substance to the Director; and (iv) such other security as the City may require to insure completion of or payment for all work free and clear of liens; provided, however, that the foregoing provisions of this Section 11.1(d) shall not apply to any repairs, renovations or improvements that are not a Material Renovation. The DCPAF shall diligently pursue any and all work in a good and workmanlike manner, and in conformity with all applicable laws, ordinances and codes.

11.2 Condemnation.

- (a) Definitions. Whenever used in this Section, the following words shall have the definitions and meanings hereinafter set forth:
 - (1) "Condemnation Proceedings." Any action brought for the purpose of any taking of the Performing Arts Center, or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Performing Arts Center), by competent

authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

- (2) "Taking" or "Taken." The event and date of vesting of title to the Performing Arts Center or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Performing Arts Center) pursuant to a Condemnation Proceeding.
- (b) Efforts to Prevent Taking. The City shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Center, or any part thereof or any interest therein, during the Term of this Agreement.
- (c) Entire Taking. If all or substantially all of the Performing Arts Center shall be Taken in Condemnation such that it may not be developed as contemplated in this Agreement, this Agreement shall terminate and from and after such date the DCPAF and the City shall not have any other obligations under this Agreement with respect to the Performing Arts Center. Any award, compensation or damage by reason of said Taking during the Primary Term shall be allocated between the City and the DCPAF as follows: (a) the portion of any award paid attributable to the taking of the Improvements constructed pursuant to this Agreement shall be allocated in proportion to the amount of Projects Costs paid by each of the City and the DCPAF to the total Project Costs paid by both the City and the DCPAF as of the Taking; provided, however, the DCPAF's portion of award attributable to improvements shall be reduced in proportion to the number of years elapsed versus 90 (the sum of the number of years in the Primary Term and the aggregate number of years in all of the Renewal Terms) and (b) the balance of any award or payment (whether made as compensation for diminution of value of this Agreement, the City's fee interest in the Performing Arts Center, the DCPAF's interest in the Performing Arts Center under this Agreement, or otherwise) after deducting the award for Improvements shall be paid to the City. Notwithstanding the foregoing, if the parties mutually agree, the DCPAF, at its option, may undertake to build a new Performing Arts Center at another location within the city limits of the City of Dallas, which location and other details of the project shall be subject to the prior written approval of the DCPAF and the City, in which case all of such awards, compensation and/or damage attributable to the taking shall be made available to the DCPAF for the rebuilding of the Performing Arts Center at such other location. Any award, compensation or damage by reason of said Taking of all or substantially all of the Performing Arts Center during any Renewal Term shall be paid to the City unless the DCPAF, at its option, undertakes to build a new Performing Arts Center at another location within the city limits of the City as described hereinabove in this Section 11.2(c).

(d) Partial Taking

- (1) Abatement for Part Taken. If less than all of the Performing Arts Center shall be Taken in Condemnation Proceedings, obligations attributable to the portion of the Center taken shall be abated from and after the date of such partial Taking, and from and after such date the DCPAF and the City shall not have any other obligations under this Agreement with respect to the portion of the Center that has been taken.
- (2) Restoration Unreasonable. If a Taking involves all of a building, performance venue, or facility within the Performing Arts Center (but not the entire Performing Arts Center) such that the building, performance venue, or facility cannot be reasonably restored to functional utility through reconstruction, reconfiguration and redesign, then the DCPAF may elect to terminate this Agreement, and from and after such date the DCPAF and the City shall not have any other obligations under this Agreement with respect to the Performing Arts Center. Such election to terminate must be exercised no later than 180 days after the date of such Taking. If the DCPAF does not elect to terminate this Agreement upon any partial Taking, then (i) the Performing Arts Center shall be reduced by the portion thereof Taken in the Condemnation Proceeding, and the obligations pertaining to the taken portions shall cease, and (ii) the DCPAF shall commence and proceed with reasonable diligence to repair, reconfigure or reconstruct the remaining portions of and Improvements on the Performing Arts Center; provided, however, the DCPAF's obligation to so repair, reconfigure or reconstruct shall be limited to the proceeds of the condemnation award actually received by the parties. For such purpose, the City and the DCPAF shall receive and shall hold in trust the amount of the award relating to the improvements taken and shall disburse such award to apply on the cost of such restoration. If the DCPAF does not complete such restoration within a reasonable period after such taking or condemnation, then an Event of Default by the DCPAF shall have occurred and the City shall be entitled to exercise the remedies set forth in Section 15.2 of this Agreement and retain the award as partial liquidated damages. Any portion of the award that does not have to be expended for repair or restoration shall be paid to the City. Any award amount attributable to the fee title to real estate taken shall be paid over directly to the City and may be retained by the City unless the parties mutually agree to rebuild the Performing Arts Center in another location within the city limits of the City as described in Section 11.2(c) above.
- (3) Restoration Reasonable. If a Taking involves less than all of a building, performance venue, or facility within the Performing Arts Center such that it can be reasonably restored to functional utility through reconstruction, reconfiguration and redesign, the DCPAF shall promptly and diligently proceed to restore the functionality and utility of the remainder of the

Performing Arts Center and affected improvements. For such purpose the City and the DCPAF shall receive and shall hold in trust the amount of the award relating to the improvements taken and shall disburse such award to apply on the cost of such restoration. If the DCPAF does not complete such restoration within a reasonable period after such taking or condemnation, then an Event of Default by the DCPAF shall have occurred and the City shall be entitled to exercise the remedies set forth in Section 15.2 of this Agreement and retain the award as partial liquidated damages. Any portion of the award that does not have to be expended for repair or restoration shall be paid to the City. Any award amount attributable to the fee title to real estate taken shall be paid over directly to the City and may be retained by the City unless the DCPAF elects to rebuild the Performing Arts Center in another location within the city limits of the City.

