

RECEIVED

2021 FEB-1 PM 12: 50
CITYSECRETARY
DALLASTEXAS

19-1905

RESIDENT COMPANY USE AGREEMENT

between

THE CITY OF DALLAS

and

**CARA MIA THEATER CO.
("CARA MIA")**

Dated as of January 29, 2021

**RESIDENT COMPANY USE AGREEMENT
INDEX**

<u>Article</u>	<u>Page</u>
ARTICLE 1 Premises	3
1.1 Premises	3
ARTICLE 2 Term	3
2.1 Term	3
2.2 Renewal Options	4
2.3 Termination	4
ARTICLE 3 Rent	4
3.1 Rent	4
3.2 Additional Rent	5
3.3 Additional Consideration	5
3.4 Facility Fee	6
3.5 No Abatement or Offset	6
3.6 Security Deposit	6
ARTICLE 4 Real Estate Taxes	6
4.1 Real Estate Taxes	6
ARTICLE 5 CARA MIA's Acceptance and General Use of the Premises	6
5.1 Access and Delivery of Possession	6
5.2 Condition of Premises	7
5.3 Prohibited Uses	7
5.4 Programming	8
5.5 Revenues	8
5.6 Use of Common Facilities; Parking	9
5.7 Compliance with Laws	9
5.8 Additional Requirements	9
5.9 Branding, Recognition and Marketing	12
5.10 Concessionaire and Vendor Contracts	12
5.11 Naming and Sponsorship	12
5.12 Fees and Charges	13
5.13 Contracts Related to Management and Operation of the Premises; General Provisions	13
ARTICLE 6 Use by the City; City's Right of Entry	14
6.1 License	14
6.2 City Right of Entry	15
ARTICLE 7 Abatement of Nuisances	15
7.1 Abatement of Nuisances	15
ARTICLE 8 Maintenance and Upkeep of the Premises	15
8.1 Maintenance and Upkeep of the Premises	15
ARTICLE 9 Improvements	15
9.1 Improvements	16
9.2 Ownership	16
9.3 Condition of Premises; Disclaimer	16

9.4	Alterations, Additions and Improvements	17
9.5	Personal Property	18
ARTICLE 10	Insurance and Indemnification	18
10.1	The City's Insurance Obligation	18
10.2	CARA MIA's Insurance Obligation	18
10.3	Indemnity	18
ARTICLE 11	Repair, Maintenance and Security.....	19
11.1	CARA Mia Obligation/Care of Premisis	19
11.2	Routine Maintenance and Security	19
11.3	Capital Maintenance	19
11.4	Cara Mia's Repairs	19
11.5	Right of the City to Make Repairs	20
11.6	Signs.....	20
ARTICLE 12	Casualty and Condemnation	20
12.1	Casualty.....	20
12.2	Condemnation	21
ARTICLE 13	Assignment and Subletting	22
13.1	Assignment and Subletting	22
ARTICLE 14	Business Inclusion and Development Plan	22
14.1	Business Inclusion and Development Plan	22
ARTICLE 15	Default and Remedies.....	22
15.1	CARA MIA Default.....	22
15.2	City's Remedies	23
15.3	City's Default.....	23
15.4	CARA MIA's Remedies	24
15.5	No Waiver or Forbearance	24
ARTICLE 16	Quiet Enjoyment; City's Right to Relocate Licensee	24
16.1	Quiet Enjoyment	24
16.2	City's Right to Relocate Licensee	24
ARTICLE 17	Holdover	24
17.1	Holding Over by CARA MIA.....	24
ARTICLE 18	Notice	25
18.1	Notices and Payments	25
ARTICLE 19	Financing	26
19.1	No Mortgage on the City's Interests	26
ARTICLE 20	Miscellaneous	26
20.1	Commissions.....	26
20.2	Representatives	26
20.3	Copyright Indemnification.....	26
20.4	Recording.....	27
20.5	Late Charge and Interest	27
20.6	Survival.....	27
20.7	Captions	27
20.8	Construction.....	27
20.9	Successors and Assigns.....	27

20.10	Entire Agreement	27
20.11	Severability; Partial Invalidity	28
20.12	No Joint Ventures	28
20.13	Governing Law	28
20.14	Inspection	28
20.15	No Third Party Beneficiaries	28
20.16	Waiver of Default/No Implied Waiver	28
20.17	Nondiscrimination.....	28
20.18	Place of Performance of Obligations and Venue	30
20.19	Cumulative Remedies	30
20.20	Force Majeure	30
20.21	Offset.....	30
20.22	Notice of Contract Claim	30
20.23	Relationship of the Parties; No Partnership	30
20.24	Conflict of Interest	31
20.25	Gift to Public Servant.....	31
20.26	Language.....	32
20.27	Estoppel Certificate.....	32
20.28	Counterparts	32
20.29	Right to Enjoin.....	32
20.30	Right of Review and Audit	33
20.31	Time of Essence	33

Exhibits

- A Legal Description of the Land
- B Use Contract Sample

RESIDENT COMPANY USE AGREEMENT

THIS RESIDENT COMPANY USE AGREEMENT (this “Agreement”) is made and entered this 29th day of January, 2021, but effective as of October 1, 2021 (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 CARA MIA THEATER CO., a Texas non-profit corporation (the “CARA MIA”).

RECITALS

WHEREAS, the City is the owner of the Latino Cultural Center (the “LCC” or “Latino Cultural 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; and

WHEREAS, the City spent \$5.6 million to build the LCC to serve as a regional catalyst for the preservation, promotion and development of Latino and Hispanic arts and culture, and private contributions were \$4.2 million; and

WHEREAS, the LCC opened on September 16, 2003 and has since served over 500,000 people; and

WHEREAS, \$4.3 million was available from 2006 Bond Funds for the design and construction of the Latino Cultural Center Phase II; and

WHEREAS, on February 13, 2019, the City Council authorized a professional services contract with Good Fulton & Farrell, Inc. d/b/a GFF, Inc. for architectural and engineering design, and construction administration services for the LCC; and

WHEREAS, the contract authorized by City Council on February 13, 2019 provides for the design and construction administration services for a new multi-form theater and adjoining spaces at the LCC; and

WHEREAS, the Dallas Cultural Plan 2018 emphasized the priorities of Equity, Diversity, Space, Support for Artists, and a Sustainable Arts Ecosystem, and the city’s two largest Latinx theater companies, CARA MIA and Teatro Hispano de Dallas (“Teatro Dallas”), are desirous of growing into a new theater space; and

WHEREAS, CARA MIA and Teatro Dallas have a long history of presenting compelling works about the diverse experiences of Latinx communities to audiences in Dallas and at the LCC, and the City is desirous of providing each of them with a residency opportunity at the LCC; and

WHEREAS, the City and CARA MIA, and the City and Teatro Dallas desire to enter into use agreements for the creation of a resident theater company status at the LCC, whereby CARA MIA and Teatro Dallas would have resident theater company status and use priorities in the LCC multi-form theater and Oak Farms Dairy Performance Hall portions of the LCC, and which would mark the LCC as the first municipal arts center in the United States to boast of two professional resident Latinx theater companies, setting a new standard for equitable representation for Latinx theater in the nation; and

WHEREAS, as a resident theater company user of the LCC, CARA MIA commits to and shall use the LCC as CARA MIA's primary performance venue locale in the City and nation; and

WHEREAS, CARA MIA is a Texas non-profit corporation established and existing under Texas law; and

WHEREAS, in consideration for CARA MIA's commitment to use the LCC as its primary and priority performance venue as further described in this Agreement, the City is willing and does by this Agreement elevate CARA MIA to a status of a resident company user of the LCC, in same fashion as City agrees to and has done for Teatro Dallas in a concurrent but separate agreement, wherein the LCC multi-form theater and Oak Farms Dairy Performance Hall portions of the LCC shall be made available to CARA MIA on a priority basis to be used by CARA MIA, subject to and in accordance with the use terms set forth in this Agreement; and

WHEREAS, as part of the consideration for City's grant of resident company user status in the LCC, CARA MIA agrees to cooperate with City and Teatro Dallas and actively undertake a fundraising campaign to raise \$500,000 for a capital improvement fund toward the design, development and construction of betterments to the multifunction theater space and supporting areas, which may include but are not limited to seating and audio-visual enhancement.

NOW, THEREFORE, the City and CARA MIA, for and in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby agree to the following:

AGREEMENT

In consideration of the covenants and agreements hereinafter set forth to be kept and performed by the parties hereto, the City does hereby elevate CARA MIA to a status of a resident company user of the LCC, in same fashion as City agrees to and has done for Teatro Dallas in a concurrent but separate agreement, and does hereby grant a license to CARA MIA and CARA MIA does hereby accept a license for priority use over certain portions of the LCC, during a cumulative period of between twelve to sixteen/twenty weeks annually as hereinafter described, during the Term, at the rental and subject to and upon the terms and conditions set forth in this Agreement and in an applicable supplemental Use Contract(s), as said term is

defined hereinafter, to be entered into by the parties that shall be applicable for each annual possession turnover period during the Term. The applicable annual Use Contract(s) shall serve to supplement this Agreement and shall be substantially in the form attached hereto as Exhibit B, (hereafter the “Use Contract”), which Exhibit B, may be amended from time to time by the City during the Term but which shall always be in the form utilized by the City to contract with any intended third party user of the Latino Cultural Center. All applicable annual Use Contract(s) shall be incorporated into this Agreement for the purposes set forth therein and be binding on the parties in same manner as this Agreement shall be during the Term.

ARTICLE 1

Premises

1.1 Premises. The premises subject of and subject to this Agreement and the applicable Use Contract(s) shall consist only of those portions of the LCC comprised of the LCC multi-form theater and the Oak Farms Dairy Performance Hall and shall include as needed on a shared user basis any associated supporting spaces, including but not limited to dressing rooms, restrooms, locker rooms, and lobby areas, at the LCC, located at 2600 Live Oak Street in Dallas County, Texas; together with all the rights, privileges, and appurtenances belonging to or in any way pertaining to the property for its use by third parties, including ingress and egress as needed during CARA MIA’s use in accordance with this Agreement (collectively hereinafter the “Premises”). During the periods of use agreed to by the parties and set forth in supplemental Use Contract(s), CARA MIA will have access to the LCC theaters in accordance with industry standards for professional theater. CARA MIA acknowledges and agrees that the supporting spaces are not exclusive areas within the LCC, and the City may, notwithstanding CARA MIA’s use, make these areas available for concurrent use by other contracted third-party users of the LCC. Unless otherwise agreed to by the City in the then applicable Use Contract(s), CARA MIA shall be prohibited from taking any actions to exclude contracted third-party users from other areas of the LCC not included in the Premises or the supporting spaces.

ARTICLE 2

Term

2.1 Term. Subject to Section 3.3(a), CARA MIA agrees to use the Premises as a resident company for its performance purposes between twelve to sixteen/twenty weeks annually as hereinafter described, during the five (5) year term commencing on October 1, 2021 and expiring on September 30, 2026 (hereinafter the “Primary Term”) of this Agreement; provided, however, that the City shall have the right to terminate this lease as provided elsewhere herein. Annually, during the Term and at least 6 months in advance of the end of the City’s fiscal year or September 30th of each calendar year, CARA MIA shall notify the City of the respective weeks to be reserved for CARA MIA’s use. City and CARA MIA will then enter into a Use Contract applicable to those dates identified and intended for CARA MIA’s use. Each subsequent annual period of CARA MIA use will require a separate Use Contract before the Premises will be turned over to CARA MIA for CARA MIA’s use.

Without limiting any of the foregoing, CARA MIA acknowledges and agrees that as a resident company it, along with Teatro Dallas by a concurrent but separate agreement, will have first choice of dates for productions on the LCC calendar prior to any other user group. CARA MIA and Teatro Dallas will have an allotment of 16 weeks for a total of 4 productions per fiscal year in the multi-form theater space and the Oak Farms Dairy Performance Hall with at least 4 weeks in each space. CARA MIA will have the flexibility to increase its use period for any Term year from 16 weeks up to 20 weeks, but may do so only once during a single two consecutive City fiscal year period and for no more than a cumulative of 3 years during the Term; or CARA MIA may decrease its use period from sixteen (16) weeks to twelve (12) weeks for any Term year, but may do so only for a maximum of two (2) consecutive years during the Term. CARA MIA agrees that the allotment of dates shall operate to maintain at least twenty-four (24) weeks of use in any consecutive two (2) year period during the term.

CARA MIA commits to work together with Teatro Dallas to determine fair distribution of their respective allotted dates. In the event of a dispute regarding the allocation of dates, the LCC Manager will work with both companies to reach a resolution. CARA MIA acknowledges the tier system of other LCC core groups and Latinx users for general purpose rentals.

2.2 Renewal Options. The City hereby grants to CARA MIA the right and option to renew and extend the Term of this Agreement for four (4) consecutive renewal terms of five (5) 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. Unless otherwise agreed to by the parties in writing, upon CARA MIA’s extension of this Agreement, all of the other but then current terms, provisions and covenants of this Agreement shall apply to each Renewal Term. Provided CARA MIA is not in default under this Agreement or an event does not exist that with the giving of notice or passage of time or both would constitute an Event of Default hereunder, the CARA MIA may exercise a renewal option by delivering written notice of such exercise not later than one hundred eighty (180) days nor earlier than three hundred and sixty (360) days prior to the expiration of the Term then in effect. The Primary Term and any Renewal Term, which has been exercised, shall hereinafter collectively be described as the “Term”.

