

**LEASE AGREEMENT**

**Log No. 34215**

**STATE OF TEXAS            )**

**COUNTY OF DALLAS        )**

This Lease Agreement, (this "Lease") is made and entered into as of this \_\_\_ day of June, 2009, to be effective as of July 1, 2009, by and between the City of Dallas, a Texas municipal corporation, hereinafter referred to as ("CITY"), and the DSM Management Group, Inc., a Texas nonprofit corporation, hereinafter referred to as ("LESSEE").

**WHEREAS**, the CITY owns certain improved property, hereinafter referred to as the "Leased Premises", known as the Music Hall at Fair Park, located at 909 First Avenue, Dallas, Dallas County, Texas, which is a multi-story building located in Fair Park and bounded generally by First Avenue, Parry Avenue, Robert B. Cullum Blvd., and Grand Avenue and consisting of approximately 75,300 square feet of space being situated on Lot 1A of City Block C/812, in Fair Park, more fully described in **Exhibit A**, attached to and incorporated herein;

**WHEREAS**, LESSEE desires to lease, operate, and maintain the Leased Premises under the terms and conditions stated herein;

**WHEREAS**, LESSEE has successfully operated the Leased Premises for many years for the cultural benefit of the CITY and the Public and LESSEE wishes to continue providing the Dallas community with an active schedule of Broadway musicals uninterrupted so that generations of Dallasites have the opportunity to enjoy quality theatrical productions in Fair Park;

**WHEREAS**, LESSEE as operator has provided in the past significant maintenance and improvements to the Leased Premises at its cost further benefiting the CITY and the Public;

**WHEREAS**, LESSEE shall have the right to enter into contracts with others for the use and/or rental of the Leased Premises for the presentation of plays, recitals, concerts, lectures, musical, theater, and dance performances, meetings, other assemblies, and other similar or appropriate uses; and

**WHEREAS**, it is the desire of the CITY and LESSEE for LESSEE to occupy and to lease, hire and rent the Leased Premises for a twenty (20) year period, with the option to extend the lease term for four (4) renewal terms, with each renewal term being for five (5) years, for the purposes set out herein.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants, and conditions set forth herein the parties hereto agree as follows:



## SECTION 1. LETTING AND DESCRIPTION OF THE LEASED PREMISES

That for and in consideration of LESSEE's covenant to pay the annual rental amount of \$1.00 and other sums for which provisions are made in this Lease and as additional consideration the performance of other obligations of LESSEE hereunder, CITY demises and leases to LESSEE and LESSEE leases from CITY the Leased Premises.

CITY may at its option offset any amounts due and payable under this Lease against any debt (including taxes) lawfully due to CITY from LESSEE regardless of whether the amount due arises pursuant to the terms of this Lease or otherwise and regardless of whether or not the debt due to CITY has been reduced to a judgment by a court.

LESSEE shall work with the Director of the Office of Cultural Affairs, or her designee ("Director") and/or appropriate City officials in order to fulfill the purposes of this Lease.

## SECTION 2. TERM

The term of this Lease shall be for a period of twenty (20) years, commencing on July 1, 2009, hereinafter referred to as the "Lease Commencement Date", and ending on June 30, 2029, this period being hereinafter referred to as the "Primary Term"; provided, however, that CITY and LESSEE shall have the right to terminate this Lease as provided elsewhere herein. LESSEE at its sole discretion reserves the right to renew this Lease for four (4) renewal terms, hereinafter referred to as "Renewal Option Term(s)", with each Renewal Option Term being for a period of five (5) years. The "Term" as used herein consists of the Primary Term, and the Renewal Option Term(s). LESSEE may renew this Lease for each of the five-year Renewal Option Terms by giving written notice to CITY at least six months prior to expiration of the then current Term, indicating LESSEE's election to renew this Lease. If LESSEE elects not to renew, this Lease shall expire at midnight Central Standard time at the end of the current Term. Unless amended by both the CITY and LESSEE, hereinafter referred to as "Parties", all terms, conditions and covenants shall remain in force and effect throughout the Term.

## SECTION 3. CONSIDERATION AND OTHER RELATED MATTERS

As further and additional consideration for this Lease, LESSEE shall establish and operate and maintain two separate accounts for the Leased Premises, a major maintenance account (the "Maintenance Account") and an operating account (the "Operating Account"). The source of the funds for the Maintenance Account shall be from eight percent (8%) of the gross food and beverage sales actually collected by the LESSEE at the Leased Premises, less sales and use taxes collected and paid ("Gross F&B Receipts"). The source of the funds for the Operating Account shall be an annual \$100,000 payment (the "\$100,000 Payment") by LESSEE for each year of the Term. LESSEE may make the \$100,000 Payment in advance, in one lump sum on or before July 1 of each year of the Term, or LESSEE may make the \$100,000 Payment (which shall be prorated for any partial year of the Term) in four equal installments of \$25,000, which shall be paid by LESSEE not later than the 15<sup>th</sup> day of the following months: July, October,

January, and April. The funds in the Maintenance Account and the Operating Account shall each be maintained in one or more separate accounts, which shall bear interest to the extent cost effective and practicable, each in a federally chartered bank or other institution that maintains offices in Dallas, Dallas County, Texas. The funds in the Maintenance Account shall be used for major maintenance of the Leased Premises and no expenditure from the Maintenance Account shall be permitted except by written approval of the Director, whose decision shall be final and binding. Operating Account funds may be expended for all ordinary and customary operating expenses of the Leased Premises or LESSEE, including but not limited to office supplies, building operating expenses, routine maintenance expenses, insurance, taxes on LESSEE's property, if applicable, and utilities. All funds in the Maintenance Account and the Operating Account shall be the property of the LESSEE; however, upon termination of this Lease, any then unexpended and uncommitted funds in the Maintenance Account or Operating Account shall immediately become the property of the CITY or a successor operator, as designated by the CITY (subject to substantially similar restrictions to their use as exist in this Lease). LESSEE shall transfer said funds in said accounts to the CITY or its successor operator no later than thirty (30) days after the termination of this Lease, unless a written extension of time is granted by the Director.

LESSEE will submit a copy of an annual report of revenues and expenditures from the Maintenance Account and the Operating Account to the Director, no later than the anniversary of July 15<sup>th</sup> of each year during the Term in accordance to the provisions of Section 7.

LESSEE may levy a facility fee equal to \$2.50 per paid admission to the Leased Premises, which fee is payable by the applicable party at final settlement after commencement of their final performance and shall be collected by LESSEE and paid into the Operating Account. Such fees may be adjusted to increase or decrease by LESSEE based upon changes in the costs of utilities or other costs from time to time during the Term of this Lease with prior written approval from the Director.