- (e) Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Performing Arts Center shall be Taken, the obligations under this Agreement with respect to same shall be abated during the duration of such Taking in a fair and equitable manner. A Taking shall be considered "temporary" only if the period of time during which the DCPAF is deprived of usage of all or part of the Performing Arts Center as the result of such Taking does not materially interfere with the ability of the DCPAF to continue use of the Performing Arts Center. Any other Taking that is not "temporary" as described above shall be treated as an Entire Taking or as a Partial Taking under this Article.

ARTICLE 12

Assignment and Subletting

12.1 Assignment and Subletting. The DCPAF shall have the right, at any time and from time to time during the Term, to assign this Agreement and/or to sublet all or any portion of the Premises without the City's prior consent; provided, however, that the DCPAF shall at all times during the Term remain primarily liable and responsible for all of the duties and obligations of the DCPAF under this Agreement, the DCPAF shall promptly deliver to the City written notice of each such assignment or sublease, and the subleases and assignments shall be subject the terms of this Agreement. Any assignment must be to another non-profit corporation and/or foundation organized and existing to further the same public purposes as the DCPAF. Upon any such assignment, the assignee shall execute and deliver to the City a written assumption, in form and substance reasonably satisfactory to the City, of all of the obligations of the DCPAF pertaining to the Center and accruing under this Agreement after such assignment. Subleases may be made to concessionaires and other for-profit vendors to provide services, etc. in connection with operation of the Center.

ARTICLE 13

M/WBE Good Faith Efforts

13.1 M/WBE Good Faith Efforts. The DCPAF confirms that it supports the objectives set forth in the City's Good Faith Effort Program ("GFE Program") for the hiring of minority and women-owned business enterprises, which are (i) "to provide minorities and women equal opportunity for participating in the City construction, procurement and professional services programs", and (ii) "to provide procedures for monitoring compliance with [minority and women-owned business enterprises] requirements of the City construction, procurement, and professional services programs." In connection with the operations of the DCPAF at the Center following completion of construction, the DCPAF, during the Term, shall use reasonable efforts to (i) comply with the terms of the GFE Program, including reporting requirements thereunder, (ii) contractually obligate any third party operator that the DCPAF may engage to operate any aspect of the Center on the DCPAF's behalf and all Concessionaires (defined below) to comply with the GFE Program, including reporting requirements thereunder, provided that no party shall be required to implement bidding procedures in any respect; (iii) to the degree reasonably possible, utilize contractors with offices located in the City; and (iv) contractually obligate any contractors to use good faith efforts to maintain a work site at which no individuals are under the influence of illegal drugs. "Concessionaire" shall mean third-party service companies and suppliers that contract directly with the DCPAF to provide food and beverage service to the general public at the Center, to provide parking services to the general public at the Center, or to provide ordinary maintenance, merchandising, security and ticket operations at the Center.

ARTICLE 14

Financial Records

14.1 Financial Records. The DCPAF shall furnish to the City within one hundred twenty (120) days after the close of each of the DCPAF's fiscal years (i) its balance sheet as of the close of such fiscal year; (ii) its statement of operations for such fiscal year; and (iii) its statement of cash flows for such fiscal year. As developed, but not later than the beginning of each fiscal year, the DCPAF shall provide the City with a copy of its anticipated budget for the coming year. To the extent reasonably requested by the City, the DCPAF shall allow the City to review, at the City's expense, (at the DCPAF's offices during office hours upon advance notice to the DCPAF) records in the possession or reasonable control of the DCPAF relating to the operations of the Center (but excluding any such records as are protected by attorney-client, attorney work product or similar privileges).

ARTICLE 15

Default and Remedies

15.1 DCPAF Default. Each of the following events shall be an "Event of Default" by the DCPAF under this Agreement:

- (a) the DCPAF shall fail to pay any installment of rent or any other monetary amounts hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) days after written notice thereof is given by the City to the DCPAF;
- (b) the DCPAF shall fail to maintain any of the insurance or bonds provided for herein, and the continuation of the failure without cure for a period of ten (10) days after the City notifies the DCPAF of the failure in writing in accordance with the notice provisions under this Agreement;
- (c) the DCPAF shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of any monetary amounts) where such failure to comply would materially adversely affect the operation of the Center pursuant to this Agreement, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the DCPAF; provided, however, that if such default cannot reasonably be cured within ninety (90) days, then (i) the DCPAF shall commence its cure efforts within ninety (90) days, (ii) the DCPAF shall pursue such cure with commercially reasonable diligence and continuity (subject to any appropriate delays for architectural or engineering studies, testing or similar activities) until such cure is completed, and (iii) the DCPAF shall be given an additional reasonable period of time within which to cure such default in excess of the initial ninety (90) days;
- (d) the DCPAF shall fail to comply with any term, provision or covenant in the Development Agreement and shall not cure such failure within any applicable cure period provided for in the Development Agreement;
- (e) a receiver or trustee is appointed to take possession of all or substantially all of the assets of the DCPAF; or if any action is taken or suffered by the DCPAF pursuant to an insolvency, bankruptcy, or reorganization act; or if the DCPAF makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days; and
- (f) there shall occur and remain uncured any DCPAF Event of Default under the Development Agreement.