2.3 Termination. Notwithstanding anything contained in this Agreement to the contrary, the City has the right to terminate this Agreement without further liability thereunder in accordance with the terms set forth in the Use Contract, as may be amended from time to time during the Term.

ARTICLE 3

Rent

3.1 Rent. During the Primary Term, for each weekly possession period set forth in the applicable Use Contract(s), CARA MIA agrees to and shall pay weekly rent as follows:

Fiscal Year 2021	\$ 500.00
------------------	-----------

Fiscal Year 2022	\$ 750.00
Fiscal Year 2023	\$1,000.00
Fiscal Year 2024	\$1,250.00
Fiscal Year 2025	\$1,500.00

In accordance with the rental schedule set above, for each occasion or consecutive week period of CARA MIA's intended use of the Premises, the parties shall execute a Use Contract(s), and set out the entirety of rental due during such period of use set forth in the individual Use Contract(s).

Subsequent to the Primary Term, the City may increase the weekly rate by no more than 2.5% annually and will provide a twelve (12) month notice in advance of rate increases.

All payments of rent shall be made to the City in the manner set forth in the Use Contract.

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

3.3 Additional Consideration. As further and additional consideration for this Agreement CARA MIA has and will do the following:

- (a) CARA MIA will provide 12 to 20 weeks of cultural services per City fiscal year at the LCC in either the LCC multi-form theater space or the Oak Farms Dairy Performance Hall; and
- (b) CARA MIA will provide 10 free community-based events in the city of Dallas annually, both at the LCC and at other locations within the city of Dallas, and will brand these events as "Latino Cultural Center in the City; and
- (c) CARA MIA will provide free tickets to public schools located within the city of Dallas for three evening performances each City fiscal year, and will brand these performances as "Youth Nights at the Latino Cultural Center"; and
- (d) CARA MIA, in cooperation with Teatro Dallas and the City's Office of Arts and Culture will complete a consolidated capital campaign to raise a minimum of \$500,000.00 by March 31, 2021, for betterments to the multi-form theater space and supporting areas, which may include but are not limited to seating and audio-visual enhancement. CARA MIA, the City, and Teatro Dallas, as evidenced in a concurrent but separate agreement agree all funds raised in excess above the stated goal will be maintained in a reserve fund established for capital purchases and maintenance related to the Latino Cultural Center multi-form theater and Oak Farms Dairy Performance Hall, and supporting spaces. Any expenditure from the fund shall require prior written authorization of CARA MIA, the City by and

through the Director of Office of Arts and Culture, or his/her designee, and Teatro Dallas. CARA MIA shall work with Teatro Dallas, OAC leadership and LCC Management to provide quarterly updates/reports on the consolidated capital campaign including status of funds raised and pledges received.

- (e) CARA MIA, to extent presented with any naming opportunities for its use of the LCC, shall comply with the City's naming policy, namely Section (9) Cultural Venue Naming Policy of the Cultural Policy of the City of Dallas.

3.4 Facility Fee. During year four of the Primary Term, the parties agree to explore whether a portion of LCC rentals, including but not limited to rentals received from CARA MIA, shall be dedicated towards a maintenance and/or capital improvements fund for the LCC, which portion thereafter shall be deemed and function as a facility fee.

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

3.6 Security Deposit. The then applicable Use Contract(s) shall govern CARA MIA's obligation for any security deposit, as may be required by the Director during the Term. CARA MIA acknowledges that due to CARA MIA being elevated as a resident company user at the LCC, the City is heavily reliant on CARA MIA's commitment to perform as required under this Agreement, subject to the then applicable Use Contract(s); thus, CARA MIA agrees that any CARA MIA performance cancellations noticed to City within 120 days of the scheduled performance date may result in forfeiture of any security deposit in favor of the City.

ARTICLE 4

Real Estate Taxes

4.1 Real Estate Taxes. The parties recognize that under present tax laws, the City is not required to pay real estate taxes on the LCC, including the Premises. Should any such taxes at any time be assessed due to CARA MIA's use of the Premises, CARA MIA shall be responsible to pay all taxes arising out of CARA MIA's use. City may, at any time, at its expense contest and dispute any real estate taxes and special assessments lawfully levied or assessed against the Premises, and in such case the disputed item need not be paid until finally adjudged to be valid.

ARTICLE 5

CARA MIA's Acceptance and General Use of the Premises

5.1 Access and Possession. CARA MIA shall have access to the Premises upon the Effective Date; provided however actual possession and use of the Premises shall be turned over to CARA MIA by the City only during the allotment periods for performance and production

purposes in accordance with this Agreement and the then applicable Use Contract(s).

5.2 Condition of Premises. The Premises through Use Contract(s) shall be licensed to CARA MIA for priority use during the Term of this Agreement as a resident theater company per the terms of this Agreement and for no other purpose. Except as otherwise set forth in this Agreement, the Use Contract(s) shall govern the terms, conditions, and respective obligations of the parties during each period of CARA MIA's use of the Premises. Prior to each possession period, CARA MIA agrees it shall have made an independent investigation of the Premises and will have determined that the Premises is in all respects suitable for its intended use. CARA MIA hereby covenants and agrees that CARA MIA is familiar with the current condition of the Premises, and accepts the current and future condition of the Premises for use during its respective Use Contract(s) periods in adherence with the LCC's customary practice(s) for turnover of any portion of the LCC for use by a third party set forth in the then applicable Use Contract(s). Unless otherwise provided for in the then applicable Use Contract(s), during the term of this Agreement, the City shall have no obligation to make any modifications to the Premises or other portions of the LCC due to the nature of TEATRO DALLAS's intended use. Unless otherwise provided for in the then Use Contract(s), in its use of the Oak Farms Dairy Performance Hall, CARA MIA agrees it shall not modify the onstage configuration or create a black box setting at any time during the Term.

CARA MIA, agrees to cooperate with Teatro Dallas and the City in the allocation of weekly use during the Term. CARA MIA and Teatro Dallas will have first choice of dates for productions on the LCC calendar prior to any other user group. CARA MIA and Teatro Dallas will each have an allotment of 16 weeks for a total of 4 productions per fiscal year in the multi-form theater space and the Oak Farms Dairy Performance Hall with at least 4 weeks in each space. CARA MIA will have the flexibility to increase up to 20 weeks for up to two consecutive fiscal years for the duration of the Agreement or may decrease to 12 weeks for a maximum of two consecutive years for the duration of the Agreement.

CARA MIA acknowledges and agrees that as a resident company along with Teatro Dallas, CARA MIA and Teatro Dallas must work together to determine fair distribution of their allotted dates, and CARA MIA hereby commits to do so. All scheduling disputes shall be referred to the LCC Manager. In the event of a dispute, the LCC Manager will work with both resident companies together for a resolution. CARA MIA does hereby acknowledge the Tier system of other LCC core groups and Latinx users for general purpose rentals.

CARA MIA, as a resident company alongside Teatro Dallas, shall have access to the LCC theaters in accordance with industry standards for a professional theater.

5.3 Prohibited Uses. Without in any way limiting the foregoing section and the terms of the then applicable Use Contract, during its periods of use CARA MIA shall not permit the Premises to be used in any manner contrary to the intended uses and which would render the insurance thereon void or the insurance risk more hazardous. CARA MIA shall not use or occupy the Premises, or permit the 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 certificate of occupancy or permit affecting same, or which would cause structural injury to the improvements, or cause the value or usefulness of the Premises, or any part thereof, to diminish, or which constitutes a public or private nuisance or waste. CARA MIA shall not use or occupy the Premises, or permit the Premises to be used or occupied, in a manner which would be immoral or obscene or create a threat to the health, safety, and welfare of the general public; or, which would constitute an act of public or private discrimination, limitation of use, or exclusion from the Premises on the basis of race, color, religion, gender, age, national origin, citizenship, disability, or sexual orientation. CARA MIA shall not make any change in the building's name or public identification without the prior written consent of the City. CARA MIA shall not use or occupy the Premises or allow the Premises to be used or occupied in any manner that would violate or otherwise invalidate the tax-exempt status of Premises, CARA MIA and/or the City.

CARA MIA, during periods of use of the Premises, shall, at its sole cost and expense, be responsible for programming and staffing the Premises to carry out the purposes of its use as set forth in this Agreement, and for making any payments related thereunder. Unless otherwise provided for in the then applicable Use Contract(s), all personnel engaged by CARA MIA shall be considered employees and/or agents of CARA MIA and not employees or agents of the City or the LCC.

5.4 Programming. The parties acknowledge that a primary objective of this Agreement is to provide a resident company venue within the LCC for CARA MIA, one of two professional Latinx theater companies with a long history of creating impactful theater in the city of Dallas and beyond, and to support full seasons of Latinx performances and professional schedules for all rehearsals, technical rehearsals and performances for each production, according to industry standards. CARA MIA shall take all reasonable actions to maximize the utilization of the Premises. CARA MIA shall annually provide opportunities for underserved youth and adults throughout Dallas which include artistic, administrative and technical professional development as part of its commitment to Education and Workforce Development.

5.5 Revenues. During the Term, in accordance with its use rights granted and its operating obligations in this Agreement and the then applicable Use Contract(s), CARA MIA shall have and control all revenue generating opportunities at the Premises arising out of and ancillary to CARA MIA's programming and productions. CARA MIA shall have right to retain any and all revenue, income, proceeds and other amounts that may be generated from its use at or from the Premises. During its period of use, CARA MIA shall undertake to fully exploit said opportunities in a manner consistent with the public, community entertainment, performing arts, and cultural events purpose of the Premises and CARA MIA's non-profit foundation status. In addition, except as otherwise provided for in the then applicable Use Contract(s), CARA MIA 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 CARA MIA by the City. CARA MIA acknowledges that the Premises during periods of non-use by either CARA MIA or Teatro Dallas, who has the same concurrent but separate agreement, shall be operated and programmed by the City as part of ongoing LCC operations and any resultant revenues during City's operations shall belong solely to the City.

The parties agree that to the extent a conflict in the operating terms between this Agreement and the then applicable Use Contract(s), the terms set forth in the then applicable Use Contract(s) shall control for the applicable period of CARA MIA's use.

5.6 Use of Common Facilities; Parking. During the Term, CARA MIA shall have a non-exclusive easement, right and privilege for it and its permittees, and invitees, to use, as may be needed for CARA MIA's use of the Premises in accord with this Agreement and the then applicable Use Contract(s), the common facilities within that part of the LCC building campus which lies outside of the Premises in common with City and other occupants and their permittees. "Common Facilities" shall mean the parking areas, parking area lighting, streets, roads, driveways, fire corridors, aisles, sidewalks, landscaped areas, utility and sewer lines and systems, common restrooms, elevators, escalators, stairs, and other facilities and service areas for common use, whether or not shown on Exhibit A hereto or described in this Agreement, and any additions thereto or enlargements thereof, which are located anywhere within the LCC building campus and serve the Premises. CARA MIA and its permittee's use of the common facilities may be subject to charge in accordance with established rates applicable to the general public visiting the LCC and City shall have no reimbursement obligation under this Agreement.

Parking shall be in accord with terms set forth in an addendum to the then applicable Use Contract(s). City shall not be responsible to provide and or be liable for parking during CARA MIA's use of the Premises. To extent possible, the City and CARA MIA shall endeavor to coordinate plans to assure adequate parking is provided or available during periods of CARA MIA's use. City may establish fees to be charged for parking in available Premises parking consistent with prevailing market rates for comparable parking. All revenues derived from parking shall belong to the City, subject to this Agreement.

5.7 Compliance with Laws. CARA MIA agrees not to use the Premises for any use or purpose in violation of any valid and 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 CARA MIA of this provision (i) so long as CARA MIA shall, in good faith within a reasonable time after CARA MIA 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 CARA MIA 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 Premises, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture. CARA MIA shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by CARA MIA, its officers, agents, or employees, in or upon or connected with the Premises and shall pay for the costs of compliance.