LESSEE shall own and have the right to use all revenue generated at or in connection with the Leased Premises. This sentence does not diminish LESSEE's obligations to pay costs as set forth in this Lease.

LESSEE's rights are subject to the Park and Recreation Board's authority to license and contract the use of its parking lots in Fair Park, and any arrangements between the Park and Recreation Board, its parking operations contractor and LESSEE. In particular, the LESSEE's operations shall not interfere with the use of the State Fair Permanent Areas or the State Fair Seasonal Areas during the annual State Fair of Texas exposition as defined in the "State Fair Agreement" dated August 28, 2002 between the City and State Fair Association without the prior written consent of the Director.



#### SECTION 4. PERFORMANCE AND DESCRIPTION OF USE

LESSEE shall have the right to enter into contracts with others for the use and/or rental of the Leased Premises for the presentation of plays, recitals, concerts, lectures, musical, theater, and dance performances, meetings, other assemblies and other similar or appropriate uses.

LESSEE shall also manage and maintain all areas of the Leased Premises including but not limited to, the dressing rooms, rehearsal halls, loading docks, storage rooms and all other areas of the Leased Premises, as further defined in Section 6.

LESSEE shall use all reasonable lawful efforts to collect all rents and revenues from the operation of the Leased Premises. LESSEE shall promptly pay or cause to be paid any obligations and indebtedness incurred by LESSEE in connection with any use of the Leased Premises during the Term.

LESSEE shall promptly investigate all service requests received, take such action thereon as may be justified, keep records of same and report any complaints of a serious nature to the Director. LESSEE shall also reasonably comply with all lawful requirements of any governmental authority related to the Leased Premises.

CITY through its Director may request from time to time changes in scope or focus of the activities described in this Section. Any such change which varies significantly from the scope of services set out in this Section 4, which would entail a significant increase in cost or expense to LESSEE shall be mutually agreed on by LESSEE and the Director. Changes in the scope, which in the opinion of LESSEE and the Director would require additional funding by CITY, must first be authorized in advance by resolution of the City Council or, where applicable, duly authorized administrative action signed by the City Manager and approved as form to the City Attorney.

LESSEE shall not use or occupy the Leased Premises, or permit the Leased Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto, or in any manner which would violate any certificates of occupancy or permits affecting same, or which would cause structural injury to the improvements, ordinary wear and tear and damage by casualty excluded, or cause the value or usefulness of the Leased Premises, or any part thereof, to diminish materially, or which constitutes a public or private nuisance or waste. All business operations conducted on the Leased Premises shall comply with all applicable laws statutes, and ordinances. In no event shall LESSEE undertake any activity to be conducted on the Leased Premises that constitutes a nuisance, is immoral, obscene, or is a threat to the welfare of the general public in the CITY's reasonable judgment.

LESSEE shall observe and administer the following express additional covenants, and the violation of any such express covenants shall be deemed a breach hereof and shall be sufficient cause for termination of this Lease as further provided herein.



A. Trash Receptacles: LESSEE shall provide a reasonable number of trash receptacles throughout the Leased Premises, and dispose of the collected trash at reasonable intervals, as appropriate.

B. Cleanliness: No trash or refuse of any kind shall be discarded at the Leased Premises by LESSEE or its employees, except in appropriate receptacles. The Leased Premises shall be kept reasonably clean and sanitary.

C. Overnight Use: LESSEE shall not permit employees or any other person to spend the night for any reason in the Leased Premises without the express prior approval of the Director.

D. Liability: The CITY does not guarantee police protection, and shall not be liable to LESSEE for any loss or damage sustained by LESSEE.

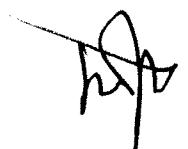
E. Management and Labor: LESSEE shall provide at its sole cost the, management and labor that are reasonably necessary to operate and maintain the Leased Premises in a safe and attractive manner. The CITY shall have the right at reasonable times to inspect the Leased Premises. In the event the LESSEE fails to maintain the Leased Premises in a reasonably clean and sanitary condition, the CITY may, after notice and an opportunity to cure, remedy such failure and LESSEE shall reimburse the CITY for all reasonable and necessary costs incurred by the CITY to remedy such failure.

LESSEE or any sub-tenant of the Leased Premises or any other person or entity paying rental to LESSEE with respect to, or authorized by LESSEE to be a user of, the Leased Premises shall have the opportunity to utilize the services of the box office at the Leased Premises, for the sale or other distribution of tickets or passes to performances in accordance with such arrangements as may be made between such persons and the LESSEE.

LESSEE shall have the right to charge rent for the use of the Leased Premises in accordance with a fee schedule which shall be approved by the Director, annually. It is expressly understood and agreed that all such rent shall be applied by the LESSEE toward the operations of the Leased Premises, LESSEE, or Dallas Summer Musicals Inc., a Texas non-profit corporation.

LESSEE shall, as soon as is reasonably practicable prepare in written form for review and written approval by the Director, appropriate operating policies for the Leased Premises, which shall be attached to and made a part of this Lease.

Notwithstanding the terms of this Lease, and subject to availability, the CITY shall have the right, authority and power to utilize the Leased Premises in accordance with the approved operating policies and approved rental fee schedule in the same manner as other sub-tenants of the Leased Premises or persons or entities paying rental to the LESSEE.

A handwritten signature in black ink, appearing to be 'H. J. ...', is located in the bottom right corner of the page.

## SECTION 5. IMPROVEMENTS

During the term of this Lease, LESSEE shall without cost to CITY (subject to the other terms and conditions of this Lease) have the right to remodel, renovate, and refurbish the Leased Premises upon prior written approval by the Director and the Director of Equipment and Building Services (“Directors”) or their designees, which approval shall not be unreasonably withheld or delayed.

LESSEE shall at LESSEE’s cost provide and submit plans and specifications for any and all remodeling, renovation or refurbishment to the Directors or their designees for prior review and written approval, which shall not be unreasonably withheld. Prior to commencing any remodeling, renovations or refurbishment of or to the Leased Premises, LESSEE shall provide CITY with payment bonds, performance bonds and proof of insurance satisfactory to CITY in the sole and unqualified exercise of its discretion. LESSEE shall likewise provide CITY with proof satisfactory to CITY that LESSEE has funds available sufficient to complete any such work, including reasonable contingency reserves. All improvements and subsequent changes or additions to the Leased Premises made by LESSEE, shall be at LESSEE expense, in a good and workmanlike manner, in compliance with applicable building codes, and free and clear of any liens and encumbrances. All improvements and subsequent changes or additions to the Leased Premises or any part thereof (except removable property described below) shall become part of Leased Premise, and shall remain upon and be surrendered with the Leased Premises as a part thereof at the end of the Term without disturbance, molestation or injury.