15.2 City's Remedies. Upon the occurrence of a DCPAF Event of Default, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement; provided, however, that the City shall have no right to terminate this Agreement unless the City delivers to the DCPAF a second notice which expressly provides that the City will terminate this Agreement within thirty (30) days if the default is not addressed as herein provided (provided, however, that no such second notice shall be required if the Event of Default hereunder is covered by a DCPAF Event of Default under the Development Agreement for which all required notices have been given). Termination or non-termination of this Agreement upon a DCPAF Event of Default shall not prevent the City from suing for specific performance, damages, injunctive relief or other

remedies. Upon termination by the City, the City may occupy the Center, and the DCPAF shall assign to the City any of its contracts and agreements requested by the City to be so assigned. The DCPAF contracts and agreements not assumed by the City shall terminate immediately upon termination of this Agreement. The DCPAF does hereby appoint the City as its agent and attorney in fact for purpose of effecting said assignment(s), said appointment being coupled with an interest therein. In the event the DCPAF fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the reasonable amount so paid and the reasonable cost incurred in said performance shall immediately be due and payable by the DCPAF to the City and shall thereafter bear interest at the rate specified in this Agreement. In no event shall the City ever be entitled to receive or the DCPAF ever be liable for consequential, exemplary or punitive damages by reason of this Agreement.

15.3 City's Default. Each of the following events shall be an "Event of Default" by the City under this Agreement:

- (a) the City shall fail to pay any sum payable to the DCPAF under this Agreement as and when the same shall become due and payable and shall not cure such default within thirty (30) days after written notice thereof is given by the DCPAF to the City;
- (b) the City shall fail to comply with any term, provision or covenant of this Agreement, other than the payment of a monetary amount to the DCPAF and shall not cure such failure within ninety (90) days after written notice thereof is given by the DCPAF to the City (provided that if such default cannot reasonably be cured within ninety (90) days, then the City shall have an additional reasonable period of time within which to cure such default); or
- (c) the City shall fail to comply with any term, provision or covenant in the Development Agreement and shall not cure such failure within any applicable cure period provided for in the Development Agreement.

15.4 DCPAF's Remedies. Upon the occurrence of a City Event of Default, the DCPAF may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement; provided, however, that the DCPAF shall have no right to terminate this Agreement except as provided in Section 15.5 below, unless the DCPAF delivers to the City a second notice which expressly provides that the City will terminate this Agreement unless the default is addressed as herein contemplated. In no event shall the DCPAF ever be entitled to receive or the City ever be liable for consequential, exemplary or punitive damages by reason of this Agreement.

15.5 DCPAF's Limited Remedy. Notwithstanding anything in Section 15.4 or elsewhere in this Agreement to the contrary, in the event the City fails to fund its obligations under Article 8, the DCPAF, as its sole and exclusive remedies, may (i) terminate this Agreement by delivering written notice of termination to the City, in which event the parties shall have no further duties, obligations or liabilities under this Agreement, (ii) waive such

failure to fund by the City, in which event the City shall not be liable or required to thereafter fund such obligation and this Agreement shall continue in full force and effect (provided that such failure to fund by the City shall not be an Event of Default by the City), or (iii) exercise the purchase option provided in this Section 15.5. If during the Primary Term the DCPAF terminates for the City's failure to fund its obligations under Article 8, the DCPAF, or its designee, shall have the right and option, at its election, to purchase the Performing Arts Center and any improvements located thereon, upon the following terms and procedures:

- (a) Notice. The DCPAF must notify the City in writing of its exercise of this option to purchase within one (1) year after each failure to fund by the City. Said notice shall designate a place, date and time for closing; provided however, the place shall be within the City of Dallas and the date shall not be sooner than 30 days after the City's receipt of the notice
- (b) Purchase Price. The purchase price shall be paid by the DCPAF in cash or other immediately available funds and shall be an amount equal to the sum of the following ("Purchase Price"):
 - (1) the City's actual out-of-pocket cost to purchase the Performing Arts Area, plus the fair market value (as of the date immediately prior to the date on which construction commences on the Center Infrastructure or the Center Parking Garage, whichever is earlier) of any portion of the Performing Arts Area that was owned by the City prior to May 2003 [or that has been abandoned to the City for inclusion in the Performing Arts Area];
 - (2) the amount of the City Construction Contribution as defined in the Development Agreement, if any, actually spent by the City for items or improvements located on the Performing Arts Areas through the date of closing (plus any interest actually paid by the City to retire such portion of the Bonds as described in the Development Agreement);
 - (3) the aggregate amount actually spent by the City during the Term of this Agreement for Capital Maintenance at the Center; and
 - (4) The Purchase Price shall increase in proportion to the increase in the Consumer Price Index for "All Urban Consumers, U.S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor over the time from the Effective Date of this Agreement or the City's expenditure of said amounts through closing (as applicable). The City Construction Contribution and the Capital Maintenance components of the Purchase Price will never be less than the amount originally expended by the City. If the index is converted to a different standard reference base or otherwise revised, the determination of the index shall be made with the use of such conversion factor, formula or table for converting the index that may be published by the Bureau or, if the Bureau does not publish the same, then with the use of such

conversion factor, formula or table as is published by any nationally recognized publisher of similar statistical information. If the index ceased to be published, then the City may substitute for it any independently published index of a reasonably comparable type.