5.8 Additional Requirements. During the Term, in accordance with the then applicable Use Contract(s), CARA MIA shall be responsible for and shall take all reasonable action necessary for the programming of the Premises as required under this Agreement,

including without limitation the following:

- (a) CARA MIA will provide 12 to 20 weeks of cultural services per City fiscal year at the LCC in either the LCC multi-form theater space or the Oak Farms Dairy Performance Hall; and
- (b) CARA MIA will continue to launch local, regional and national tours in educational, community and professional settings, serving as a bridge to intergenerational, multilingual and multi-ethnic communities. To that end, CARA MIA will present 10 free community-based events in the city of Dallas annually, both at the LCC and at other locations within the city of Dallas, and will brand these events as “Latino Cultural Center in the City”;
- (c) CARA MIA will provide free tickets to public schools located within the city of Dallas for three (3) evening performances annually, and will brand these performances as “Youth Nights at the Latino Cultural Center”;
- (d) CARA MIA will continue to develop or present new works/commissions, and annually provide professional training for local ALAANA (African, Latinx, Arab, Asian, and Native American) artists in a variety of areas related to the performing arts, such as acting, directing, stagecraft, playwrighting and arts administration during the term of this Agreement;
- (e) CARA MIA shall program the Premises as a first-class multi-form theater space for the holding of theater, dance, and concert performances and other events;
- (f) assure that all events scheduled in the Premises during the Term are compatible with a community performing arts complex of this nature;
- (g) provide professional programming to schedule and promote the maximum utilization of the Premises;
- (h) provide tickets takers, ushers, security guards and other personnel necessary for the safe, efficient and first-class operation of the Premises, as may be necessary by CARA MIA’s programming;
- (i) prepare and submit to the City annual budgets and other financial reports, in accordance with Office of Arts and Culture Funding Program requirements;
- (j) collect and account for all Premises 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 CARA MIA for the Premises;

- (k) 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 Premises as are necessary or required in the opinion of CARA MIA; provided, however, no such legal action by CARA MIA that requires joinder of the City will be required of CARA MIA unless the City so participates;
- (l) employ, pay, supervise and discharge all personnel CARA MIA determines to be necessary for the programming of the Premises;
- (m) purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the programming of the Premises;
- (n) maintain the Premises in a good, safe, attractive, sanitary order and repair consistent with the industry standards and practices;
- (o) comply and adhere to any established preventive maintenance programs for the Premises and its machinery and equipment;
- (p) maintain or cause to be maintained all necessary licenses, permits and authorizations for the programming of the Premises;
- (q) pay all legally due taxes and assessments attributable to the Premises 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 Premises or the City's interest therein. All payments by CARA MIA of taxes and/or assessments shall be made by CARA MIA on or before thirty (30) days before the last day on which such payments may be made without penalty or interest; provided, however, CARA MIA 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 CARA MIA shall not be obligated to make such payments. CARA MIA shall furnish to City receipts or other appropriate evidence establishing the payment of such amounts;
- (r) promptly furnish to City such reports and other information concerning the Premises and the programming hereof as may be reasonably requested from time to time by the Director;
- (s) procure and maintain in force all insurance policies relating to the Premises and in connection with CARA MIA's operation of same, as may be required by this Agreement;
- (t) develop and implement a meaningful program of community outreach, enrichment and education in coordination with performance offerings and events

at the Premises, with a particular emphasis on youth, seniors, and historically underserved communities; and

- (u) maintenance of the Premises in a good, safe, clean and attractive condition and in compliance with applicable laws.

5.9 Branding, Recognition and Marketing.

- (a) During the Term, CARA MIA shall plan, prepare, implement, coordinate and supervise all advertising, public relations and other promotional programs for the Premises and shall negotiate, execute (in its own name and not the name of the City) and perform all contracts for such Premises promotions. Any such arrangements shall (i) not exceed the Term of this Agreement unless the City in writing waives this requirement, (ii) terminate or be assumable, at the City's election, upon the expiration of the Agreement, (iii) in no way obligate, commit or bind City unless assumed by the City, (iv) be of a first-class quality and suitable for public facilities of this nature, and (v) be on commercially reasonable terms and consistent with industry standards and good practices. Cross-promotion of the Premises, or the LCC, with other Downtown venues, institutions and events is a prime objective and shall be exploited by CARA MIA whenever practical. CARA MIA agrees to acknowledge the City of Dallas in all appropriate printed materials in form reasonably acceptable to the City.
- (b) The City, with funds from the capital improvement fund, shall take action to improve the exterior of the LCC so that the outside wall of the LCC multi-form black box will prominently read: **"Home of Cara Mía Theater and Teatro Dallas."** Prominent signage in the lobby of the LCC multi-form theater space agreed to by all parties will display resident company status of CARA MIA and Teatro Dallas. In the event signage changes are desired, all expenses are to be borne solely by the requester and said changes are subject to the agreement by the LCC Manager.
- (c) CARA MIA will attribute "resident theater company of the City of Dallas Latino Cultural Center" or similar language on all marketing materials even in partnership at off-site locations.
- (d) Latino Cultural Center management and CARA MIA will create a collaborative marketing plan each fiscal year to promote each CARA MIA production and event at the Latino Cultural Center, which collaborative marketing plan may be subject to change by the parties as needed in the then applicable Use Contract(s).

5.10 Concessionaire and Vendor Contracts. Pursuant to applicable Use Contract(s) terms, CARA MIA may during their periods of possession and use have the right to negotiate and execute and perform vendor contracts involving the Premises and other areas of the LCC with City consent.

5.11 Naming and Sponsorship. CARA MIA, if presented with any naming

opportunities for its use of the LCC, shall comply with the City's naming policy, namely Section (9) Cultural Venue Naming Policy of the Cultural Policy of the City of Dallas. If permissible under the Naming Policy, CARA MIA shall have the right to contract for and grant sponsorships, advertising space and naming rights for facilities, events, programs, and advertising panels involving the Premises (subject to applicable laws, zoning and ordinances). Any such arrangements shall (i) not exceed the Term of this Agreement unless the City in writing waives this requirement, (ii) terminate or be assumable, at the City's election, upon the expiration of the Agreement, (iii) in no way obligate, commit or bind City unless assumed by the City, (iv) be of a first-class quality, tasteful, attractive, and suitable for public facilities of this nature, and (v) be on commercially reasonable terms and consistent with industry standards and good practices. Sponsorships, advertising and/or naming rights involving the Premises shall not promote, advertise or relate to alcohol or tobacco products or companies or be of a non-commercial or cause-oriented nature (e.g. promoting or criticizing a political party, public official or candidate; a political or social cause or movement; or a religion or religious establishment or movement) and 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 sponsor selected by CARA MIA is not a private individual (i.e. a business, commercial enterprise or group) CARA MIA's selection of such sponsor shall be subject to the prior consent of the City, which consent shall not be unreasonably withheld or delayed and which consent shall be given by the City without economic compensation to the City or other conditions.

5.12 Fees and Charges. During the term, subject to the then applicable Use Contract(s), CARA MIA 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 Premises 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 CARA MIA toward the design, development, construction, renovation, equipping, operation and maintenance of the Latino Cultural Center and the CARA MIA's promotion and furtherance of the performing arts at the Latino Cultural Center and its performance under this Agreement.

5.13 Contracts Related to Programming of the Premises; General Provisions.

- (a) General Requirements. During the term, subject to the terms of the then applicable Use Contract(s), any CARA MIA contracts (sometimes hereinafter collectively referred to as the "Resident Company User Contracts") in connection with CARA MIA's use and programming of the Premises, including without limitation vendor contracts, shall: (i) require the contractor to use good faith efforts to comply with the City's Business Inclusion and Development Plan ("BID"), (ii) terminate upon termination of this Agreement unless the City, at its sole option, elects to assume the specific Resident Company User Contract(s), (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 CARA MIA'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 CARA MIA RESIDENT COMPANY USE AGREEMENT FOR THE LCC MULTI-FORM THEATER AND THE OAK FARMS DAIRY PERFORMANCE HALL BETWEEN THE CITY OF DALLAS AND CARA MIA (THE “AGREEMENT”), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE, IN THE EVENT OF THE TERMINATION OF SAID 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 list of all Resident Company User Contracts, including the parties thereto, the primary purpose thereof and applicable contract, agreement or license fees, shall be maintained by CARA MIA, and, upon the request of City, CARA MIA 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 Resident Company User Contracts for compliance with the requirements of this Agreement at CARA MIA’s office during normal business hours.

ARTICLE 6

Use by the City; City’s Right of Entry

6.1 Use by the City. Except as may be necessary in the exercise of its police power, notwithstanding the other terms hereof, the City shall have no right, authority, and power to use and occupy the Premises, or any portion thereof, and/or to cause or permit others to use and occupy the Premises, or any portion thereof, during the periods allocated to CARA MIA for its resident company purposes pursuant to this Agreement and the then applicable Use Contract(s), without the express written consent of CARA MIA.

6.2 City Right of Entry. CARA MIA acknowledges that the City may need to gain access to the Premises on occasion during CARA MIA's periods of actual possession under the then applicable Use Contract(s) during the Term as part of LCC maintenance. The City is agreed that, except as provided herein, all access by City during those periods allocated to CARA MIA for its resident company purposes pursuant to this Agreement and the then applicable Use Contract(s) shall be subject to prior written notice of at least 48 hours, except in the event of an emergency. To the extent City shall need access to the Premises for the purposes described above, City shall make arrangements with CARA MIA to have CARA MIA personnel in attendance for the duration City is present in the Premises. Except in an emergency event, City's notice shall be in writing and describe the reason for access and the area desired to be accessed and the time of such access by the City. Prior to giving such notice for access the City shall contact CARA MIA to establish the dates that the Premises will be available and subject to City's granted access rights.

In addition to the rights of access reserved in the then applicable Use Contract(s) and elsewhere herein, CARA MIA and City agree City may reasonably use and occupy the Premises, or parts thereof, at times and locations that do not unreasonably interfere with CARA MIA's allotment of weeks and/or previously scheduled or anticipated performances in the Premises. No less than one hundred fifty (150) calendar days prior to the commencement of a Term year, the City and CARA MIA shall coordinate their use for the upcoming Term year. In order to enable CARA MIA's successful performance and compliance under this Agreement, CARA MIA shall have priority of dates and scheduling in the Premises, along and concurrent with Teatro Dallas, with City having priority choice over remaining and available dates.

ARTICLE 7

Abatement of Nuisances

7.1 CARA MIA shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances as caused by CARA MIA, its officers, agents, or employees, in or upon, or connected with the Premises, and shall pay for the costs of compliance.

ARTICLE 8

Maintenance and Upkeep of the Premises

8.1 City shall be responsible for maintenance and upkeep of the Premises; provided however, during periods of CARA MIA use, CARA MIA shall take good care of the Premises and permit no waste pursuant to the requirements set forth in the then applicable Use Contract(s).

ARTICLE 9

Improvements

9.1 Improvements. During the Term, unless otherwise provided for in this Agreement or in any then applicable Use Contract(s), City shall be responsible for and shall effect or cause the design, development, financing, construction for any capital improvements to the LCC.

9.2 Ownership. The City (and not CARA MIA) shall own title to any improvements made to the Premises upon completion of any improvements; provided, however, that CARA MIA shall have the right to use the Premises (including, but not limited to, the improvements) to the extent and as provided in this Agreement and any then applicable Use Contract(s).

9.3 Condition of Premises; Disclaimer. **During the term of this Agreement and in accordance with the terms of the then applicable Use Contract(s), turnover of the premises to CARA MIA during its periods of possession is in an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis and subject to all matters of record and zoning. CARA MIA acknowledges and agrees that the 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 Premises, including without limitation, the title, soil and utilities, (b) the income to be derived from the Premises, (c) the suitability of the Premises for any and all activities and uses which CARA MIA may conduct thereon, (d) the compliance of the Premises or its 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 Premises, (f) the manner or quality of the construction or materials, if any, incorporated into the Premises, (g) the manner, quality, state of repair or lack of repair of the Premises, and (h) any other matter with respect to the Premises, and specifically, that the 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 Premises of hazardous materials. CARA MIA further acknowledges and agrees that, in accordance with the then applicable Use Contract, having been given the opportunity to inspect the Premises, CARA MIA is relying solely on its own investigation of same and not on any information provided or to be provided by the City and agrees to accept the Premises for use and waive all objections or claims against the City arising from or related to the Premises or to any hazardous materials on the Premises. CARA MIA further acknowledges and agrees 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. 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 Premises 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.

9.4 Alterations, Additions and Improvements.

(a) Improvements/Renovations. Without limiting the terms set forth in the then applicable Use Contract(s), generally during the Term, CARA MIA shall not make any improvements to the Premises without the prior written consent of City, which consent shall not be unreasonably withheld provided the improvements are not permanent or structural in nature and are reasonably related and necessary for CARA MIA's use of the Premises in accordance with this Agreement. All approved improvements to be made by CARA MIA, shall be made in good and workmanlike manner. All cost of improvements, maintenance, utilities expense and all other costs or expense associated with CARA MIA's use of the Premises shall be at CARA MIA's expense and timely paid by CARA MIA. CARA MIA shall not allow or permit any liens to attach to the Premises.

Additionally, any structural and permanent type improvements, and/or renovations approved by the City and undertaken by CARA MIA under this Agreement shall become the property of the City, free and clear of all liens and encumbrances, subject to the terms of this Agreement and/or the then applicable Use Contract(s). The intent by the parties in this Agreement is to provide that City approved permanent additions to the structure of the LCC shall become the property of the City, unless CARA MIA, in the then applicable Use Contract(s) is otherwise required to remove said improvements and restore the LCC to its prior condition. Before commencement of any work, CARA MIA shall ensure the contractor(s) performing the work shall meet the insurance, indemnification, and defend and hold harmless requirements of City, and 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. No improvements or any subsequent change, modification or addition to the Premises shall be undertaken until CARA MIA shall have procured and paid for all required permits, licenses, and authorizations and shall have furnished the City evidence thereof. 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. Upon completion of construction, CARA MIA shall furnish the City with a certificate of substantial completion executed by the architect for the project, and a complete set of as-built plans for the improvements. CARA MIA shall thereafter furnish the City with copies of the updated plans showing all changes and modifications thereto. CARA MIA 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. To extent temporary improvements made by CARA MIA are not removed, City shall have the discretion to either (i) remove at CARA MIA's sole expense which shall thereafter be invoiced as additional rental by City, or (ii)

maintain as part of the LCC without any liability to CARA MIA for the eventual disposal of the improvements by the City.