LESSEE and its engineers, construction manager, contractors and subcontractors shall adopt good faith efforts to hire and contract with minority and women-owned business enterprises (“M/WBE”) in compliance with the City’s Business Inclusion and Development (“BID”) Plan (formerly known as the City’s Good Faith Effort Plan) that are certified by the City of Dallas, or the North Central Texas Regional Certification Agency for the construction, maintenance and operation of the Leased Premises.

LESSEE may erect or install within the Leased Premises, temporary alterations, additions or equipment of a special theatrical or similar function that does not alter the structural integrity, existing walls and partitions or basic configuration of the Leased Premises, provided that LESSEE complies with all applicable government laws, statues, ordinances, codes and regulations. LESSEE may remove at the expiration of this Lease furniture, fixtures, and equipment paid for by LESSEE, that are removable without material damage to the Leased Premises, and the same shall remain the property of LESSEE.

## SECTION 6. MAINTENANCE

LESSEE shall during the Term at LESSEE’s expense be responsible for all ordinary and customary operating expenses of the Leased Premises, including, but not limited to office supplies, building operating expenses, janitorial services, insurance, utilities and daily routine maintenance, which is defined to include routinely maintaining in good repair all equipment and systems, all electrical, mechanical, and plumbing systems, including heating and air conditioning



equipment, front and rear doors, light fixtures and bulb replacements, plumbing and floor drains, exhaust fans, windows, interior walls, ceiling and floors, exhibits, office furnishings and security equipment in, constituting a part of and/or serving the Leased Premises.

LESSEE also at its cost and expense shall during the Term perform routine repair and maintenance of the roof, foundation, exterior walls, exterior lighting, termites and pest extermination, exterior grounds, parking areas and all public and common areas of the Leased Premises to keep them in a reasonably neat, safe, clean, repaired, sanitary, and attractive condition and suffer no waste.

In the event of any structural or mechanical failure or imminent failure of an essential building component or system, or the need to modify or replace an essential building component or system as a result of a requirement imposed by any government, LESSEE may first look to the existing Maintenance Account to make major maintenance payments, pursuant to the provisions of Section 3. If the cost to repair, replace or modify the essential building component or system exceeds the balance of the Maintenance Account, the CITY will repair, replace or modify the component or system, subject to appropriation and required CITY approvals.

## **SECTION 7. INSPECTIONS**

The CITY is hereby granted the right to audit, at CITY's election and expense, all records and billings of LESSEE related to this Lease, the Leased Premises and LESSEE's activities in connection therewith, upon reasonable notice and during normal business hours. LESSEE agrees in this regard to keep and maintain proper records of such financial transactions and on a normally accepted accounting format, during each year of the Term of this Lease, and to preserve same for three (3) years.

LESSEE shall provide CITY with annual financial statements, including balance sheets, income statements, and cash flow or sources and use statements for LESSEE and its operations at the Leased Premises

CITY and its agents and/or representatives shall also have the right to enter the Leased Premises at any reasonable time and after reasonable notice during LESSEE's normal business hours, for any purpose connected with the performance of CITY's or LESSEE's obligations hereunder, observing the performance by LESSEE of obligations under this Lease, and/or to determine the condition of the Leased Premises.

## **SECTION 8. INSURANCE**

LESSEE shall obtain and maintain in full force insurance coverage in accordance with insurance provisions set forth in **Exhibit B**, attached hereto and made a part hereof, including the Fire Legal Liability (Damage to Rented Premises [per occurrence]) insurance to which reference is made in **Exhibit B** and in Section 18C of this Lease. Such policies of insurance: (i) shall be



issued by insurance companies licensed in the State of Texas; and (ii) shall name CITY as an additional insured or loss payee, as the case may be.

## **SECTION 9. ASSIGNMENT**

LESSEE shall not assign this Lease in whole or in part, without the prior written consent of CITY, which consent may be denied in CITY's sole and unqualified discretion. Any sublease, occupancy, right, or contract pertaining to this Lease or the Leased Premises is and shall be subordinate to this Lease and may not extend past the termination date of this Lease.

## **SECTION 10. UTILITIES**

LESSEE shall pay the cost of all utility services and initial connection charges, including but not limited to water, gas and electricity used in connection with or chargeable against the Leased Premises until the expiration of this Lease.

LESSEE shall be responsible for the installation, maintenance and expense of a security system and its own telephone services serving the Leased Premises.

## **SECTION 11. TERMINATION**

In the event the Leased Premises, or any part of the Leased Premises, are affected by any liens, restrictions, easements or other encumbrances, which if enforced, utilized or foreclosed, could interfere with or impede LESSEE's use and operation of the Leased Premises as defined in Section 4, then LESSEE shall have the right as its sole and exclusive remedy to terminate this Lease by giving thirty (30) days advance written notice of termination to CITY. The Leased Premises shall be vacated upon termination.

The CITY may terminate this Lease by delivering written notice ("City Termination Notice") to LESSEE in accordance with the provisions set forth below in this paragraph and the following paragraph of this Section 11. The City Termination Notice shall specify the effective date of the termination of the Term (the "City End Date"), which must be no earlier than eighteen (18) months following LESSEE's receipt of the City Termination Notice. Upon and following delivery and receipt of the City Termination Notice in accordance with this Section 11, the City End Date shall be the last day of the Term, as if the City End Date had been the date originally designated to be the last day of the Term. All services being performed under this Lease shall cease upon the City End Date. In no event shall CITY be liable to LESSEE for any losses or for exemplary or punitive damages suffered by LESSEE as a result of termination in accordance with this Section 11.

The CITY may, for the convenience of the CITY in its discretion, upon and following approval by the City Council, deliver the City Termination Notice and thereby terminate this Lease as of the City End Date set forth therein. Also, the Director may on behalf of the CITY



deliver the City Termination Notice and thereby terminate this Lease as of the City End Date set forth therein if in her reasonable discretion she determines that LESSEE has failed to meet a public purpose for the use of the Leased Premises. Further, the CITY has the right to deliver the City Termination Notice and thereby terminate this Lease as of the City End Date set forth therein, on or before the last day of the then current fiscal year in the event of non-appropriation of funds by CITY. CITY agrees to notify LESSEE of such non-appropriation at the earliest practicable time prior to the end of CITY's then current fiscal year. In the event of termination due to non-appropriation: CITY shall be totally relieved of and have no further maintenance and financial obligations under this Lease, from and after the end of CITY's then current fiscal year; and, if LESSEE desires to continue using the Leased Premises after the end of CITY's then current fiscal year, LESSEE shall, within 30 days after LESSEE's receipt of the City Termination Notice, notify CITY that LESSEE will assume all of CITY's maintenance and financial obligations under this Lease for the period from the end of the CITY's then current fiscal year until the earlier of the City End Date or the date LESSEE ceases using the Leased Premises.