- (c) At closing the City shall deliver to the DCPAF a Special Warranty Deed as to the Land and Improvements which shall be subject to any and all matters of record on the Effective Date of this Agreement applicable to the property conveyed (except as provided below), and otherwise conveying the Land and improvements free and clear of liens created by the City and otherwise on an "AS IS, WHERE IS, WITH ALL FAULTS BASIS" to the maximum extent allowed by law. In addition, the City shall deliver to the DCPAF a bill of sale similarly conditioned and/or qualified covering the Personal Property and all other portions of the Performing Arts Center that are not covered by the Deed. In addition to any other matter, the Land and improvements conveyed shall include or be subject to deed restrictions in favor of and enforceable by the City restricting the Land and improvements to use solely as a cultural/performing arts complex and/or other public use consistent with this Agreement and the Downtown Arts District and maintaining and preserving the Renovated Artist Square. The Deed and any related deed restrictions are subject to approval as to form by the City Attorney and the DCPAF.
- (d) The DCPAF may elect to secure a title policy and the City will reasonably cooperate with said effort; provided, however, all cost and expenses associated with same shall be borne by the City. Additionally, all costs of closing incurred by the DCPAF shall be borne by the DCPAF and all costs of closing incurred by the City shall be borne by the City.

15.6 No Waiver or Forbearance. Forbearance by the non-defaulting party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either party hereto shall not be construed by the other party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

15.7 The City's Right to Perform the DCPAF's Covenants. If the DCPAF shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, other than the obligation to pay Base Rental, and such failure shall continue without the DCPAF curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the City after 10 days additional written notice to the DCPAF specifying such failure (or shorter notice if any emergency [meaning that there is imminent danger to the safety of persons or of substantial damage to property] exists) may (but without any obligation so to do) perform the same for the account and at the expense of the DCPAF, and the reasonable amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by the

City for curing such default) shall be payable by the DCPAF to the City on demand, or if not so paid, shall be treated at the City's option as a monetary default. This provision is not in lieu of, but is in addition to, any other rights or remedies the City may have with respect to any such failure of performance to the City.

15.8 The DCPAF's Right to Perform the City's Covenants. If the City shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without the City curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the DCPAF, after 10 days' additional written notice to the City specifying such failure (or shorter notice if any emergency exists), may (but without any obligation so to do) perform the same for the account and at the expense of the City, and the reasonable amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by the DCPAF for curing such default) shall be payable by the City to the DCPAF on demand. This Section shall not apply to Events of Default covered by Section 15.5.

ARTICLE 16

Representations and Warranties

16.1 The City's Representations and Warranties. As a material inducement to the DCPAF for entering into this Agreement, the City hereby represents and warrants to the DCPAF that each of the following is true and correct in all respects:

- (a) Existence. The City is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.
- (b) Authority. The City has all requisite power and authority to own the Center, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions herein contemplated.
- (c) Binding Obligation. This Agreement is a valid and binding obligation of the City and is enforceable against the City in accordance with its terms.
- (d) No Defaults. The execution by the City of this Agreement and the consummation by the City of the transactions contemplated hereby (i) do not, as of the Effective Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under the City's charter or any resolution, indenture, agreement, instrument or obligation to which the City is a party or by which the Center or any portion thereof is bound; and (ii) do not, to the knowledge of the City, constitute a

violation of any law, order, rule or regulation applicable to the City or any portion of the Center of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over the City or any portion of the Center.

- (e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for the City to enter into this Agreement, make the agreements herein contained or perform the obligations of the City hereunder other than those which have been obtained.
- (f) Quiet Enjoyment. During the Term and subject to the terms of this Agreement, the DCPAF shall have the quiet enjoyment and peaceable possession of the Center against hindrance or disturbance by the City or by any other person or entity, acting by, through or under the City, but not otherwise.
- (g) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of the City, threatened or asserted against the City affecting the City or any portion of the Center, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.
- (h) Impositions. The City has not received any notice of any condemnation actions, special assessments or increases in the assessed valuation of taxes or any Impositions of any nature that are pending or being contemplated with respect to the Center or any portion thereof.
- (i) Compliance with Laws. The City has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Center or any portion thereof.
- (j) Encumbrances. The City has not placed or granted any liens or security interests against the Center, and there are no actions pending, to the knowledge of the City, which would result in the creation of any lien on any portion of the Center, including, but not limited to, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. During the Term, the City shall not grant any lien, security interest, encumbrance, easement, restriction, covenant or other exception to title on all or any portion of the Center that unreasonably impairs the DCPAF's use of the Center without the prior written consent of the DCPAF, which consent shall not be unreasonably withheld or conditioned and with all due consideration to facilitating the further development of the Downtown Arts District (including without limitation the Municipal Site).
- (k) Limitations. Except as otherwise expressly provided herein, the Premises are leased by the City on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, without representation or warranty of any kind, either express or implied, as to the

condition of the Center, its merchantability, its condition or its fitness for the DCPAF's intended use or for any particular purpose.