(b) Decorative and/or Theatrical. No portion of this Section shall be construed as to limit CARA MIA's ability to construct temporary sets, designs, staging, lighting and sound systems or other alterations of theatrical or decorative nature in the facilities which does not alter the structural integrity or fundamental character or appearance of the Premises. CARA MIA or its contractors shall carry sufficient and appropriate insurance for such activities as may be required by the City.

(c) Business Inclusion and Development – Construction. To extent CARA MIA undertakes or causes any construction work to the Premises in accordance with this Agreement or the then applicable Use Contract(s), CARA MIA shall, and CARA MIA shall request that its engineers, construction manager and contractors, adopt good faith efforts to comply with the City's Business Inclusion and Development (BID) Plan, to the extent feasible, in hiring and contracting with minority and women-owned local businesses certified by the City or the North Central Texas Regional Certification Agency in the construction of any improvements for the Premises as a whole.

9.5 Personal Property. All personal property installed or situated from time to time in the Premises and paid for by CARA MIA from funds other than from the City, shall remain the property of CARA MIA (or any sub-licensee or concessionaire installing same). Items of personal property purchased by the City or that are necessary or proper for the safe or efficient operation of the Premises shall be and remain the City's property and part of the Premises.

ARTICLE 10

Insurance and Indemnification

10.1 The City's Insurance Obligation. Except as set forth in section 12.2 below, the City, at the City's expense, shall during the Term, be responsible to procure and maintain property insurance against loss or damage by fire and other casualties to the LCC including the Premises (but excepting CARA MIA's Personal Property), in accordance with the City's insurance policies.

10.2 CARA MIA's Insurance Obligation. Except as set forth in section 12.1 above, as additional rent for the Premises, CARA MIA shall, at CARA MIA's sole cost and expense, procure and maintain, or cause to be procured and maintained during its possessory periods during the Term, insurance in accordance with the requirements set forth in the applicable Use Contract which shall be incorporated herein for all purposes set forth therein.

10.3 Indemnity. During the Term, CARA MIA agrees to abide by and adhere to the indemnity requirements set forth in the then applicable Use Contract(s). The provisions of this Section shall survive the termination of this Agreement and are solely for the benefit of the City and CARA MIA and shall not be deemed for the benefit of any other person or entity.

ARTICLE 11

Repair, Maintenance and Security

11.1 CARA MIA Obligation/Care of Premises. During its possessory periods under the then applicable Use Contract(s) during the Term, CARA MIA shall keep the Premises and all permanent Improvements that from time to time may be on or a part of the Premises or other used areas within the LCC in accordance with any requirements set forth in the then applicable Use Contract(s).

11.2 Routine Maintenance and Security of Premises. During the Term and unless otherwise set forth in the then applicable Use Contract(s) as a CARA MIA obligation, City shall maintain and provide janitorial, trash collection, and landscaping for the Premises, including repairs (other than Capital Maintenance as hereinafter defined and which shall be the City's obligation) to the interior, exterior and structural portions of the Improvements. City shall be responsible to take care of the grounds at the LCC, including without limitation, the mowing of grass, care of shrubs, and general landscaping. In accordance with the then applicable Use Contract(s), TEATRO DALLAS shall be responsible for security necessitated by its programming.

11.3 Capital Maintenance. City is not required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Latino Cultural Center, or any part thereof, during the Term. Unless otherwise agreed to in this Agreement or in any then applicable CARA MIA Use Contract(s) during the Term, the City shall be responsible for all Capital Maintenance that the parties agree and deem necessary or advisable with respect to the Premises. Additionally, the City shall not undertake any Capital Maintenance to the Premises or remainder of the LCC with funds from the consolidated capital campaign described in Section 3.3(d) of this Agreement for the LCC multi-form theater which has not been designated or approved in writing by CARA MIA, Teatro Dallas, and the City, which approvals shall not be unreasonably withheld, delayed or conditioned. 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, that the parties mutually determine would increase the capacity or operating efficiency of an asset, are substantial, and would be treated as a capital item and not as an expense under generally accepted accounting principles. The City and CARA MIA shall coordinate and cooperate to minimize disruption of the Premises programming and events while avoiding additional cost or delays to the Capital Maintenance.

11.4 CARA MIA's Repairs. Unless otherwise provided for in the then applicable Use Contract(s), during the term, CARA MIA shall be obligated for repairs to the Premises arising out of CARA MIA's use. To extent CARA MIA shall be obligated, CARA MIA shall make any and all repairs in and about the Premises 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 Premises and the LCC. Before CARA MIA commences repairs involving an estimated cost of more than Twenty

Thousand and No/100 Dollars (\$20,000.00), plans and specifications for same shall be submitted to the Director for approval and CARA MIA 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 LCC, inclusive of the Premises, 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.

11.5 Right of The City to Make Repairs. The City, its agent and employees, shall have the right, at any time, and from time to time, to enter the Premises for the purpose of inspection or, if CARA MIA is in default 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 CARA MIA under the Agreement or the then applicable Use Contract(s) but which CARA MIA has failed to perform; and CARA MIA 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.

11.6 Signs. Except as may otherwise be provided in this Agreement or in an applicable Use Contract(s), CARA MIA shall have no right to erect any interior signs on the Premises, without City's prior written consent.

ARTICLE 12 Casualty and Condemnation

**(THIS ARTICLE SHALL BE OPERATIONAL ONLY TO EXTENT NOT ADDRESSED
IN THE THEN APPLICABLE USE CONTRACT(S) DURING THE TERM)**

12.1 Casualty.

In the event the Premises are rendered partially unusable for the purposes for which they were licensed (which, as used herein, means such destruction or damage as would prevent CARA MIA or City from carrying on its business on the Premises to an extent exceeding 50% of its normal business activity) by fire, water, natural disaster or other damage or casualty, CARA MIA shall give immediate notice to City who may elect, but not be obligated, to repair and restore the damage or to demolish the premises. In event City elects to demolish the Premises, this Agreement shall terminate and the rent shall be paid to the time of such destruction or casualty. In the event City elects to repair and restore the damage to the Premises, City shall allow CARA MIA a fair reduction in rent for the then applicable Use Contract(s) during the time the Premises are partially unusable for the purpose for which they were licensed due to fire, water, natural disaster or other damage or casualty. City's failure to communicate to CARA MIA and make an election within sixty (60) business days following the casualty, shall be deemed an election not to repair the damage and restore the Premises. For purposes herein, restoration does not include the replacement of personal property owned by CARA MIA or CARA MIA's employees, patrons, visitors or invitees.

12.2 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 LCC, 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 LCC), 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 LCC 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 LCC) pursuant to a Condemnation Proceeding.
- (b) Entire Taking. If all or substantially all of the LCC shall be Taken in Condemnation such that the LCC may not be used as contemplated in this Agreement, this Agreement shall terminate and from and after such date CARA MIA and the City shall not have any other obligations under this Agreement with respect to the Premises. Any award, compensation, or damage by reason of said taking shall be paid to and be the sole property of the City, whether such award shall be made as compensation for diminution of the value of the Agreement, the Improvements, or the fee interest in the LCC or otherwise, and CARA MIA hereby assigns to the City CARA MIA's right, title and interest in and to any and all such award.
- (d) Partial Taking
- Abatement for Part Taken. If less than all of the LCC shall be Taken in Condemnation Proceedings, obligations attributable to the portion of the Premises taken shall be abated from and after the date of such partial Taking, and from and after such date CARA MIA and the City shall not have any other obligations under this Agreement with respect to the portion of the Premises that has been taken.
- (e) Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the LCC inclusive of the Premises shall be Taken, as to materially interfere with CARA MIA's use, 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 CARA MIA is deprived of usage of all or part of the Premises as the result of such Taking does not materially interfere with the

ability of the CARA MIA to continue use of the LCC. 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 13 **Assignment and Subletting**

13.1 Assignment and Subletting. Except as otherwise provided for in the applicable Use Contract, CARA MIA shall have no right to assign this Agreement and/or to sublet all or any portion of the Premises.

ARTICLE 14 **Business Inclusion and Development Plan**

14.1 Business Inclusion and Development Plan. Business Inclusion and Development – Programming. During the Term in this Agreement and the then applicable Use Contract(s), CARA MIA, shall adopt good faith efforts to comply with the City's Business Inclusion and Development (BID) Plan, to the extent feasible, in hiring and contracting with minority and women-owned local businesses certified by the City or the North Central Texas Regional Certification Agency in CARA MIA's programming of the Premises. Upon City's request, CARA MIA shall include in its required reporting under this Agreement a written report on its good faith efforts to comply with the City's BID Plan.

In addition, in connection with CARA MIA's use and programming at the Premises, CARA MIA, during the Term and the then applicable Use Contract(s) shall (i) contractually obligate any third party programmer that CARA MIA may engage to program any aspect of the Premises on CARA MIA's behalf and all Concessionaires (defined below) to comply with the BID Plan, including reporting requirements thereunder, provided that no party shall be required to implement bidding procedures in any respect; (ii) to the degree reasonably possible, utilize contractors with offices located in the City and (iii) 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 CARA MIA to provide food and beverage service to the general public at the Premises, to provide parking services to the general public at the Premises, or to provide ordinary maintenance, merchandising, security and ticket operations at the Premises.

ARTICLE 15 **Default and Remedies**

15.1 CARA MIA Default. In addition to events of default defined in a then applicable Use Contract(s), each of the following events shall be an "Event of Default" by CARA MIA under this Agreement:

- (a) CARA MIA 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 CARA MIA;

- (b) CARA MIA 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 CARA MIA of the failure in writing in accordance with the notice provisions under this Agreement;
- (c) CARA MIA 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, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to CARA MIA (provided that if such default cannot reasonably be cured within ninety (90) days, then CARA MIA shall have an additional reasonable period of time within which to cure such default, but in no event exceeding a total of 120 days);
- (d) a receiver or trustee is appointed to take possession of all or substantially all of the assets of CARA MIA; or if any action is taken or suffered by CARA MIA pursuant to an insolvency, bankruptcy, or reorganization act; or if CARA MIA makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days.

Any written notice and opportunity to comply/cure provided herein shall not be required to be given to the City if the same or a substantially similar event of default has occurred and been the subject of written notice within the previous twelve (12) month period.

15.2 City's Remedies. In addition to the remedies defined in a then applicable Use Contract(s), upon the occurrence of a CARA MIA Event of Default under this Agreement, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. Termination or non-termination of this Agreement upon a CARA MIA 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 Premises, and CARA MIA shall assign to the City any of its contracts and agreements requested by the City to be so assigned. CARA MIA contracts and agreements not assumed by the City shall terminate immediately upon termination of this Agreement. CARA MIA 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 CARA MIA 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 performing any such obligations and the amount so paid and the cost incurred in said performance shall immediately be due and payable by the CARA MIA to the City and shall thereafter bear interest at the rate specified in this Agreement.

15.3 City's Default. It shall be an "Event of Default" by the City under this Agreement that the City shall fail to comply with any term, provision or covenant of this Agreement, other

than the payment of a monetary amount to CARA MIA, and shall not cure such failure within ninety (90) days after written notice thereof is given by CARA MIA 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, including but not limited the extent of additional time needed for City to comply with statutory and local procurement processes).

15.4 CARA MIA's Remedies. Upon the occurrence of a City Default, CARA MIA may as its sole remedy terminate this Agreement without any further notice or demand whatsoever.

15.5 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.

ARTICLE 16

Quiet Enjoyment; City's Right to Relocate Licensee

16.1 Quiet Enjoyment. Provided CARA MIA is not in default, during the Term and subject to the terms of this Agreement, CARA MIA shall have the quiet enjoyment and peaceable possession of the Premises within the LCC, subject to the terms and conditions of this Agreement and a then applicable Use Contract(s).

16.2 City's Right to Relocate Licensee. CARA MIA, as a Licensee of the Premises, acknowledges that as a part of the LCC, the Premises at some point during the Term may become necessary for the City's governmental functions and that City upon reasonable notice shall, at its cost, have the right to relocate CARA MIA's operations to another location within the LCC. Said relocation shall not constitute a breach of this Agreement.

The parties acknowledge that this Agreement creates a relationship of City as licensor and CARA MIA as licensee and specifically does not create in the City any proprietary or supervisory authority over CARA MIA's activities.

ARTICLE 17

Holdover

17.1 Holding Over by CARA MIA. Should CARA MIA holdover within the Premises or any part thereof after the expiration of an applicable Use Contract during the Term, then, unless otherwise agreed in writing, such holdover shall constitute and be construed as a trespass,

subject to the City's immediate re-entry and repossession, and City's pursuit of all available remedies at law and equity to recover possession of the Premises.