LESSEE may terminate this Lease by delivering written notice ("Lessee Termination Notice") to CITY in accordance with the provisions set forth below in this paragraph of this Section 11. If LESSEE has not received a City Termination Notice, then the Lessee Termination Notice shall specify the effective date of the termination of the Term (the "Lessee End Date"), which must be no earlier than eighteen (18) months following CITY's receipt of the Lessee Termination Notice. If LESSEE has received a City Termination Notice, then the Lessee End Date specified in the Lessee Termination Notice must be no earlier than thirty (30) days following LESSEE's receipt of the City Termination Notice. Upon and following delivery and receipt of the Lessee Termination Notice in accordance with this Section 11, the Lessee End Date shall be the last day of the Term, as if the Lessee End Date had been the date originally designated to be the last day of the Term. All services being performed under this Lease shall cease upon the Lessee End Date. In no event shall LESSEE be liable to CITY for any losses or for exemplary or punitive damages suffered by CITY as a result of termination in accordance with this Section 11.

## **SECTION 12. DEFAULT**

It is agreed between the parties that in case at any time default shall be made by LESSEE in the performance of any of the terms, conditions or covenants required by this Lease to be performed by LESSEE, and said default shall continue for a period of sixty (60) days after the service of written notice of such default by CITY to LESSEE or if the default is of such a nature that it could not reasonably be cured within such 60-day period and LESSEE does not within said 60-day period commence to cure it and thereafter proceeds with due diligence to cure it, then CITY may: (i) enter into and upon the Leased Premises or any part thereof and repossess the same, with or without terminating this Lease, and without prejudice to any other remedy CITY might have, without being liable for prosecution or any claim of damage thereof, (ii) terminate this Lease, or (iii) re-let the whole of the Leased Premises or any portion thereof, on such terms on which CITY may deem reasonable. In the event of any such termination of this Lease, reentry or dispossession, LESSEE shall pay to CITY, on demand, the amount of the loss



and damage, which CITY may suffer by reason of such breach, for and during the period through (but not after) the date of such termination, reentry or dispossession.

LESSEE's sole and exclusive remedy in the event of CITY's default of any obligation other than payment or use of money or the covenant of quiet enjoyment shall be termination of this Lease after providing CITY 60 days written notice and opportunity to cure.

### **SECTION 13. QUIET ENJOYMENT**

CITY covenants that it has good, right, and lawful authority to execute this Lease, and that throughout the term hereof, LESSEE shall have, hold and enjoy peaceful and uninterrupted possession of the Leased Premises, subject always to the performance of the covenants, as herein provided to be performed by LESSEE, and to compliance with any and all zoning and municipal codes and regulations, and any and all restrictions, easements, covenants, conditions, interest, instruments and encumbrances of record in Dallas County Real Property Records.

### **SECTION 14. NO WAIVER OF RIGHT TO DECLARE FORFEITURE**

Any failure or neglect of CITY or LESSEE at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder shall not be taken or considered as a waiver of the rights thereafter to declare a forfeiture for like or other or succeeding breach or default.

### **SECTION 15. SURRENDER OF LEASED PREMISES**

LESSEE covenants and agrees to yield and deliver peaceably to CITY possession of the Leased Premises on the date of cessation of the letting, whether such be by termination, expiration or otherwise, promptly and in as good condition as at the commencement of the letting, except for damage by casualty or for reasonable wear and tear arising from the use of the Leased Premises to the extent permitted elsewhere in this Lease.

### **SECTION 16. LIABILITY**

CITY and its agents shall not be liable to LESSEE or to LESSEE's employees, agents, patrons, visitors, invitees associates or any other persons for (i) the accuracy and competency of their designs, reports, information, and other documents or services, (ii) any defect error or omission in the documents prepared by LESSEE, its employees, agents or associates (iii) any injury to any such persons or any damage to personal property occurring on the Lease Premises caused by the negligence or misconduct of LESSEE and its employees, agents, patrons, visitors, invitees associates or any other persons. The CITY nor its agents shall be liable or responsible for any damage that may occur due to fire, explosion, flood, power failure or any other cause, to LESSEE's business personal property, including, but not limited to goods, merchandise,



equipment, or inventory that is kept in the Leased Premises, nor to LESSEE's employee's, agents, patrons, visitors, invitees associates or any other persons personal property or belongings that is brought to the Leased Premises.

## **SECTION 17. INDEMNIFICATION**

LESSEE agrees to defend, indemnify, and hold the CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any persons or persons, that may arise out of or be occasioned by the LESSEE's use, occupancy and maintenance of the Leased Premises or LESSEE's installations and improvements within the Leased Premises, from any act or omission of any representative, agent, resident, and/or employee of LESSEE, by LESSEE's breach of any of the terms or provisions of this Lease, or by any negligent or strictly liable act or omission of LESSEE, its officers, agents, associates, employees or subcontractors in the use, occupancy and maintenance of the Leased Premises or LESSEE's installations and improvements within the Leased Premises; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the LESSEE and the CITY, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the Parties under Texas law. The provisions of this paragraph are solely for benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **SECTION 18. FIRE AND OTHER CASUALTIES**

If the Leased Premises, or any portion thereof, are damaged by fire or other casualty, LESSEE shall give immediate notice thereof to CITY, and this Lease shall continue in full force and effect except as hereinafter set forth.

A. If the Leased Premises are damaged by fire or other casualty, any damage shall be repaired by and at the expense of CITY subject to appropriation and approval of the City Council, provided that CITY will be entitled to receive, in trust, and apply to such repair all insurance proceeds paid by reason of the subject casualty under any casualty insurance policy required by this Lease to be maintained by LESSEE. CITY shall commence any repairs required by this paragraph within 45 days of any said fire or other casualty, and shall exercise good-faith efforts to complete such repairs within a reasonable timeframe after the date of the subject fire or other casualty.

B. If the Leased Premises is not or cannot be repaired and restored within 270 days of said casualty, LESSEE or CITY may terminate the Lease as of the date of the fire or other casualty. In such event, the CITY shall receive and retain any and all casualty insurance proceeds for property that is or upon termination of this Lease would become property of CITY



and LESSEE shall have no claim thereto and the CITY shall thereby be relieved of all obligations to repair, rebuild, or restore.