16.2 The DCPAF's Representations, Warranties and Special Covenants. As a material inducement to the City for entering into this Agreement, the DCPAF hereby represents and warrants to the City that each of the following is true and correct in all respects:

- (a) Existence. The DCPAF is a duly organized and validly existing non-profit corporation and foundation under the laws of the State of Texas and the Internal Revenue Code and shall maintain said status during the Term of this Agreement.
- (b) Authority. The DCPAF has all requisite power and authority to own its property, operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.
- (c) Binding Obligations. This Agreement is a valid obligation of the DCPAF and is binding upon the DCPAF in accordance with its terms.
- (d) No Default. The execution by the DCPAF of this Agreement and the consummation by the DCPAF of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or lapse of time or both would ripen into default under, the organizational documents of the DCPAF or under any indenture, agreement, instrument or obligation to which the DCPAF is a party or is bound.
- (e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for the DCPAF to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.
- (f) As-Is. Except as otherwise expressly provided herein, the Premises are accepted the DCPAF on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, without representation or warranty of any kind, either express or implied, as to the condition of the Center, its merchantability, its condition or its fitness for the DCPAF's intended use or for any particular purpose.

ARTICLE 17

Holdover

17.1 Holding Over by the DCPAF. Should the DCPAF or any assignee, subtenant or licensee of the DCPAF holdover within the Center or any part thereof after the expiration of the Term, then, unless otherwise agreed in writing, such holdover shall constitute and be construed

as a tenancy from month-to-month only, upon the same terms and conditions as during the Term; provided, however, the DCPAF shall pay a Base Rental equal to the fair market rental for the Center as determined by the City's appraiser and the City shall have no further obligation to fund its Annual City Operating Expenses otherwise provided in this Agreement.

ARTICLE 18

Notice

18.1 Notices and Payments. Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be personally served 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 to the other party under the provisions of this Article. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

| | |
|------------------|--|
| If to the City: | City of Dallas 1500 Marilla 4E North Dallas, Texas 75201 Attn: City Manager Telephone: 214-670-4268 Facsimile: 214-670-3946 |
| 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

ARTICLE 19

DCPAF Financing

19.1 No Mortgage on the City's Interests. The DCPAF shall have no right, power or authority to place a mortgage, deed of trust lien or security interest of any sort upon any interest of the City in or to the Premises, including without limitation the fee title to same.

19.2 Mortgage by the DCPAF. The DCPAF shall have the right to place a mortgage, deed of trust lien or security interest upon the DCPAF's interest in and under this Agreement, but such mortgage, deed of trust lien or security interest shall cover and affect only the DCPAF's interest in the Agreement and not the City's fee simple title to the Premises. In addition, the City will take all actions reasonably requested by the DCPAF and/or the DCPAF's lender, if any, which holds a lien or mortgage covering the DCPAF's interest under this Agreement, in order to reflect that such lender or its foreclosure purchaser will succeed to the DCPAF's rights under this Agreement in the event of any lawful foreclosure by such lender.

- (a) City's Cooperation. The City will execute and deliver a reasonable estoppel certificate addressed to the DCPAF's mortgagee setting forth the material terms of this Agreement, confirming the terms of this Article, and providing the City's agreement to recognize the mortgagee or any purchaser of the mortgaged interest at foreclosure in the same manner as an assignee pursuant to Article 12 of this Agreement. The City agrees to accept commercially reasonable amendments of this Agreement which are requested by the DCPAF's mortgagee prior to the execution of its mortgage which are reasonably calculated to protect the mortgagee's interest in this Agreement under its mortgage and do not, in the reasonable opinion of the City, materially diminish the rights of the City under this Agreement or violate or would cause the City to be in violation of its City Code, City Charter, or state law. Notwithstanding the foregoing, no mortgagee shall acquire, by virtue of the mortgage, any greater right in the Center and in any building or improvements thereon than the DCPAF then had under this Agreement, and provided further that any mortgage shall at all times be and remain inferior and subordinate to this Agreement. In no event shall the DCPAF have the right to encumber, subordinate or render inferior in any way the City's fee simple title and reversionary interest in and to the Center.
- (b) Notices to DCPAF's Mortgagees. If at any time after execution and recordation of any mortgage in the Real Property Records of Dallas County, Texas, the

mortgagee shall notify the City in writing that the mortgage on the DCPAF's interest in the Agreement has been given and executed by the DCPAF, and shall furnish the City at the same time with the address to which the mortgagee desires copies of notices to be given, the City hereby agrees that it will thereafter deliver in the manner specified in Article 18 to the mortgagee at the address so given, duplicate copies of any and all notices in writing which the City may from time to time give or serve upon the DCPAF under and pursuant to the terms and provisions of this Agreement and any and all pleadings in suits filed by the City against the DCPAF, as applicable. No notice to the DCPAF shall be effective as to the mortgagee unless duplicate copies thereof are delivered to such mortgagee.