ARTICLE 18

Notice

18.1 Notices and Payments. In addition to the notice requirements set forth in an applicable Use Contract, 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) 670-3297 Facsimile: (214) 670-3946
With copy to:	City of Dallas City Attorney's Office 1500 Marilla 7CN Dallas, TX 75201 Attn: Real Estate Counsel Telephone: 214-670-5940 Facsimile: 214-670-0622
If to CARA MIA:	CARA MIA Theater Company 3630 Harry Hines Blvd. Dallas, Texas 75219 Attn: President and Chief Executive Officer Telephone: 214-516-0706 Facsimile: 214-516-0706
with copies to:	Telephone: _____ Facsimile: _____

ARTICLE 19
Financing

19.1 No Mortgage on the City's Interests. CARA MIA 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 LCC or the Premises, including without limitation the fee title to same.

ARTICLE 20
Miscellaneous

The parties agree that to the extent the following miscellaneous provisions differ in form in the then applicable Use Contract, the form in the then applicable Use Contract shall be harmonized with those set forth in this Agreement, as may be amended at such time set forth in the applicable Use Contract during the Term of this Agreement so as not to be contrary to the Dallas City Charter or Dallas City Code.

20.1 Commissions. The City and the CARA MIA 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 the Office of Arts and Culture to act on the City Manager's behalf as to all aspects of this Agreement. CARA MIA 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, CARA MIA shall designate two individuals who shall have full authority (acting together and not alone) to administer this Agreement on behalf of CARA MIA. The initial CARA MIA representatives shall be David Lozano and Ariana Cook. CARA MIA may designate a permanent or temporary replacement for either CARA MIA representative by delivering a written notice to the City executed by CARA MIA.

20.3 Copyright Indemnification. The parties' obligations herein shall be as set forth in the then applicable Use Contract, which obligations are incorporated in their entirety for the purposes set forth in this Agreement.

20.4 Recording. Neither party shall record this Agreement in the Real Property Records of Dallas County, Texas.

20.5 Late Charge and Interest. Unless otherwise provided in the then applicable Use Contract(s), in the event CARA MIA fails to make any payment to City due hereunder upon the date due, City shall be entitled to collect from CARA MIA a late charge equal to ten percent (10%) of the amount of the delinquent payment. In the event City pays any sum or incurs any expense that CARA MIA is obligated to pay hereunder, or that is made on behalf of CARA MIA, the City shall be entitled to receive reimbursement thereof from CARA MIA upon demand, together with interest thereon from the date of expenditure at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by applicable law to be charged by the City of CARA MIA. Notwithstanding the foregoing provisions, any interest provided herein will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of the maximum amount will be credited to the amounts otherwise owed hereunder, or if none is owed, refunded. This provision overrides any conflicting provision in this Agreement.

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

20.7 Captions. The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, amplify, modify, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

20.8 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.

20.9 Successors and Assigns. This Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto and not their respective successors and assigns.

20.10 Entire Agreement. This Agreement in concert with any and all applicable Use Contracts entered into by the parties during the Term, contain 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 and there shall not be any oral agreements or representations between the parties hereto affecting this Agreement and any and all applicable Use Contracts that shall be entered into by the parties during the Term, and this Agreement and each Use Contract, individually and separately, supercedes 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.

20.11 Severability; Partial Invalidity. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein, unless the invalid, illegal, or unenforceable provision is reasonably viewed as constituting a material benefit to and primary consideration for either party entering into this Agreement, in which case the City and CARA MIA will diligently and in good faith negotiate and implement a substitute provision providing the party, to the greatest extent possible, the equivalent material benefit and primary consideration as the provision held to be invalid, illegal, or unenforceable.

20.12 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.

20.13 Governing Law. **This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.**

20.14 Inspection. CARA MIA shall permit the City and its agents, upon reasonable advanced notice to enter into and upon the Premises during normal business hours for the purpose of inspecting the same. Twenty-four (24) 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 CARA MIA's use.

20.15 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.

20.16 Waiver of Default/No Implied Waiver. The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

20.17 Nondiscrimination.

As a condition of this Agreement, CARA MIA covenants that CARA MIA will take all necessary actions to insure that, in connection with any operations under this Agreement, CARA

MIA, its officers, employees and subcontractors, will not engage in discrimination in violation of applicable law. CARA MIA shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. CARA MIA shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. CARA MIA shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12301-12233, as amended.

1. In this regard, CARA MIA shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from the expiration or termination of this Agreement, with full reasonable access allowed to authorized liaisons of City, upon reasonable written request, for purposes of evaluating compliance with this and other provisions of this Agreement. CARA MIA agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.
2. CARA MIA shall, in all solicitations or advertisements for employees placed by or on behalf of CARA MIA, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.
3. CARA MIA shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and personnel records which pertain to current professional services contracts with the City for purposes of ascertaining compliance with this equal employment opportunity clause.
4. CARA MIA shall file compliance reports with the City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of CARA MIA, and must be in the form that the City Manager or his designee prescribes.
5. If CARA MIA fails to comply with the equal employment opportunity provisions of this Agreement, it is agreed that City at its option may do either or both of the following:
 - (a) Cancel, terminate or suspend this Agreement in whole or in part;
 - (b) Declare CARA MIA ineligible for further City approvals under this Agreement until

it is determined to be in compliance.

20.18 Place Of Performance Of Obligations And Venue. All obligations of the parties under the terms of this Agreement reasonably susceptible of being paid or performed in Dallas County, Texas, shall be payable and performable in Dallas County, Texas, and venue for any legal actions arising out of this Agreement shall lie exclusively in Dallas County, Texas.

20.19 Cumulative Remedies. Each right, power, and remedy of City and CARA MIA provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City or CARA MIA of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City or CARA MIA of any or all such other rights, powers, or remedies.

20.20 Force Majeure. None of the parties hereto shall be held responsible for delays in the performance of its obligations hereafter when caused by strikes, lockouts, work stoppages, labor disputes, acts of nature, inability to obtain labor or materials or reasonable substitutes thereof, public enemy or hostile government action, war, civil commotion, fire or other casualty, and other similar causes beyond its reasonable control.

20.21 Offset. Notwithstanding anything to the contrary herein, City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from CARA MIA, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise and regardless of whether or not the debt due to such party has been reduced to judgment by a court.

20.22. Notice Of Contract Claim. This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. CARA MIA shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

20.23 Relationship Of The Parties; No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of City and CARA MIA.

No term or provision of this Agreement or act of CARA MIA, its architect, construction manager, contractor, subcontractors, officers, agents and employees or any person

under the control of CARA MIA in the performance of this Agreement shall be construed as making them the agent, servant or employee of City, or making them eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

Nothing in this Agreement shall be construed as making either of said parties liable for the debts or obligations of the other party.

20.24 Conflict Of Interest. The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Lease, to-wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED –

(a) No city official 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 a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official'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.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code.”

20.25 Gift To Public Servant.

City may terminate the Agreement immediately if CARA MIA has offered, or agreed to confer any benefit upon a City employee or official that said City employee or official is prohibited by law from accepting. CARA MIA shall use commercially reasonable efforts to cause its contractors and agents to also not, offer or agree to confer any benefit upon a City employee or official that said City employee or official is prohibited by law from accepting. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, City may require CARA MIA to remove any employee of CARA MIA from the Premises or a Premises project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to CARA MIA as a result of the improper offer, Agreement to confer, or conferring of a benefit to a City employee or official.

20.26 Language.

The terms used herein, shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The words “persons” and “parties” whenever used shall include individuals, firms, associations, and corporations. City and CARA MIA have freely negotiated this Agreement and its terms. Separate legal counsels have represented both parties. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly against a party by reason of authorship.

20.27 Estoppel Certificates.

Neither CARA MIA nor the City shall have any obligation to provide any estoppel certificate of their position in this Agreement to any unrelated party.

20.28 Counterparts.

This Agreement may be executed, including electronically, and via facsimile, in one or more counterparts, each of which when so executed shall be deemed to be an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

20.29 Right to Enjoin.

In the event of any violation or threatened violation by CARA MIA of any term, restriction, condition or covenant of the terms of this Agreement, City shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin such violation or threatened violation in a court of competent jurisdiction.

20.30 Right of Review and Audit. CARA MIA agrees that the City may review any and all of the services performed by CARA MIA under this Agreement. The City is granted the right to audit, at the City's election, all of CARA MIA's records relating to the performance of this Agreement. CARA MIA agrees to retain such records for a minimum of three (3) years following the expiration or termination of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to the City's rights as may be disclosed by such audit.

20.31 Time of Essence. Time is expressly declared to be of the essence in this Agreement and each and every covenant hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

EXECUTED this the 29th day of January, 2021 by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 19-1905, adopted by the City Council on December 11, 2019, and by CARA MIA, acting through its duly authorized officials.

CARA MIA THEATER CO.:

CARA MIA, a Texas non-profit corporation

David Lozano

David Lozano (Jan 28, 2021 10:29 CST)

By: _____

Name: David Lozano

Title: Executive Artistic Director

THE CITY:

CITY OF DALLAS, TEXAS

T. C. Broadnax, CITY MANAGER

Joey Zapata

Joey Zapata (Jan 28, 2021 12:59 CST)

By: _____

Assistant City Manager

Recommended by Director:

Office of Arts and Culture

Jennifer Scripps

By: Jennifer Scripps (Jan 28, 2021 10:39 CST)

Jennifer Scripps

Approved as to form:

Christopher J. Caso, CITY ATTORNEY

Consuelo R. Tankersley

Consuelo R. Tankersley (Jan 29, 2021 11:50 CST)

By: _____

Assistant City Attorney

EXHIBIT A

FLOYDS ADDED
UNRECORDED

BLOCK 314
LIVE OAK LOFTS CONDO
VOL. 98215, PG. 14

DART
Inst. No. 2007022677, Tract 3
City of Dallas
V. 1376, P. 64

9' Sidewalk Easement
End, Cul. Cross
b/s S 87°11'00" E - 1.12

Live Oak Lofts Condominium Assoc.
V. 2005166, P. 2851

11' Sidewalk Easement
City of Dallas
V. 3302, P. 532

End, Iron Rod
b/s N 82°52'32" E - 1.25

End, Cul. Cross
b/s S 40°56'04" E - 0.38

Greenway Good-Latimer LP
Inst. No. 201600073361

City of Dallas
V. 3059, P. 206

City of Dallas
V. 2005014, P. 4789

(Goods Adn Unrecorded)

City of Dallas
V. 2174, P. 405

City of Dallas
V. 2005014, P. 4789

City of Dallas
V. 2005014, P. 4789

City of Dallas
V. 2005014, P. 4789

City of Dallas
V. 2005014, P. 4789

City of Dallas
V. 2005014, P. 4789

City of Dallas
V. 2005014, P. 4789

CITY LIGHTS ADDN.
PRELIMINARY
PLAN NO. S123-054

BLOCK 276
CITY PLAN NO. S123-054

DART
Inst. No. 2007022677, Tract 1
City of Dallas
V. 1304, P. 466

DART
Inst. No. 2007022677, Tract 6
City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

Elan Dallas City Lights Owner, LP
Inst. No. 20130271062

DART
Inst. No. 2007022677, Tract 1
City of Dallas
V. 1304, P. 466

DART
Inst. No. 2007022677, Tract 6
City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

City of Dallas
V. 1304, P. 466

Minerva Partners, LTD
Inst. No. 20110033815

City of Dallas
V. 81067, P. 3756

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

City of Dallas
V. 1322, P. 128

STATE OF TEXAS
COUNTY OF DALLAS

WHEREAS the City of Dallas is the owner of a 169,957 square foot (3.787 acre) tract of land situated in the John Grigsby League and Labor Survey, Abstract No. 495, Dallas Co., Texas, and being a portion of the property acquired by the City of Dallas by deeds dated and recorded in the following:

1.) Volume 97143, Page 4682 and dated May 31, 1987
2.) Volume 98003, Page 4610 and dated December 30, 1987
3.) Volume 98001, Page 5827 and dated April 23, 1988
4.) Volume 2001192, Page 5563 and dated February 13, 2000
5.) Volume 2004051, Page 9307 and dated March 15, 2004

and also being a portion of Block M/271 of Good's Homestead Addition, an unrecorded addition to the City of Dallas and all of Block M/270 of the Subdivision of Block G & M The Good Homestead recorded in Volume 81, Page 540 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a cross found at the intersection of the southeast line of Live Oak St. (Variable Width) and the northeast line of Good-Latimer Expressway, said corner being the most westerly corner of Lot 1 the said Subdivision of Block G & M The Good Homestead Addition:

THENCE North 44°25'26" East, along the southeast line of said Live Oak St., a distance of 450.02 feet to a 5/8" Iron Rod with 3.5" Aluminum cap stamped "LATINO CULTURAL CENTER" set at the intersection of the southeast line of said Live Oak St. with the southwest line of Cantegral St. (50' Width):

THENCE South 45°39'13" East, along the southeast line of said Live Oak St., passing at a distance of 238.50 feet, the intersection with the northwest line of Florence St. (50' Width) as abandoned by City of Dallas Ordinance No. 27319, recorded in Inst. No. 20080313618, from which a found cross bears South 79°27'35" West, a distance of 0.32 feet and continuing and passing at a distance of 288.50 feet, a found 1/2" ironrod at the intersection with the southeast line of said abandoned Florence St., and in all a total distance of 424.85 feet to a 1/2" Iron Rod found at the intersection of the southwest line of said Cantegral St. with the northeast line of an alley designated as Lodge St. (15' Width):

THENCE South 44°25'26" West, along the northeast line of said Lodge St. alley, a distance of 337.02 feet to a 5/8" Iron Rod with 3.5" aluminum cap stamped "LATINO CULTURAL CENTER" set at the most southerly corner of said City of Dallas tract conveyed in deed recorded in Volume 97143, Page 4682, tract II and the most easterly corner of a tract of land conveyed to The Meadows Foundation by deed recorded in Volume 98101, Page 4045:

THENCE North 45°39'13" West, with the common line of said City of Dallas tract and The Meadows Foundation tract, a distance of 137.00 feet, to a 5/8" Iron Rod with 3.5" aluminum cap stamped "LATINO CULTURAL CENTER" set in the northwest line of said Florence St.:

THENCE North 44°25'26" East, with the southeast line of said Florence St., a distance of 102.02 feet to a 5/8" Iron Rod with 3.5" aluminum cap stamped "LATINO CULTURAL CENTER", said corner also being the most southerly corner of said Abandonment Ordinance No. 27319:

THENCE North 45°39'13" West, crossing said Florence St., also being along the said southwest line of the abandoned portion of said Florence St., a distance of 50.00 feet to a 5/8" Iron Rod with 3.5" aluminum cap stamped "LATINO CULTURAL CENTER":

THENCE South 44°25'26" West, along the said northwest line of Florence St., a distance of 215.10 feet to a 5/8" Iron Rod with 3.5" aluminum cap stamped "LATINO CULTURAL CENTER" set at the intersection of the northwest line of said Florence St. with the northeast line of said Good-Latimer Expressway:

THENCE North 45°39'13" West, along the said northeast line of Good-Latimer Expressway, a distance of 237.85 feet to the POINT OF BEGINNING and containing 169,957 square foot (3.787 acres) of land.