C. Each policy of property insurance obtained by CITY or LESSEE that covers the Leased Premises or any property that is adjacent or affixed to the Leased Premises or that is located in, on or under the Leased Premises, or any portion of or interest in any of the foregoing, shall include a waiver of subrogation by or binding upon the insurers and of all rights based upon an assignment from its insured, against CITY or LESSEE, their officers, directors, employees, managers, agents, and invitees, in connection with any loss or damage thereby insured against, **EVEN IF THE SAME IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY.** Notwithstanding anything to the contrary set forth in this Lease, except as provided and referred to in the next sentence, neither party nor its officers, directors, employees, managers, agents, or invitees shall be liable to the other for loss or damage caused by any risk coverable by property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, and invitees for such loss or damage, **EVEN IF THE SAME IS CAUSED BY THE NEGLIGENCE OF THE RELEASED PARTY.** LESSEE will provide proof of Fire Legal Liability (Damage to Rented Premises [per occurrence]) limit of \$1,000,000 as required in Section 8 of this Lease and per **Exhibit B** under LESSEE's Commercial General Liability insurance coverage, and nothing in this paragraph or elsewhere in the Lease shall limit the rights of CITY or the obligations of LESSEE with respect to said Fire Legal Liability insurance or the proceeds thereof. The failure of a party to insure its property shall not void this paragraph. Self-insurance by a party of its property shall not void this paragraph. For the purposes of this paragraph, as well as any other provision of this Lease to the extent such other provision relates to insurance of, or damage to or destruction of, the property described in this paragraph: the term "property insurance" means causes of loss - special form property insurance, or any broader form of property insurance typically carried by owners of facilities such as the Leased Premises; and, with respect to the waivers for the benefit of LESSEE set out in this paragraph (and any waivers or other provisions of similar effect elsewhere in this Lease), the LESSEE is a party and the term "LESSEE" includes the LESSEE under this Lease and any affiliates of LESSEE and any person or entity renting or using the Leased Premises under a contract or otherwise with the permission of LESSEE.

## **SECTION 19. CONDEMNATION**

If the Leased Premises, or any part thereof, or any building or improvement thereon, shall be taken or condemned in whole or in material part for public purposes or sold in lieu of condemnation, then the term of this Lease shall, at the option of either CITY or LESSEE, cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of CITY. LESSEE does hereby assign to CITY all of its right, title and interest in any and all condemnation award applicable to all or any part of or interest in the Leased Premises, improvements and/or this Lease.



## SECTION 20. CONFLICT OF INTEREST OF CITY EMPLOYEES

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Lease, to wit:

### “SEC.11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the CITY, or be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or services, except on behalf of the CITY as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the CITY. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the CITY shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally funded housing programs, to the extent permitted by applicable federal or state law. (Amend. of 8-12-89, Prop. No.1: Amend. of 8-12-89, Prop. No.15)”

## SECTION 21. GIFTS

CITY may terminate this Lease immediately if LESSEE has offered, conferred, or agreed to confer any benefit upon a CITY employee or official that the CITY employee or official is prohibited by law from accepting. (The CITY has been advised by the prosecuting authorities that the Section 36.10(4) exception to Sections 36.08 and 36.09 of the Texas Penal Code is not available to public servants who have no legal reporting requirements.)

For purposes of this section, “benefit” means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, CITY may require LESSEE to remove any employee of the LESSEE from the Leased Premises who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to LESSEE as a result of the improper offer, agreement to confer, or conferring of a benefit to a CITY employee or official.



## SECTION 22. NON-DISCRIMINATION

As a condition of this Lease, LESSEE covenants that LESSEE will take all necessary actions to insure that, in connection with this Lease, LESSEE, its employees, associates and contractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. LESSEE shall also comply with all applicable requirements of the employers under Americans with Disabilities Act, 42, U.S.C.A. §§121101-12213, as amended. In this regard, LESSEE will keep, retain and safeguard all records relating to this Lease or services performed hereunder for a minimum period of three (3) years, with full access allowed to authorized representatives of the CITY, upon request, for purposes of evaluating compliance with this and other provisions of this Lease.

## SECTION 23. SIGNS

LESSEE shall have the right to erect signs on the Leased Premises, provided that: (a) LESSEE shall bear the expense of all signs it places on the Leased Premises; (b) all new signs shall be designed to be reasonably compatible with the architectural qualities of the building; and (c) any and all new signs must be reviewed and approved by the Director and comply with all applicable ordinances and regulations.

## SECTION 24. GOVERNMENTAL REQUIREMENTS – RULES AND REGULATIONS

LESSEE shall comply with all laws, ordinances, orders, rules and regulations (municipal, state and federal) with reference to the use, occupancy or condition of the Leased Premises.

Except as otherwise set forth herein, LESSEE agrees to obtain, from all governmental authorities having jurisdiction, all licenses, certificates and permits necessary for the conduct of its operations, and to keep them current.

LESSEE covenants, represents and warrants unto CITY that LESSEE is a duly formed and validly existing non-profit corporation exempt from federal taxation under Section 501(C)(3), Internal Revenue Code of 1986, as amended, and will maintain said status at all times during the Term.

## SECTION 25. CONDITION OF LEASED PREMISES - NO REPRESENTATIONS OR WARRANTIES

**LESSEE has previously inspected the Leased Premises, has been given access to the records related to the Leased Premises, and accepts the Leased Premises for LESSEE's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis, subject to matters of record and zoning. LESSEE acknowledges and agrees that CITY has not**



made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (a) the value, nature quality or condition of the Leased Premises, including without limitation, the title, soil and utilities, (b) the income to be derived from the Leased Premises, (c) the suitability of the Leased Premises for any and all activities and uses which LESSEE may conduct thereon, (d) the compliance of improvements located at the Leased Premises or their operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Leased Premises, (f) the manner or quality of the construction or materials, if any, incorporated into the currently existing Leased Premises, (g) the manner, quality, state of repair or lack of repair of the currently existing Leased Premises, and (h) any other matter with respect to the Leased Premises, and specifically, that CITY has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Leased Premises of hazardous materials. LESSEE further acknowledges and agrees that, having been given the opportunity to inspect the Leased Premises, LESSEE is relying solely on its own investigation of the Leased Premises and not on any information provided or to be provided by CITY and agrees to accept the Leased Premises for use and waives all objections or claims against CITY arising from or related to the Leased Premises or for any hazardous materials on it. LESSEE further acknowledges and agrees that any information provided or to be provided with respect to the Leased Premises was obtained from a variety of sources and that 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. CITY is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Leased Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The term "hazardous materials" as used in this section shall mean any hazardous materials or hazardous substances 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.