- (c) Mortgagee's Right to Cure. If the City shall ever be entitled to exercise a right hereunder to terminate this Agreement (other than for non-appropriation) after the giving of notice and/or the passage of time, as applicable, the City shall deliver additional written notice to the DCPAF's mortgagee of the City's intention to so terminate this Agreement and describing the existing defaults, and mortgagee thereafter shall have 30 days to cure the defaults described in such written notice. In the event (i) such default is not capable of cure within such 30-day period, this Agreement may not be terminated if mortgagee shall deliver to the City, within such 30-day period, written notice of mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within 120 days of the date of such notice, or (ii) any mortgagee is not in actual possession of the Premises on the date of the additional notice given the mortgagee under this Section, and possession is necessary in order to cure any default, then the time within which such mortgagee may commence to cure such default shall be extended for a reasonable time, not to exceed 120 days, until such mortgagee can obtain actual possession of the Premises. No purported termination of this Agreement shall be effective until such written notice shall have been given to mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Mortgagee may, at its option any time before the rights of the DCPAF under this Agreement shall have been terminated, pay any of the Base Rental due hereunder, procure any insurance required hereunder, pay any Imposition required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of the DCPAF by the terms of this Agreement or which may be necessary and appropriate to comply with the covenants and conditions of this Agreement to prevent the termination of same. All payments so made and all things so done and performed by any such mortgagee shall be as effective to prevent a forfeiture of the rights of the DCPAF hereunder as if performed by the DCPAF.
- (d) Survival. The provisions of this Section shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if said Sections were a separate and independent contract among the City, the DCPAF and any mortgagee.

- (e) Mortgagee's Liability. No mortgagee shall be or become personally liable to the City as an assignee of this Agreement, for the payment or performance of any obligation of the DCPAF unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any mortgage, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of the DCPAF under the terms of this Agreement; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of the DCPAF hereunder.
- (f) No Modification or Surrender. During such time as all or any portion of the DCPAF's interest in this Agreement is subject to a mortgage, this Agreement as to such portion of the Center may not be modified or voluntarily surrendered without the prior written consent of the mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

19.3 City Assistance with DCPAF Financing. The DCPAF currently contemplates issuing private, tax-exempt bonds to finance a portion of the DCPAF Construction Contribution (as defined in the Development Agreement). The DCPAF will be the sole obligor for such bonds and the City's ownership interest in the Performing Arts Center shall not be pledged as security for such private bonds. Subject to the future City Council approval (if required) and to applicable legal limitations, if requested by the DCPAF the City shall reasonably cooperate with the DCPAF to facilitate issuance of such private tax-exempt bonds, including without limitation by sponsoring a state-authorized conduit issuing authority to serve as the conduit through which the bonds will be issued and qualified as tax-exempt bonds. In no event shall the City be required to incur any cost or expense in said endeavor and the DCPAF shall reimburse the City for any such costs or expenses incurred by the City relating to said financing.

ARTICLE 20

Miscellaneous

20.1 Commissions. The City and the DCPAF hereby represent and warrant to each other that (a) it has not contracted or entered into any agreement with any real estate broker, agent, finder or any other person or entity in connection with this transaction, and (b) it has not taken any action that would result in any real estate broker's, agent's, finder's or other fees or commissions being due to any person or entity with respect to this transaction.

20.2 Representatives. During the Term of this Agreement, the City Manager shall have full authority to administer this Agreement and provide the consents and approval provided for herein on behalf of the City. To facilitate this, the Manager may designate the Director of Public Works and Transportation and/or the Director of the Office of Cultural Affairs to act on the City Manager's behalf as to all aspects of this Agreement. The DCPAF shall be entitled to

rely on the authority of the City Manager (or, when designated, the Directors) for such purposes under this Agreement.

During the Term of this Agreement, the DCPAF shall designate two individuals who shall have full authority (acting together and not alone) to administer this Agreement on behalf of the DCPAF. The initial DCPAF representatives shall be Bill Lively and Bob Qualls. The DCPAF may designate a permanent or temporary replacement for either DCPAF representative by delivering a written notice to the City executed by the DCPAF.

20.3 Copyright Indemnification. The DCPAF assumes full responsibility for complying with the Federal Copyright Law of 1978, as amended (17 U.S.C. 101, et seq.) and any applicable regulations, including but not limited to the assumption of all responsibilities for paying royalties which are due for the use of copyrighted works in the Center's performances, transmissions or broadcasts, and the DCPAF agrees to defend, indemnify, and hold harmless the City, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of the DCPAF's infringement or violation of the copyright law or regulations.

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

20.5 Survival. Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.

20.6 Captions. The captions used in this Agreement are for convenience only and shall not be deemed to amplify, modify or limit the provisions hereof.

20.7 Construction. Words of any gender used in this Agreement shall be construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context otherwise requires. This Agreement shall not be construed either for or against either party by reason of authorship.

20.8 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

20.9 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and can be altered, amended or modified only by a written instrument executed by all such parties. It is understood that there are no oral agreements or representations between the parties hereto affecting this Agreement, and this

Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter hereof. There are no other representations or warranties between the parties hereto and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

20.10 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances (other than those as to which it is held invalid or enforceable) shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.11 No Joint Ventures. Nothing herein contained, either in the method of computing rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating, any partnership, association, joint venture or otherwise.

20.12 Choice of Law. **The laws of the State of Texas shall govern the validity, performance and enforcement of this Agreement**

20.13 Inspection. The DCPAF shall permit the City and its agents, upon reasonable advanced notice to enter into and upon the Center during normal business hours for the purpose of inspecting the same. Forty-eight (48) hour notice shall in any event be deemed to be reasonable. The City shall use reasonable good faith efforts to minimize interference with or disruption of the DCPAF's use.

20.14 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their successors and assigns permitted under this Agreement, and no provisions of this Agreement shall be deemed to confer upon any other person any remedy, claim, liability, reimbursement, cause of action or other right.