SURVEYOR'S STATEMENT:
I, Dwayne H. Copeland, a Registered Professional Land Surveyor, licensed by the State of Texas, affirm that this plat was prepared under my direct supervision, from recorded documentation, evidence collected on the ground during field operations and other reliable documentation; and that this plat substantially complies with the Rules and Regulations of the Texas Board of Professional Land Surveying, the City of Dallas Development Code (Ordinance No. 19455, as amended), and Texas Local Government Code, Chapter 212. I further affirm that monumentation shown hereon was either found or placed in compliance with the City of Dallas Development Code, Sec. 51A-6.817 (a) (i) (c) & (e); and that the digital drawing the accompanying this plat is a precise representation of this Signed Final Plat.

Dated this 16 day of November, 2016

Dwayne H. Copeland,
Registered Professional Land Surveyor #5470

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned, a Notary Public in and for said state, on this day personally appeared Dwayne H. Copeland, for the City of Dallas, Texas, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same in the capacity herein stated, and for the purposes and consideration there in expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, *Dwayne H. Copeland*
this the 16 day of November, 2016.

MUNICIPAL DEDICATION
NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the City of Dallas, Texas a municipal corporation, acting through its duly authorized agent, Rick Galceran P.E., does hereby adopt this plat, designating the herein above described property as "LATINO CULTURAL CENTER ADDITION," an addition to the City of Dallas, Dallas County, Texas, and do hereby dedicate, to the public use forever the streets and alleys shown thereon. The easements shown thereon are hereby reserved for the purposes indicated. The utility and fire lane easements shall be open to the public, fire and police units, garbage and rubbish collection agencies, and all public and private utilities for each particular use. The maintenance of paving on the utility and fire lane easements is the responsibility of the property owner. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed, reconstructed or placed upon, over or across the easements as shown. Said easements being hereby dedicated for the mutual use and accommodation of all public utilities using or desiring to use same. All, and any public utility shall have the right to remove and keep removed all or parts of any building, fences, trees, shrubs, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective system on the easements, and all public utilities shall at all times have the full right of ingress and egress to or from the said easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone. (Any public utility shall have the right of ingress and egress to private property for the purpose of reading meters and any maintenance or service required or ordinarily performed by that utility).

Water main and wastewater easements shall also include additional area of working space for construction and maintenance of the systems. Additional easement area is also conveyed for installation and maintenance of manholes, cleanouts, fire hydrants, water services and wastewater services from the main to the curb or pavement line, and description of such additional easements herein granted shall be determined by their location as installed.

This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Dallas.

WITNESS, my hand at Dallas, Texas, this the 17 day of November, 2016

Rick Galceran
Rick Galceran, P.E.
Director of Public Works & Transportation

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned, a Notary Public in and for said state, on this day personally appeared Ricardo Galceran, for the City of Dallas, Texas, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same in the capacity herein stated, and for the purposes and consideration there in expressed

GIVEN UNDER MY HAND AND SEAL OF OFFICE, *Rick Galceran*
this the 17 day of November, 2016.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 24, 2016.

NOTARY PUBLIC
MY COM. EXPIRES NOV 24, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission Expires November 3, 2016

DISTANCE DESIGNATION TABLE

Platted Distance
Calculated Distance
Measured Distance
Deed Distance

140.05p
139.95c
(139.97)m
(140.02)d

LINE TYPE DEFINITIONS

SURVEY BASELINE- CENTERLINE
ADDITION BOUNDARY
SUBDIVISION BOUNDARY
REFERENCE LINE
LOT BOUNDARY
PROPERTY BOUNDARY

LEGEND

PK NAIL W/SHINER
IRON ROD (Size As Note)
IRON PIPE W/IRCAP
IRON PIPE (Size As Note)
MAG NAIL W/IRCAP
BENCHMARK
CUT "X" IN CONCRETE
60-D NAIL W/CL. WASHER
MON SET W/ADON NAME
CENTERLINE MARK

1. Lock-bolt drainage is not permitted without Engineering Section approval.

2. BASIS OF BEARING: Bearings are based upon Texas State Plane Coordinate System, Texas, North Central Zone 4202, North American Datum 1983 (NAD83) 1983 adjustment, using Geoid03 Model with a grid to surface adjustment factor of 1.00195006. Bearings shown herein are grid values. Distances shown herein are surface values.

3. Monuments delineated as Controlling Monuments (CM) hereon were held to control the exterior boundary of the platted tract.

POINT OF BEGINNING

North 44°25'26" East - 450.02'

10'x10' St. Ded. By This Plat

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

Block M/270

EXHIBIT B

THE STATE OF TEXAS

LATINO CULTURAL CENTER
USE AGREEMENT # ____

COUNTY OF DALLAS

THIS USE AGREEMENT is made and entered into this ___ day of _____ between the City of Dallas, a municipal corporation of Dallas County, Texas, acting herein by and through its Director of the Office of Arts & Culture, hereinafter called "OAC", and **Organization**, having its principal place of business at Address, hereinafter called "User".

WITNESSETH:

1. Premises: Upon the terms, covenants, and conditions contained in this Use Agreement, OAC has granted to User, and User has accepted from OAC a right for User to use and occupy space for User's Event (defined herein below) in that portion (hereinafter called "the Premises") of the Latino Cultural Center, located in the City of Dallas, Dallas County, Texas described as follows:

Lobby, auditorium, lobby restrooms, tech booth (only accessible to User/User Organization technical personnel), and backstage dressing rooms.

User shall have reasonable rights of ingress and egress through the halls, passageways, lobbies, and corridors subject to the terms and conditions of this Use Agreement, including but not limited to Section 22 below, but User shall acquire no other rights in any part of the Latino Cultural Center other than the use of the Premises for User's Event.

2. Use of Premises: User represents and covenants that the Premises are to be used for the purpose of: **Organization** (hereinafter called "the Event") and for no other purpose without the written consent of OCA, for a **base term** of use on **dates**, for the sole purpose of putting in equipment, preparing the Premises and equipment for use, rehearsing, presenting the event, and packing up and removing equipment afterwards. Provided that if any activity begins prior to the hours specified above or continues past the hours specified above, User shall be required to pay all additional expenses resulting to OCA for such additional time. Such expenses shall be determined by OCA through its Manager of the Latino Cultural Center, or his designated representative, hereinafter called "Manager". Payment for additional expenses is due no later than five (5) business days following the Event.

3. Payment: As consideration hereof and as payment for the right of use of the Premises granted herein, User promises to pay OAC the sum of **rental amount in USD**. User further agrees to pay to OAC on demand any and all sums which may be due OAC for additional time usage, services, accommodations, or materials. If the Event is canceled or the advertised entertainer, performer, or artist does not perform as scheduled, the deposit shall be forfeited as liquidated damages.

4. Security Deposit: To secure User's promise to pay the cost of (a) repairing any damages done to the Premises, furnishings or equipment of the Latino Cultural Center, (b) replacing any chairs, partitions, portions of the floor, etc., which have been moved, and (c) fees for any additional time, services, accommodations or materials, including but not limited to catering fees, due and payable, User will deposit with OAC upon execution of this contract, the further sum of N/A out of which OAC may deduct the cost of any such repair, etc., and the remainder of which will be returned to User. The failure on the part of OAC to acquire a cash deposit as security for any loss and damages to the Premises or furnishings, shall not affect the unconditional liability of User to pay the same; nor shall User's liability be limited to the amount of cash deposit or bond required, if any.

5. Moneys Payable to Manager: All sums of money which become payable to OAC under this Use Agreement shall be payable without demand to the Manager in his office at the Latino Cultural Center in the City of Dallas, Dallas County, Texas. Acceptance by OAC of payment at later times or at places such as those stated in other similar Use Agreements, no matter how many times repeated, shall not prevent OAC without demand or notice from requiring strict compliance with the provisions hereof for the date and place of payment. User acknowledges the importance of



making prompt payment of all sums of money due to OAC and agrees to pay to OAC interest on any late payments at an annual interest rate equal to the lesser of 18% or the maximum non-usurious interest rate permitted by law.

6. Requirements of Insurance: User shall not bring or permit anyone to bring into or keep anything in the Latino Cultural Center that will increase the fire hazard or any rate of insurance carried by OAC. User shall not bring or permit any person to bring into the Premises any animals, living organisms or any other property that creates a potential hazard of any kind, without the prior written consent of the Manager and shall not place or put up any decorations without the prior written consent of the Manager. User shall not bring or permit any person to bring into the Premises any gasoline, fuels, oil flashlights or any other exhibits, or other things placed or permitted to be placed in the Latino Cultural Center by User without the prior written consent of the Manager and pre-approval by the City Fire Marshall.

7. Control of Premises: In renting the Premises, OAC does not relinquish the right to control the management of the Latino Cultural Center, to enforce all necessary and proper rules for the management and operation of same, and to control the sale or distribution of tickets available from the Latino Cultural Center box office, by reasonably limiting the number of tickets that any person is entitled to purchase. OAC, through its Manager, police officers, firefighters, and other designated representatives, has the right at any time to enter any portion of the Premises for any purpose and the entire Latino Cultural Center, including the Premises, is at all times under the charge and control of the Manager, provided this shall not authorize or empower OAC to direct the activities of User or assume liability for User's activities. For security reasons, backstage access will be allowed only to performers, stagehands and official representatives of User's organization. User will submit an authorized list of such persons to the Latino Cultural Center upon arrival. All other guests and members of the audience are restricted to the lobby areas and concert hall.

8. Smoking: Smoking is not permitted anywhere within the building.

9. Parking: The Latino Cultural Center has 74 parking spaces. All parking is at User's discretion and the Latino Cultural Center will not be held responsible for any vehicles parked in this lot or anywhere near the Premises.

10. Insurance:

(a) Prior to the time User is entitled to any right of access to or use of the Premises, User shall procure, pay for and maintain required insurance in amounts required by the City of Dallas Office of Risk Management, written by companies authorized in the State of Texas, and acceptable to the Manager. The insurance shall be evidenced by delivery to the OAC a copy of executed certificates of insurance and/or certified copies of policies executed by the insurer or its authorized agent as determined by the Manager.

The City of Dallas shall be named as an additional insured by using endorsement CG2026 or broader.

(b) Each insurance policy required above shall include the following required provisions within the body of the insurance Use Agreement or by endorsement to the policy:

(1) The term of this insurance is for the duration of this Use Agreement which includes the period from the right of access to set up through the period allowed for removal of property, and any extension hereof, at User's sole expense.

(2) Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles, which all are at the sole responsibility and risk of User.

(3) The term "Owner", "OAC", "City", or "City of Dallas" shall include all authorities, boards, bureaus, commissions, divisions, departments, and offices of City and the individual members, employees and agents thereof in their official capacities, or while acting on behalf of the City of Dallas.

(4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City's self-insured retention of whatever nature.



(5) Each policy shall require that thirty (30) days prior to the cancellation or any material change in coverage, a notice thereof shall be given to the Manager by certified mail.

(6) User hereby waives subrogation rights for loss or damage against City, its officers, agents, and employees from personal injury (including death), property damage or any other loss.

(c) Manager reserves the right to review the insurance requirements during the effective period of the Use Agreement and to adjust insurance coverages and limits when deemed necessary and prudent by the City's Risk Management Division of the Human Resources Department.

(d) With regard to Subcontractors:

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

(2) The User shall obtain and monitor the certificates of insurance from each Subcontractor. The User must retain the certificates of insurance for the duration of the Use Agreement and shall have the responsibility of enforcing insurance requirements among its Subcontractors. The OAC shall be entitled, upon request and without expense, to receive copies of these certificates.