## **SECTION 26. FORCE MAJEURE**

Neither CITY nor LESSEE shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reasons of strikes, boycotts, embargoes, shortages of materials, acts of God, war, riots, or rebellions, provided, however, that this Section shall not apply to the failure of LESSEE to pay any fees or charges specified under this Lease. In the event LESSEE is prevented from performing any of its obligations due to the above stated circumstances, it shall notify CITY in writing within a reasonable time following such circumstances. CITY, through its Director, shall notify LESSEE within 30 days whether CITY, in its sole discretion, concurs with the reasons for LESSEE's delays.



**SECTION 27. MECHANIC AND LABOR**

LESSEE agrees that LESSEE will not permit any claim of lien made by any mechanic, materialman, laborer, supplies, or other similar liens to stand against the Leased Premises for work or materials furnished to LESSEE in connection with any construction, improvements, maintenance, repair, presentation, performance or assemblies thereof made by LESSEE or any agents or representatives of LESSEE. LESSEE shall cause any such claim of lien to be fully discharged by payment or bonding within thirty (30) days after the date of filing thereof and in the event of bonding any such claimant shall be required to pursue the payment bond exclusively.

**SECTION 28. RELATIONSHIP OF PARTIES**

The relationship of the parties under this Lease is that of landlord and tenant. Where LESSEE is required to perform activities under this Lease for the benefit of the CITY, it shall do so in the capacity of an independent contractor in its relationship with the CITY and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how work is to be performed. No term or provision of this Lease or act of LESSEE in performing under the terms of this Lease shall be construed as making LESSEE the agent, servant, employee, partner or joint venturer of the CITY or making LESSEE or any of his employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which CITY provides its employees.

**SECTION 29. VENUE**

Should any legal action be instituted in connection with this Lease agreement, legal venue for all purposes shall lie exclusively in Dallas County, Texas. The terms and provisions hereof shall be governed and construed in accordance with the laws of the State of Texas and shall be binding upon and inure to the benefit of the successors and assigns of CITY and LESSEE.

**SECTION 30. MODIFICATION**

This Lease may be modified only by written agreement signed by CITY and LESSEE and neither party hereto has made any representations or promises except as contained herein.

**SECTION 31. LEASE ADMINISTRATION AND NOTICES.**

This Lease shall be administered on behalf of LESSEE by the President of the DSM Management Group, Inc. or his designee. All notices, communications, and reports required or permitted under this Lease or any other document or instrument referred to herein or executed in connection herewith must be given in writing and must be personally delivered or mailed by





prepaid certified or registered U.S. Mail, to the party to whom such notice or communication is directed, and to each person designated to receive a copy at the addresses of each such party set forth below. Subject to the other provisions of this Lease, any party may change its address (or redesignate the persons to whom such notice shall be delivered) for purposes of this Lease by giving notice of such change to the other party pursuant to this Section 30. Where the notice has been hand-delivered, notice shall be deemed communicated on the date of actual receipt. Where the notice has been delivered by U.S. Mail, notice shall be deemed communicated on the fifth day after it was mailed; except that if notice is mailed by prepaid certified mail, return receipt requested, notice shall be deemed communicated on the date of delivery communicated on the domestic return receipt.

If intended for CITY, to:

Director  
Office Cultural Affairs  
City of Dallas  
1925 Elm Street  
Dallas, Texas 75201  
Phone (214) 670-1404  
Fax (214) 948-4083

with a copy to:

Assistant Director  
City of Dallas  
Department of Development Services  
Real Estate Services Division  
320 E. Jefferson Blvd., Room 203  
Dallas, Texas 75203  
Phone (214) 948-4100  
Fax (214) 948-4083

With a copy to:

City Attorney  
City of Dallas  
City Hall  
1500 Marilla 7DS  
Dallas, Texas 75201  
Attn: Barbara Martinez  
Phone (214) 670-3481  
Fax (214) 670-0622

If intended for LESSEE, to:

Michael A. Jenkins,  
President and Managing Director  
DSM Management Group, Inc.  
The Music Hall at Fair Park  
909 First Avenue  
Dallas, Texas 75210  
Phone: (214) 421-5678 x105  
Fax No. (214) 565-0071

with a copy to:

Steven C. Metzger  
Metzger & McDonald, PLLC  
3626 N. Hall Street, Suite 800  
Dallas, Texas 75219-5133  
Phone (214) 740-5030  
Fax No. (214) 224-7555

## SECTION 32. SEVERABILITY

In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or



unenforceability shall not affect any other provision thereof and this Lease shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Lease.

**SECTION 33. COUNTERPARTS**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SECTION 34. CAPTIONS**

The captions to the various clauses of this Lease are for informational purposes only and shall not alter the substance of the terms and conditions of this contract.

**SECTION 35. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective, heirs, executors administrators, successors, and, except as otherwise provided in this Lease, their assigns.

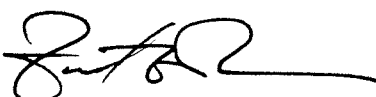
**SECTION 36. COMPLETE AGREEMENT**

This Lease embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Lease, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Lease.

**EXECUTED** this the \_\_\_\_ day of June, 2009, by CITY signing by and through its City Manager, duly authorized to execute same by resolution adopted by the City Council on May 13, 2009, and by the DSM Management Group, Inc. signing by and through its hereunto duly authorized officers.

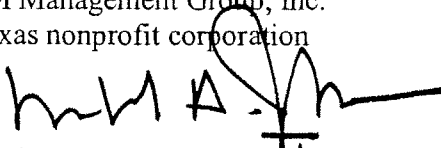
LANDLORD/CITY:

CITY OF DALLAS  
Mary K. Suhm,  
CITY MANAGER

BY:   
Assistant City Manager


LESSEE:

DSM Management Group, Inc.  
a Texas nonprofit corporation


  
BY: MICHAEL A. JENKINS DIRECTOR  
Print Name & Title



APPROVED AS TO FORM:  
Thomas P. Perkins, Jr.,  
CITY ATTORNEY

BY:   
Assistant City Attorney 

RECOMMENDED BY DIRECTOR

  
\_\_\_\_\_  
Maria Munoz-Blanco, Office of Cultural Affairs

Attachments:

- City Council Resolution No. 09-1226 approved on May 13, 2009
- Exhibit A** – Music Hall Property Description
- Exhibit B** – Insurance Provisions