20.15 Estoppel Certificates. The DCPAF and the City shall, at any time and from time to time upon not less than 30 days' prior written request by the other party, execute, acknowledge and deliver to said party, a statement in writing certifying (i) its ownership of its respective interest hereunder, (ii) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Base Rental, Ticket Surcharge, and any other payments have been paid by the DCPAF, (iv) the dates to which and amount of the Annual City Operating Expenses paid year-to-date, and (v) that, to the current actual knowledge of the party, no default on the part of the other party exists (except that if any such default does exist, the certifying party shall specify such default).

20.16 Force Majeure. The time for performance by the City or the DCPAF of any term, provision or covenant of this Agreement shall be deemed extended by any time lost due to delays resulting from acts of God, strikes, unavailability of building materials, civil riots, floods,

material or labor restrictions by governmental authority and any other cause not within the reasonable control of the City or the DCPAF, as the case may be.

20.17 Waiver of the City's Lien. The City hereby waives all of the City's rights to any contractual, statutory, constitutional or other lien or security interest on any of the DCPAF property or the property of any assignee or subtenant that may now or at any time hereafter be situated on the Premises.

ARTICLE 21

Environmental Matters

21.1 Environmental Investigation and Remediation. The DCPAF shall be responsible for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Center and which is caused by the presence of Hazardous Materials (defined below) on the Center, except to the extent such results from the act of the City or its officers, employees, representatives or agents. Such environmental investigation and remediation work shall be carried out in accordance with all applicable laws. The DCPAF shall notify and advise the City of the remediation the DCPAF will undertake and the procedures to be used. The DCPAF shall complete the remediation with due diligence and shall comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. The DCPAF's obligation as provided above to undertake environmental investigation and remediation of the Center shall be a continuing obligation of the DCPAF throughout the Term.

21.2 Presence and Use of Hazardous Materials. The DCPAF shall not, without the City's prior written consent, keep on or around the Premises, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic, or harmful, including without limitation Hazardous Materials, or is subject to regulation, by federal, state, or local law, regulation, statute, or ordinance, unless such use by the DCPAF is in compliance with all applicable federal, state or local laws, regulations, statutes and ordinances. With respect to any such Hazardous Materials, the DCPAF shall:

- (a) Comply promptly, timely, and completely with all government requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers.
- (b) Submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate government authorities.
- (c) Within thirty (30) days of the City's request, submit written reports to the City regarding the DCPAF's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Materials and provide evidence satisfactory to the City of the DCPAF's compliance with the applicable government regulations.

- (d) Allow the City or the City's agent or representative to come on the Premises at all times to check the DCPAF's compliance with all applicable government regulations regarding Hazardous Materials; provided, however, that the City shall at all times use reasonable efforts to minimize any disruption to the use of the Premises by the DCPAF.
- (e) Comply with all applicable government rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Materials.

Any and all costs to the City and associated with the City's routine inspection of the Premises and the City's routine monitoring of the DCPAF's compliance with this Article, including the City's attorney fees and costs, shall be the obligation and liability of the City; provided, however, that if it is ever determined that Hazardous Materials are present at the Premises, then the DCPAF shall be required to reimburse the City for all of the reasonable costs incurred by the City with respect to the City's inspection of the Premises and the City's monitoring of the DCPAF's use, storage, treatment, transportation and disposal of the Hazardous Materials that are located at the Premises.

21.3 Cleanup Costs, Default, and Indemnification. The DCPAF shall be fully and completely liable to the City for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed by any government authority with respect to the DCPAF's use, disposal, transportation, generation, and/or sale of Hazardous Materials, in or about the Center. If the DCPAF breaches its obligations under this Article and such breach is not cured following notice and within the applicable cure period, the City may take any and all action reasonably appropriate to remedy such breach, including taking all appropriate action to clean up or remediate any contamination resulting from the DCPAF's use, generation, storage or disposal of Hazardous Materials, and the DCPAF shall promptly pay all reasonable costs incurred by the City in connection therewith. The DCPAF shall defend, indemnify and hold harmless the City, its officers, agents, employees and representatives, from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees and cost of clean up and remediation) arising from the DCPAF's failure to comply with the provisions of this Article. This indemnity provision shall survive termination or expiration of this Agreement.


21.4 Hazardous Materials. The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations affecting the Center relating to pollution or the protection or regulation of human health, natural resources or the environment, including, but not limited to, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Texas Hazardous Substances Spill Prevention and Control Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder.

[SIGNATURES APPEARING ON THE FOLLOWING PAGE]

Executed and effective as of the Effective Date.