(e) Approval, disapproval or failure to act by the OAC regarding any insurance supplied by the User or its Subcontractor shall not relieve the User of full responsibility or liability for damages and accidents as set forth in the Use Agreement documents. Neither shall the bankruptcy, insolvency nor denial of liability by insurance company exonerate the User from liability.

11. Removal of Disorderly Persons, etc.: OAC retains the right to remove from the Premises any and all such employees of User and the right, with its officers and agents, including its police officers, to eject any objectionable person or persons from the Latino Cultural Center or any of its facilities. In the event OAC exercises such authority, User hereby waives any and all claims for damages against OAC on account thereof.

12. Alterations: User will not cause or permit any nails or any other things to be driven into any portion of the Latino Cultural Center, or cause or permit any changes, alterations, repairs, painting, or staining of any part of the Premises or furnishings or the equipment thereof, nor permit to be done anything which will damage or change the finish or appearance of the Latino Cultural Center or the furnishings thereof. User will pay the costs of repairing any damage which may be done to the Premises or any of the fixtures, furniture or furnishings thereof by any act of User or any of User's employees or agents or anyone visiting the Premises upon the invitation of User including the patrons of the attraction or function for which User hereby is leasing the Premises. The Manager shall determine whether any damage has been done, the extent of the damage, the reasonable cost of repairing the damage, and whether it is damage that the User must pay for under the terms of this Use Agreement. The Manager's decision is final unless, within ten days after he makes a decision, User, if User is dissatisfied therewith, gives written notice to the Manager of User's desire to appeal to the City Manager from such decision. In the notice to the Manager, User shall state fully the particulars and grounds upon which User considers the Manager's decision incorrect and no further objections other than the objections so stated will be considered by the City Manager. The decision of the City Manager is final and binding upon User.

13. Indemnity: User agrees to defend, indemnify and hold OAC, 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 person or persons, that may arise out of or be occasioned by User's breach of any of the terms or provisions of this Use Agreement, or by any negligent act or omission of User, its officers, agents, associates, employees, subcontractors or subconsultants, in the performance of



this Use Agreement; except that the indemnity provided for in this Paragraph shall not apply to any liability resulting from the sole negligence of OAC, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the User and OAC, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the OAC under Texas law and without waiving any defense of the parties under Texas law. The provisions of this Paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

14. Attorney's Fees: If OAC is required to file suit to collect the amount owed under this Use Agreement for User's use of the Premises, OAC shall be entitled to collect reasonable attorney's fees which shall be at least ten percent (10%) of the principal amount together with any and all other expenses OAC may reasonably incur in the collection of such amount.

15. Advance Opening: The Manager has the authority to require User, staging any public performance, to open the

16. Passageways: No portion of the sidewalks, ramps, entries, corridors, passageways, vestibules, halls, lobbies, stairways, aisles, driveways, or access to public utilities of the Latino Cultural Center shall be obstructed by User or used for any other purpose other than for ingress or egress from the Premises without the prior consent of the Manager. The doors, skylights, stairways, or opening that reflects or admits light into any place in the building, including hallways, fire hose cabinets, corridors, passageways, radiators, and house lighting appurtenances shall not be covered or obstructed by User without the prior written consent of the Manager.

17. Property left on Premises: OCA reserves the right after the termination of this Use Agreement to remove from the Latino Cultural Center all effects of User remaining and to store them wherever OCA sees fit in OCA's name, or at OCA's option in the name of User, but at the cost, expense and risk of User, and OCA shall not be liable in any way to User on account of so removing and storing these effects. If the effects of User remain in the Latino Cultural Center for any additional period beyond the term of this Use Agreement, OCA shall be entitled to charge a reasonable daily storage fee, which shall be determined by the Manager.

18. Additional Charges: Unless stated to the contrary elsewhere in this Use Agreement, OCA agrees at the time contemplated herein to furnish the Premises to User lighted, heated, cleaned, etc., with its usual scenic and/or stage equipment available, provided that additional charges may be made for special seat set-ups, special electrical and utility services, special additions or arrangements of the public address systems, and stagehand costs related to clearing the stage for access.

19. Care of Premises: User, at User's own expense shall keep the Premises in a safe, sanitary and sightly condition, in good repair, and shall restore and yield the Premises back to OCA upon the expiration or termination of this Use Agreement in good condition and repair, ordinary wear and tear (and damage by the elements or act of God, or by other cause beyond the control of User) excepted. If the Premises are not so kept by User, OCA may enter Premises (without causing or constituting a termination of the privilege or an interference with the possession of the Premises by User) and do all things necessary to restore the Premises to the condition required, including but not limited to, removal of signs, balloons, tape, and other things not removed by User, its subcontractors, or their respective servants, agents, employees, invitees, licensees, or contractors charging the cost and expense thereof to User.

20. Copyright Indemnification: User agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations issued thereunder including, but not limited to, the assumption of any and all responsibilities for paying royalties which are due for the use of copyrighted works in User's performances or exhibitions to the copyright owner, or representative of said copyright owner, and User agrees to defend, indemnify and hold harmless OCA, its officers, employees, and agents, for any claims or damages growing out of User's infringement or violation of the Copyright Law and/or Regulations, and for failure to pay royalties which may be due. It is the policy of the Latino Cultural Center that use of recording devices and cameras is strictly prohibited. The Latino Cultural Center reserves the right to confiscate such equipment to be returned following the performance. Should User wish to audio or video record this event or performance, a formal request to do so must be submitted to the Manager in writing. If approved, all technical elements for the placement of audio or video equipment must be



approved in advance by the Manager. User will also furnish to the Manager or his designee the names of all individuals who will be working on User's behalf in producing these recordings. User understands that they are responsible for securing any and all releases by artists and performers giving permission for the recordings. It is further understood that User is responsible for both reporting and payment of any music licensing fees (ASCAP, SESAC, BMI) that may be required by law.

21. Waiver of Notice: User hereby waives all notice of any demand for rent, notice to quit, demand for possession and any and all notice of demand of any nature, which may or shall be required by any statute of this State relating to forceful entry and detainer, of the landlord and user, or any other statute or by common law during the terms of this Use Agreement.

22. Assignment: User shall not assign this Use Agreement, nor suffer any use of the Premises other than specified in this Use Agreement, without the prior written consent of the Manager. Nor shall User subcontract the use of the Premises without the prior written consent of the Manager. User agrees to ensure that any assignee or permitted entrants will comply with all terms, provisions, covenants, and conditions of this Use Agreement. Assignment or subcontracting of this Use Agreement shall not relieve User from any of its obligations under this Use Agreement.

23. Restriction on Certain Displays: All displays and signage are subject to the approval of the Manager. User agrees that it will not display nor permit its agents or permitted entrants to display in the Latino Cultural Center any drug paraphernalia. If the Manager determines that drug paraphernalia is being displayed, he will cause the drug paraphernalia to be removed from the Premises of the Latino Cultural Center. For the purpose of this Use Agreement "drug paraphernalia" means all equipment, products, or materials that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Texas Controlled Substances Act.

24. Radio and Television Broadcasts: User shall not transmit nor permit anyone to transmit from the Premises a description of any part of the Event by means of radio, television, cable, videotape, or other method of transmission of aural or visual reports without the prior written consent of the Manager.

25. Unlawful Use: User agrees that every employer, agent, and permitted entrants connected with the purpose for which the Premises are rented shall abide by, conform to and comply with all laws of the United States, the State of Texas and all ordinances of the City of Dallas, including but not limited to, all rules or regulations for the government and management of the Latino Cultural Center including, but not limited to, the no smoking policy, and the requirements of the Police and Fire Departments, and will not do, nor suffer to be done anything on the Premises during the term of this Use Agreement, in violation of these rules, laws or ordinances. If the attention of User is called to such violation, User will immediately desist from and correct the violation.

26. Events of Default: The following events shall be deemed to be events of default by User under this Use Agreement:

- (a) User fails to pay any installment of the rent herein reserved when due, or any other payment of reimbursement to OCA required herein when due;
- (b) User becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- (c) User attempts to assign this Use Agreement without the prior written consent of OAC;
- (d) User deserts or vacates any substantial portion of the Premises; or
- (e) User fails to comply with any term, provision or covenant of this Use Agreement.

27. Remedies:

(a) Upon the occurrence of any such events of default in Paragraph 33 of this Use Agreement, OAC shall have the option to pursue any one of the following remedies upon 24 hours written notice to User:

- (i) Termination of this Use Agreement, in which event User shall immediately surrender the Premises to OAC, and if User fails to do so, OAC may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Premises and expel or remove User and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any



claim for damages stemming therefrom. User agrees to pay to OAC on demand the amount of all loss and damage which OCA may suffer by reason of such termination, whether through inability to recommit the use of the Premises on satisfactory terms or otherwise.

(ii) Entrance upon and possession of the Premises and the expulsion or removal of User and any other person who may be occupying the Premises or any part thereof, by force if necessary, without incurring liability for prosecution or any claim for damages stemming therefrom. OAC may then recommit the use of the Premises and receive the rent. User agrees to pay to OAC on demand any deficiency that may arise by reason of such recommitting. If OAC is successful in recommitting the Premises at a rental in excess of that agreed to be paid by User pursuant to the terms of this Use Agreement, OAC and User each mutually agree that User shall not be entitled, under any circumstances, to such excess rental, and User does hereby specifically waive any claim to such excess rental.

(iii) Entrance upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages therefrom, and performance of whatever User is obligated to do under the terms of this Use Agreement, and User agrees to reimburse OAC on demand for any expenses which OAC may incur in thus effecting compliance with User's obligations under this Use Agreement, and User further agrees that OAC shall not be liable for any damages resulting to User from such action, whether caused by the negligence of OAC or otherwise.

(b) Pursuit of any of the foregoing remedies shall not preclude pursuit of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to OCA hereunder or of any damages accruing to OAC by reason of the violation of any of the terms, provisions and covenants contained herein. No act or thing done by OCA or its agents during the term hereby granted shall be deemed a termination of this Use Agreement or an acceptance of the surrender of the Premises, and no agreement to terminate this Use Agreement or accept a surrender of the Premises shall be valid unless in writing signed by OCA. OCA's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless OCA so notifies User in writing. Upon an event of default, any failure of OCA to enforce any one or more of the remedies provided herein shall not be deemed or construed to constitute a waiver of such default or a waiver of OCA's right to enforce any such remedies with respect to such default or any subsequent default.

28. Notices: All notices required or permitted under this Use Agreement may be given to a party personally or by certified mail, return receipt requested, addressed to such party at the address stated below or to such other address as one party may from time to time notify the other in writing. Any notice so given shall be deemed to have been received when deposited in the United States mail so addressed with postage prepaid:

If intended for OAC, to:

(Name of User/User Organization)

Manager
Latino Cultural Center
2600 Live Oak St.
Dallas, TX 75204

(Street Address or P.O. Box)

(City, State, Zip Code)

If intended for User, to:

(Name)



29. Successors and Assigns: This Use Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and, except as otherwise provided in this Use Agreement, their assigns.

30. Matters Not Covered: Any decision affecting any matter not expressly provided for in this Use Agreement shall rest solely within the discretion of OAC, acting through its City Manager and the Manager.

31. Venue: The parties herein agree that this Use Agreement shall be enforceable in Dallas, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

32. Force Majeure: If (a) The Latino Cultural Center or any portion thereof shall be destroyed or damaged by fire or other calamity so as to prevent the use of the Premises for the purposes and during the periods specified in this Use Agreement, or (b) if the use of the Premises by User shall be prevented by act of God, strike, lockout, material or labor restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of OAC, then this Use Agreement shall terminate and User hereby waives any claim against OAC for damages by reason of such terminations except that any unearned portion of the rent due hereunder shall abate, or, if previously paid, shall be refunded by OAC to User.

33. No Partnership: Nothing contained in this Use Agreement shall be deemed to make OAC and User partners or joint venturers with each other.

34. No Waiver: No waiver by OAC of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

35. Multiple Parties: If more than one User is named in this Use Agreement, service of any notice on any one of the Users shall be deemed service on all Users.

36. Joint and Several Liability: If more than one User is named under this Use Agreement, the obligation of all such Users shall be, and is, joint and several.

37. Subordination: This Use Agreement is made subject to the provisions of the charter and ordinances of the City of Dallas, as amended, and all applicable laws of the State of Texas.

38. Governing Law: This Use Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

39. Section Headings: The section headings in this Use Agreement are for convenience in reference and are not intended to define or limit the scope of any of the conditions, terms or provisions of this Use Agreement.

40. Severability: In case any one or more of the provisions contained in this Use Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Use Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

41. Conflict of Interests: The following section of the Charter of the City of Dallas ("City") shall be one of the conditions, and a part of, the consideration of this Use Agreement, to wit:

"CHAPTER XXII. Sec 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED –

- (a) No officer or employee shall have any financial interest, direct or indirect, in any Use Agreement with the City of 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 Use Agreement 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 of City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

42. Gift to Public Servant Prohibited:

- (a) OAC may terminate this Use Agreement immediately if User has offered, or agreed to confer any benefit upon a City of Dallas employee or official that the City employee or official is prohibited by law from accepting.
- (b) For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.
- (c) Notwithstanding any other legal remedies, OAC may require User to remove any employee of the User who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

43. Notice of Breach of Contract Claim: This Use Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Use Agreement as if written word for word in this Use Agreement. Notwithstanding, and in addition to, all other requirements in this Use Agreement related to notices, claims and notice of claims, User shall fully comply with the requirements of Section 2-86, including filing a notice of claim with the City Manager in writing, in the form prescribed in Section 2-86, as a condition precedent and a jurisdictional prerequisite to the filing of a lawsuit to recover damages for any alleged City breach of this contract.