**WHEREAS**, the City of Dallas, a Texas municipal corporation, hereinafter referred to as City, owns certain improved property, known as the Music Hall, located in Fair Park, at 909 First Avenue, Dallas, Dallas County, Texas, consisting of a building of approximately 75,300 square feet of space, situated on lot 1A of City Block C/812 official records of the City of Dallas, ("lease premises"); and

**WHEREAS**, the City desires to lease said approximately 75,300 square feet building to the DSM Management Group, Inc., a Texas nonprofit corporation, as Lessee, upon the special conditions, as herein provided to operate same as a music and theatrical venue for the public under the direction of the Director of the Office of Cultural Affairs ("Director"); and

**WHEREAS**, the term of the lease agreement ("the lease") will be for a twenty (20) year period commencing on July 1, 2009 and ending June 31, 2029 ("Primary Term") with the option to extend the lease for four additional five (5) year renewal terms ("Renewal Option Terms"); and

**WHEREAS**, pursuant to the local government code, a municipality may transfer an interest in real property to a nonprofit corporation without complying with its notice and bidding requirements, subject to the nonprofit organization using the property in a manner that primarily promotes a public purpose of the municipality; and

**WHEREAS**, the DSM Management Group, Inc., a Texas non-profit corporation has been operating, maintaining and managing the Music Hall (the "Facility") for presentation of plays, recitals, concerts, lectures, musical theater and dance performances, meetings, other assemblies, and other similar or appropriate purposes, and desires to continue its occupancy,

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Manager is hereby authorized to execute a lease agreement with DSM Management Group, Inc, a Texas non-profit corporation, as Lessee, upon approval as to form by the City Attorney, for an approximately 75,300 square feet building, known as the Music Hall located in Fair Park at 909 First Avenue, Dallas, Dallas County, Texas for the management, use and operation of a musical and theatrical venue for the benefit of the public.



**SECTION 2.** That the special terms and conditions of the lease agreement are:

- a) The lease is for a 20 year period beginning July 1, 2009 ("Lease Commencement Date"); and ending June 30, 2029, ("Primary Term") with the option to extend the lease for four additional five (5) year Renewal Option Terms, with six (6) months prior written notice to City; provided however, that City and Lessee retain the right to terminate the Lease for convenience with advance written notice; and
- b) The Lessee's annual rental during the Primary Term and Renewal Option Terms shall be \$1.00 and as additional consideration the performance of other obligations; and
- c) The Lease operation shall not interfere with the annual State Fair of Texas exposition as defined in the "State Fair Agreement," dated August 28, 2002 between the City and State Fair Association without the prior written consent of the Director; and
- d) The Lessee as additional consideration shall pay when due any and all operational expenses and taxes, if any, applicable to Lessee's property and operations, and obtain the required insurance; and
- e) As additional consideration the Lessee shall establish, operate and maintain a separate operational fund account ("Operating Account") for the Facility in an interest bearing account in a federally chartered bank or other institution that maintains offices in Dallas, Dallas County, Texas and deposit funds equal to \$100,000 per year payable in one lump sum or four equal installments of \$25,000, deposited not later then the 15<sup>th</sup> day of the following months, July, October, January and April; and
- f) The Lessee may utilize Operating Account funds for all ordinary and customary operating expense of the Facility, including, but not limited to office supplies, building operating expenses, routine maintenance expenses, insurance and utilities; and
- g) As further and additional consideration, Lessee shall establish, operate and maintain a separate special maintenance fund account ("Maintenance Account") for the Facility in an interest bearing account in a federally chartered bank or other institution that maintains offices in Dallas, Dallas County, Texas and deposit eight percent (8%) of the gross revenues collected, less sales and use taxes collected and paid, from food and beverage sales; and

A handwritten signature in black ink, appearing to be the initials 'HJR' followed by a stylized flourish.

SECTION 2. (Continued)

- h) The Lessee may utilize Maintenance Account funds for long-term and special major maintenance expenses to the Facility, with written approval of the Director for all expenditures, with such approval of the Director being final and binding; and
- i) All funds in the Operating Account and Maintenance Account shall be the property of Lessee, however upon termination of the lease any unexpended and uncommitted funds in the Operating and Maintenance Accounts shall immediately become the property of the City. The Lessee shall transfer said Accounts to City or its successor operator no later than thirty (30) days after the termination of the Lease; and
- j) The Lessee may levy a facility fee initially \$2.50 per paid admission for rental of Venue, such fees may be adjusted to increase or decrease by Lessee, with prior written approval from Director; and
- k) The Lessee shall cause to be paid from rental revenues collected the operational account and customary operating expense of the Facility, including, but not limited to, salaries and other compensation for staff, payroll taxes, payroll related benefits, office supplies, building operating expenses, routine maintenance expenses, and utilities; and
- l) The Lessee shall submit a copy of an annual report of revenues and expenditures from the Operating Account and the Maintenance Account to the Director no later than the anniversary of July 15th, each year during the Term; and
- m) The Lessee shall at its expense carry liability and worker's compensation insurance on the lease premises in such form and amounts as City shall require; and
- n) The Lessee shall obtain all necessary permits and licenses for the use of the lease premises contemplated by the lease and otherwise comply with all applicable laws and ordinances; and
- o) The lease premises shall be used by Lessee for presentation of plays, recitals, concerts, lectures, musical theater and dance performances, meetings, other assemblies, and other similar or appropriate purposes. In the event the lease premises are not used to operate such a facility in accordance with the provisions of the lease, City reserves the right to terminate this lease for convenience with advance written notice and opportunity to cure; and



**SECTION 2.** (Continued)

- p) The Lessee shall maintain and repair at its expense janitorial services, daily routine maintenance, further defined to include maintaining in good repair all equipment and systems, including, but not limited to, all electrical, mechanical and plumbing systems, including heating and air conditioning equipment, front and rear doors, light fixtures and bulb replacements, plumbing and floor drains, exhaust fans, windows, interior walls, ceiling and floors, exhibits, office, furnishings and security equipment in, constituting a part of and/or serving the lease premises; and
- q) The Lessee shall maintain the foundation, roof, exterior walls, exterior lighting, termites and pest extermination, exterior grounds, parking areas and all public and common areas of the lease premises; and
- r) The Lessee shall use good faith efforts to comply with the City's Good Faith Effort Plan; and
- s) The Lessee shall utilize Operating Account funds to pay all utility bills for water, gas, heat and electricity, used in connection with or chargeable against the lease premises; and
- t) In event of any cost to repair or replace a structural or mechanical failure of an essential building component exceeds the balance of the special major maintenance funds account for such payments, the City will repair or replace failed structure or component, subject to appropriation and required City approvals; and
- u) The City reserves the right to terminate the lease on the last day of the then current fiscal year in the event of non-appropriation of funds by City. City shall notify Lessee of such non-appropriation at the earliest practicable time prior to the end of City's then current fiscal year, at which time Lessee may avoid termination by Lessor due to non-appropriation by assuming all of City's maintenance and financial obligations under the lease and City shall be totally relieved from same.