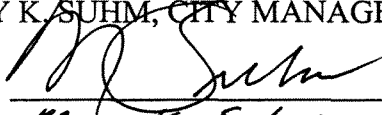
THE DCPAF:

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

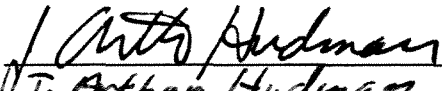
By: 
Name: William H. Dively
Title: President & CEO

THE CITY:

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

By: 
Name: Mary K. Suhm
Title: City Manager

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

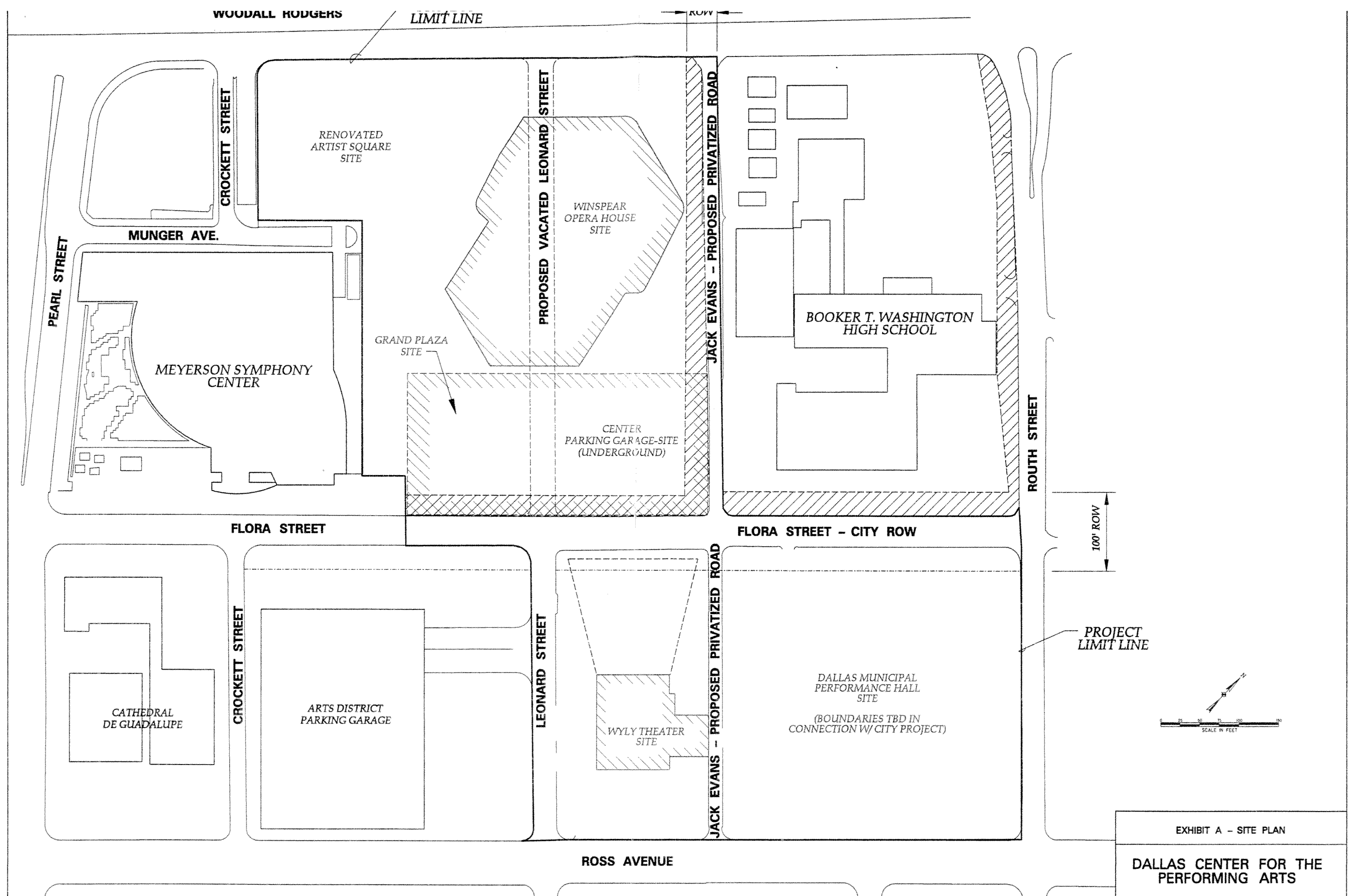
By: 
Name: J. Arthur Hudman
Title: Assistant City Attorney

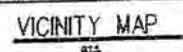
**EXHIBIT
A**

LEGAL DESCRIPTION OF THE LAND

**EXHIBIT
B**

SITE PLAN OF THE LAND






LEGEND:

GARAGE ENCROACHMENT
AREA



GARAGE LOCATION MAP

NTS

DALLAS CENTER
FOR THE
PERFORMING ARTS

FOUNDATION



LOPEZGARCIA GROUP
 3825 Marinet Center Blvd., Suite 500
 Dallas, Texas 75207
 (214) 747-7777
 (214) 741-9413 fax
lopezgarcia-group.com

OWNER/DEVELOPER:
CITY OF DALLAS
1500 MARILLA STREET
DALLAS, TEXAS 75201
PHONE: (214) 670-5111

**EXHIBIT
C**

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This Memorandum of Agreement (this "Memorandum") is made and entered into as of the ____ day of _____, 2005, 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 as of this date executed and entered into that certain Use Agreement (the "Agreement") whereby the City has, 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 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.

3. 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.

4. 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 |

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

5. 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: _____
Title: _____

THE CITY:

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

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of the City of Dallas, Texas, a municipal corporation of the State of Texas and a home rule city, on behalf of said City.

Notary Public Signature

(PERSONALIZED SEAL)

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

 This instrument was acknowledged before me this ____ day of _____ 2005, by
_____, _____ of
Dallas Center for the Performing Arts Foundation, Inc., a Texas non-profit corporation, on behalf of
said non-profit corporation.

(PERSONALIZED SEAL)

Notary Public Signature