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

IN WITNESS WHEREOF, OAC and User execute this Use Agreement as of the day and year first above written.

Title

CITY OF DALLAS
OFFICE OF ARTS & CULTURE:

As authorized by Dallas City Code 2-162.2(b)

Manager Date

USER:

Name/Company

Authorized Signatory Date

Printed Name



Attachment #1
Insurance Requirements

SECTION A. Prior to the time Lessee is entitled to any right of access to or use of the Premises, Lessee shall provide evidence of the following insurance written by companies authorized in the State of Texas and acceptable to Lessor. The insurance shall be evidenced by delivery to the Lessor certificates of insurance executed by the insurer or its authorized agent stating coverages, and expiration dates.

SECTION B. Lessor reserves the right to review the insurance requirements during the effective period of the contract and to modify when deemed necessary and prudent by the City of Dallas'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.

SECTION C. Lessee shall maintain in full force and effect for the duration of this contract, which includes the period from the right of access to set up through the period allowed for removal of property, and any extension hereof, at Lessee's sole expense, following insurance:

1. Commercial General Liability Insurance In the Amount of \$1,000,000, including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, Contractual Liability and Fire Legal Liability. The City of Dallas will be shown as an additional insurance and shown 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 Lessor shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION E. Approval, disapproval or failure to act by the Lessor 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.



APPENDIX # 1**Latino Cultural Center Rental Requirements specifically regarding COVID-19 and general use requirements**

The following requirements must be adhered to during the rental period stated in this use agreement at the Latino Cultural Center (LCC). Failure to adhere to these requirements may result in cancellation of use agreement:

COVID-19 Requirements:

1. Maximum occupancy at the Latino Cultural Center is no more than 10 individuals at any given time throughout the facility, including an LCC staff member. While on LCC property no additional visitors, clients, office personnel, or other non-essential personnel associated with the production are allowed on the premises.
2. Individuals should, to the extent feasible, maintain social distancing of at least 6 (six) feet from others, and limit personnel congregating.
3. Lobby door entrance will be the only open entrance to the building for the User/User Organization. Doors will be open five minutes prior to contracted start time.
4. The User/User Organization (stage manager) will notify LCC staff member when all User/User Organization personnel are in the building so that doors will be closed and locked from the inside to prevent additional individuals from entering the premises. Emergency exits will be open as mandated by City Code for exit only.
5. Face masks or fabric face coverings must be worn (over the nose and mouth) by User/User Organization personnel when not on camera and contractors when on property even when individuals are practicing social distancing.
6. Please note the following areas are the only areas allowed for User/User Organization personnel during this rental period: auditorium, lobby, lobby restrooms, backstage dressing room (through the south doors only), and tech booth (access only allowed to User/User Organization technical personnel).
7. Tables and chairs will be set up in lobby as a green room.
8. Water fountains will be turned off unless User/User Organization can bring prepackaged disposable cups. If user brings prepackaged disposable cups, one water fountain may be turned on to fill up disposable cups. Otherwise, User/User Organization may bring disposable water bottles.
9. LCC will have daily cleaning staff prior to User/User Organization being on the premise on site to clean and sanitize all areas used by the User/User Organization during this rental period.
10. Hand sanitization stations will be provided in lobby and auditorium and restrooms for User/User Organization during this rental period.

General Requirements:

11. LCC is a City of Dallas facility; smoking is not allowed on the premises.
12. Weapons and firearms of any kind are prohibited on LCC premises unless otherwise permitted by law.



13. *Nothing* may be placed on any object of art, walls, ceilings, doors, windows or casings. The User / User Organization will be charged additional fees for any unauthorized wall mounts or any damage to LCC facilities.
14. At least one LCC staff member will be present at all functions, including set-up, during the event and load-out/strike-out. Staff overtime will be billed to the User / User Organization.
15. Payment of Use Agreement rental fees is due no later than thirty (30) days after the execution of this Use Agreement by User/User Organization
16. The total rental amount will reflect arrival time by User / User Organization to set up/tear down and/or load in/load out.
17. LCC does not assume any responsibility for any property placed in the facilities.
18. The User / User Organization is required to purchase insurance that covers LCC premises, operations and event therein for the time frame of the rental period for the amounts stipulated in facility rental agreement for any rental or event that includes an *audience* of any type (please refer to Section 11 of the Use Agreement for insurance requirements).

I have read and understand the terms of the Latino Cultural Center Use Agreement and its appendices, including the Latino Cultural Center Rental Guidelines (Appendix 1). I hereby agree to abide by the terms of the Use Agreement and to ensure that all representatives of my organization are informed and abide the rules. I understand that an LCC staff member will be on duty at all times reinforcing these guidelines. I understand that failure to abide by the terms of the Use Agreement and appendices will result in the loss of the privilege of using the LCC.

CITY OF DALLAS
OFFICE OF ARTS & CULTURE:

Manager Date
As authorized by
Dallas City Code 2-162.2(b)

USER:

Authorized Signatory Date

Printed Name

Title



191905

December 11, 2019

WHEREAS, the City of Dallas owns the land and improvements comprising the Latino Cultural Center, including the Oak Farms Dairy Performance Hall, located at 2600 Live Oak Street in Dallas County, Texas; and

WHEREAS, the City of Dallas spent \$5.6 million to build the Latino Cultural Center ("LCC"), and private contributions were an additional \$4.2 million; and

WHEREAS, the LCC is operated by the Office of Arts and Culture to serve as a regional catalyst for the preservation, promotion and development of Latino and Hispanic arts and culture; and,

WHEREAS, the LCC opened on September 16, 2003 and has since served over 500,000 people; and

WHEREAS, \$4.3 million was available from 2006 Bond Funds for the design and construction of the LCC Phase II; and

WHEREAS, on February 13, 2019, City Council authorized a professional services contract with Good Fulton & Farrell, Inc. d/b/a GFF, Inc. for architectural and engineering design, and construction administration services for a new multi-form theater and adjoining spaces at the LCC; and

WHEREAS, the *Dallas Cultural Plan 2018* emphasized the priorities of Equity, Diversity, Space, Support for Artists, and a Sustainable Arts Ecosystem, and the city's two largest Latinx theater companies are desirous of growing into a new theater space; and

WHEREAS, Cara Mia Theatre Co. and Teatro Dallas have a long history of presenting compelling works about the diverse experiences of Latinx communities to audiences in Dallas and at the LCC, and the City is desirous of providing them with a residency opportunity at the LCC; and

WHEREAS, the City and Cara Mia Theatre Co., and the City and Teatro Hispano de Dallas desire to enter into long-term use agreements for resident theater company status at the LCC, which would mark the LCC as the first municipal arts center in the United States to boast two professional resident Latinx theater companies, setting a new standard for equitable representation for Latinx theater in the nation.

Now, Therefore,

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

191905

December 11, 2019

SECTION 1. That the City Manager, upon approval as to form by the City Attorney, is hereby authorized to execute **(1)** a Resident Company Use Agreement between Cara Mia Theatre Co. (CMTC), as licensee, and the City of Dallas, as licensor, and **(2)** a Resident Company Use Agreement between Teatro Hispano de Dallas (TD), as licensee, and the City of Dallas, as licensor, to enable CMTC and TD, individually and separately but on the same Use Agreement terms, to license the Latino Cultural Center multi-form theater and Oak Farms Dairy Performance Hall and associated supporting spaces, at the Latino Cultural Center for 12 to 20 weeks each annually, over a five-year term, for the period October 1, 2021 through September 30, 2026 (the "Initial Term"), with four five-year renewal options for the period October 1, 2026 through September 30, 2046, to carry out the City's cultural public purpose in accordance with the Use Agreements.

SECTION 2. That additional special terms and conditions of each of the Use Agreements include among other things, the following terms and conditions:

- A. Total rent payable to the City by CMTC and TD, individually and separately, during the Initial Term shall be at the following weekly rate:

Year 1	\$ 500.00
Year 2	\$ 750.00
Year 3	\$1,000.00
Year 4	\$1,250.00
Year 5	\$1,500.00; and

- B. Subsequent to the Initial Term, the City may increase the weekly rate for CMTC and TD, individually and separately, by no more than 2.5% annually and will provide a 12-month notice in advance of rate increases; and
- C. CMTC and TD will each have first choice of dates for productions in the LCC multi-form theater and the Oak Farms Dairy Performance Hall. In the event of a conflict, the LCC manager shall work with both parties to reach a resolution, and the LCC manager will have the final decision. CMTC and TD will each have an allotment of 16 weeks each for a total of four productions each per City fiscal year, with at least four weeks each in the LCC multi-form theater and at least four weeks each in the Oak Farms Dairy Performance Hall, with CMTC and TD each having the flexibility to increase up to 20 weeks per City fiscal year for a maximum of two consecutive City fiscal years or to decrease down to 12 weeks per City fiscal year for a maximum of two consecutive City fiscal years for the duration of the agreement. The remaining allotment of dates, outside of the contractual allotment, will follow the Tier process, as established by the LCC manager, for other LCC core groups and Latinx user groups for general purpose rentals; and

191905

December 11, 2019**SECTION 2. (continued)**

- D. CMTC and TD will individually and separately provide 12 to 20 weeks of cultural services per City fiscal year at the LCC in either the LCC multi-form theater space or the Oak Farms Dairy Performance Hall; and
- E. CMTC and TD will each provide 10 free community-based events in the city of Dallas annually, both at the LCC and at other locations within the city of Dallas, and will brand these events as "Latino Cultural Center in the City"; and
- F. CMTC and TD will each provide free tickets to public schools located within the city of Dallas for three evening performances each City fiscal year, and will brand these performances as "Youth Nights at the Latino Cultural Center"; and
- G. CMTC, TD and the Office of Arts and Culture will complete a consolidated capital campaign to raise a minimum of \$500,000.00 by March 31, 2021, for betterments to the multiform theater space and supporting areas, which may include but are not limited to seating and audio-visual enhancement. Funds raised in excess above the stated goal will be maintained in a reserve fund established for capital purchases and maintenance related to the Latino Cultural Center multi-form theater and Oak Farms Dairy Performance Hall, and supporting spaces, and all naming opportunities must comply with the Section (9) Cultural Venue Naming Policy of the Cultural Policy of the City of Dallas; and
- H. The exterior wall of the LCC multi-form theater shall have prominent signage to read, "Home of Cara Mía Theatre and Teatro Dallas," and prominent signage in the lobby of the multi-form theater space agreed to by all parties will display resident company status of TD and CMTC, and in the event that changes to the signage are desired, all expenses are to be borne by the entity who wishes to change its name and is subject to agreement by the LCC Manager. All naming opportunities and responsibility for associated expenses must comply with the naming policy in the City of Dallas Cultural Policy; and
- I. CMTC and TD will attribute "resident theater company of the City of Dallas Latino Cultural Center" or similar language, subject to approval by the Director of Arts and Culture, on all marketing materials, including but not limited to partnerships in locations outside of the LCC; and
- J. CMTC and TD will maintain their reserved booking, subject to City's right to interrupt and recapture the entire LCC premises to respond to a state of emergency that requires the City to operate essential city functions in the LCC; and

191905

December 11, 2019**SECTION 2.** (continued)

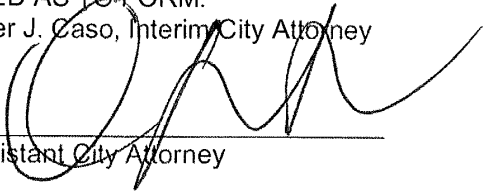
- K. CMTC and TD will comply with monthly and annual reporting consistent with the requirements of the Cultural Organizations Program administered through the Office of Arts and Culture, and will provide annual reports on the fulfillment of contract terms and expenditures of funds from the reserve fund for capital purchases and maintenance as described in (G) above; and
- L. City shall pay the cost of all utility services, including but not limited to, all charges for gas, water and electricity serving the Premises; and
- M. CMTC and TD shall have no right to assign these use agreements or sub-license the premises or any part thereof; and
- N. Renewal options shall be subject to CMTC and TD, individually and separately meeting the terms of their respective Use Agreement, and the approval of the Director of Arts and Culture; and
- O. Such other terms and requirements of the licensees and/or disclaimers as the City deems necessary, convenient or appropriate.

SECTION 3. That the Chief Financial Officer is hereby authorized to receive and deposit all facility use revenues received under the Agreement to the General Fund, Fund 0001, Department OCA, Unit 4805, Revenue Code 7219.

SECTION 4. That these contracts are designated as Contract No. OCA-2019-00011331 and Contract No. OCA-2019-00011332.

SECTION 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:
Christopher J. Caso, Interim City Attorney

By: 
Assistant City Attorney