**SECTION 3.** That the City Controller be and is hereby authorized to deposit all revenue received from this transaction in Fund 0338, Department OCA, Unit 6642, Revenue Source 8411.



COUNCIL CHAMBER

**09-1226**

May 13, 2009

**SECTION 4.** That this resolution shall take effect immediately from and after passage in accordance with provisions of the Charter of the City of Dallas, and it is according so resolved.

**APPROVED AS TO FORM:**

**THOMAS P. PERKINS, JR.**

City Attorney

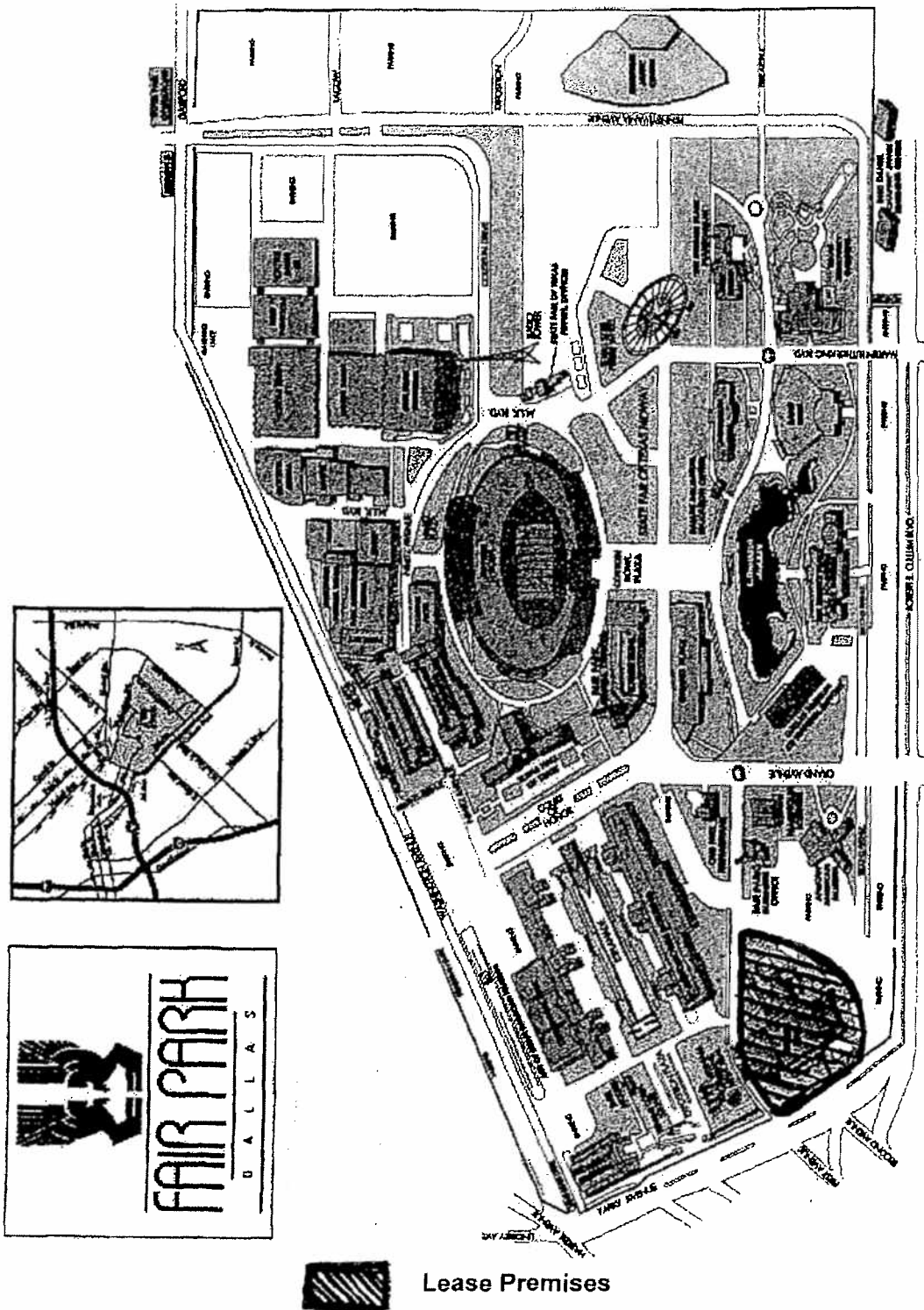
BY:

  
Assistant City Attorney





# Exhibit A Music Hall – Fair Park



**Exhibit B**  
**Insurance Requirements**

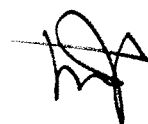
**SECTION A.** Prior to the approval of this lease by the CITY, DSM Management Group, Inc. (LESSEE) shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **REQUIRED PROVISIONS** b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

**SECTION B.** The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The LESSEE agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract). Upon request by CITY, LESSEE shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

**INSURANCE COVERAGE REQUIRED**

**SECTION C.** Subject to LESSEE'S right to maintain reasonable deductibles, LESSEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at LESSEE'S sole expense, insurance coverage in the following type(s) and amounts:

1. **Workers' Compensation** with statutory limits; **Employers Liability** with minimum limits for bodily injury: a) by accident, \$100,000 per each accident b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
2. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
3. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate. Additional coverage shall include: Fire Legal Liability limit of \$1,000,000; Liquor Liability limit of \$1,000,000 if alcoholic beverages provided. If this insurance is written on a claims-made form, coverage



shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

### REQUIRED PROVISIONS

LESSEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Office of Special Events, Attention: David Fisher, Assistant Director, 1925 Elm Street, Dallas, Texas 75201 and
  - (ii) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the LESSEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in **REQUIRED PROVISIONS b.(i)** as the Certificate Holder.

**SECTION D.** (1) Without limiting any of the other obligations or liabilities of the LESSEE, the LESSEE shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the term of the contract, levels of insurance that are necessary and appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the LESSEE as an additional insured. (2) The LESSEE shall obtain and monitor the certificates of insurance from each Subcontractor. The LESSEE



must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

**SECTION E.** Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the LESSEE or its subcontractors shall not relieve the LESSEE of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the LESSEE from liability.

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.