

THIRD AMENDMENT TO LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("Third Amendment") is entered effective as of June 12, 2019 (the "Effective Date") by the CITY OF DALLAS, a duly incorporated home rule city of the State of Texas located principally in Dallas County, Texas (the "City"), and the DALLAS THEATER CENTER, a corporation organized under the Texas Non-Profit Corporation Act ("Tenant" or "DTC").

WITNESSETH:

WHEREAS, the City owns the Kalita Humphreys Theater located at 3636 Turtle Creek Boulevard in Dallas, Dallas County, Texas as well as the land and improvements comprising approximately 9.87 acres of land and appurtenances thereto, as more specifically described in Exhibit "A" to the lease agreement dated September 26, 1973 between the City and Tenant (hereinafter called "Original Lease Agreement") as amended by the First Amendment to the Original Lease Agreement and the "Exhibit A (Revised)" thereto (hereinafter called "First Amendment") dated November 17, 1982 (hereinafter called the "Premises" or "Leased Premises"); and

WHEREAS, the City, then acting by and through its Park and Recreation Board and now acting by and through its Office of Arts and Culture ("OAC"), formerly known as Office of Cultural Affairs, subsequently executed the Second Amendment to the Original Lease Agreement (hereinafter called the "Second Amendment", and collectively with the Original Lease Agreement, the First Amendment, and Second Amendment, the "Lease") on March 27, 1991; and

WHEREAS, the primary term of the Lease expired on September 26, 2013; and

WHEREAS, the parties have maintained the Lease on a month-to-month holdover status in the interim pending the negotiation of a lease extension for Tenant's continued use of the Premises; and

WHEREAS, the City and Tenant have negotiated acceptable terms for this Third Amendment to the Lease and now desire to supplement, modify and amend the Lease to extend the lease term for an additional five (5) year period, and provide for additional obligations of the parties, as otherwise specifically provided herein.

NOW, THEREFORE, the City and Tenant, 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 supplement, modify and amend the Lease as follows:

1. **Defined Terms.** All capitalized terms not defined in this Third Amendment have the definitions ascribed to such terms in the Lease.
2. **Term.** The term of the Lease shall be, and the same hereby is extended for an additional period of five (5) years, commencing on June 12, 2019 and expiring on June 1, 2024 (the "Extension Term"); at the same rental (\$1.00 per year payable on or before January 2 of each lease year), and upon the same covenants, terms, and conditions as those specified in the Lease, except as hereinafter set forth.

3. Rent. Notwithstanding that rent is payable on or before January 2 of each lease year, the parties acknowledge and agree Tenant has deposited with the City the sum of Five Dollars (\$5.00) in advance which the City acknowledges to be payment in full for the entire Extension Term, and no other rental sums shall be due and owing during the Extension Term.
4. No Renewal Option. Section 2.0 of the Lease captioned "2.0 RENEWAL OPTION" shall be, and the same hereby is deleted in its entirety. Tenant shall have no options to renew unless expressly granted by the City in writing.
5. Operation of the Center and Annex Building. The text of the article of the Lease captioned "7.0 OPERATION OF THE CENTER AND ANNEX BUILDING" shall be, and the same hereby is amended by adding the following text comprising subsection 4 at the end of the existing section as follows:
 - "4. Tenant shall have the right to sublease use of the Premises to third parties ("Sublicensees" or "Sublessees") through a limited use contract only, otherwise constituting a revocable license for limited use of portions of the Premises; and, provided the sublicensed/subleased use of the Center and the Annex Building is in line with the original purpose of the lease, namely in the ordinary course of operating a theater center or as otherwise provided in that certain article of the Lease captioned "6.0 USE OF PREMISES." The limited use contract must be approved by the Office of Arts and Culture. Tenant agrees that any limited use contract approved by the Office of Arts and Culture does not create any vested property interest for the Sublicensee(s)/Sublessee(s); and Tenant shall indemnify the City for any representations made to the contracted user that it creates any leasehold interest in the Premises or rights to any claims arising out of the contract against the City. The requirements of the limited use to be set forth in the contract shall be as follows.
 - a. The limited use contract shall provide for third party use of the Premises at market rates on either a per event, per month, or per season basis.
 - b. Tenant, shall on annual basis, provide the Director with rental rate sheets utilized by Tenant for third party use of the Premises. The rate sheets may provide a variety of rates for potential Sublicensee/Sublessee, including but not limited to, for-profit, non-profit, and complimentary rates.
 - c. During years 2 through 5 of the Extension Term, Tenant must, subject to availability, provide designated office and storage space and props and costume design space within the Premises (inclusive of the Annex) for use by Sublicensees/Sublessees concurrently with the term of each Sublicensee's/Sublessee's use of the Premises.
6. Maintenance and Upkeep by City. Section 12.0 of the Lease, captioned "MAINTENANCE AND UPKEEP BY CITY" is hereby amended to add the following sentences at the end of the section:

“During its use of the Premises, Tenant must maintain the Premises in a clean, safe, condition, and in good order and repair. Notwithstanding any of the foregoing, the parties agree that this Third Amendment is not intended to expand Tenant’s current repair obligations or to release City from its current maintenance obligations under the Lease or its responsibility for capital repairs.”

7. Default by Tenant. The text in the third line of subsection 1. a. of the article of the Lease captioned “21.0 DEFAULT BY TENANT” shall be, and the same hereby is amended by deleting the word “to” and replacing it with the word “from” so that the third line shall read as follows: “after written notice thereof from city, or if such failure cannot reasonably”.
8. Notices. Section 29.0 entitled “NOTICES” of the Lease is hereby further amended to reflect that all notices, communications, and documents to be given to the parties shall be mailed, via certified mail, return receipt requested, or hand delivered at the address and to the attention of the individual shown below:

City of Dallas: Office of Arts and Culture
Majestic Theater
1925 Elm St., Ste 500
Dallas, Texas 75201
ATTN: Director

Tenant: Dallas Theater Center
2400 Flora St.
Dallas, Texas 75201
ATTN: Managing Director

9. Updated Master Plan. The Lease shall be, and same hereby is amended to add Section 43.0 captioned “UPDATED MASTER PLAN.” Section 43.0 captioned “UPDATED MASTER PLAN” shall provide as follows:

“43.0: UPDATED MASTER PLAN

DTC will be responsible to complete an update to the 2010 Master Plan for the Kalita and the surrounding park land. DTC must submit an updated master plan to the City c/o the Office of Arts and Culture no later than December 31, 2020, which includes and provides for the following:

- a. An independent third-party consultant/team with historic restoration and theater design experience; and
- b. A steering committee of diverse stakeholders to include three (3) Directors from the City of Dallas, two (2) local theater groups, and nine (9) community stakeholders (one of which is from AIA and one is from Preservation Dallas); and
- c. Performing arts community provides additional contemporary feedback for renovations for interior spaces; and
- d. Completion of a support building should precede renovation or replacement of the Heldt Annex Building; and

- e. Allow for the restoration of the exterior of the Kalita to the 1959-60 period of significance; and
- f. That the 2020 Master Plan Update to the 2010 Master Plan be briefed to the Arts & Culture Advisory Commission, Park & Recreation Board, Landmark Commission and City Council Quality of Life Committee, once at the beginning of development of the update, once at the middle, and then at the end of the development of the draft update.

If the Updated Master Plan is subsequently adopted by the City, DTC will use reasonable best efforts to assist in fundraising for the implementation of the theater-related elements of the Updated Master Plan.”

Without limiting any of the foregoing requirements regarding the Updated Master Plan, DTC’s failure to finalize the Updated Master Plan by December 2020 shall not constitute a default under the Agreement provided that DTC has submitted to the Director of OAC by that date a draft for review.

10. Equitable Access Plan. The Lease shall be, and same hereby is amended to add the following Section 44.0 captioned “EQUITABLE ACCESS PLAN.” Section 44.0 captioned “EQUITABLE ACCESS PLAN” shall read as follows:

“44.0 “EQUITABLE ACCESS PLAN

Tenant will be responsible to provide additional services in its Kalita operations through a City approved Equitable Access Plan for the Kalita operations. Specifically, at a minimum:

- a. The Equitable Access Plan will include effective policies and procedures for Kalita operations to provide non-resident groups greater opportunities to book space and utilize basic sound and lighting equipment and technical support; and
- b. The booking calendar shall be submitted to the Director of the Office of Arts and Culture for approval; and
- c. Any changes to Sublicensee/Sublessee dates must have Sublicensee’s/Sublessee’s prior consent; and
- d. The following number of weeks are reserved for non-resident groups at the Kalita and the Heldt Annex Building:
 - i. Year 3: 4 weeks reserved for non-resident groups
 - ii. Year 4: 8 weeks reserved for non-resident groups
 - iii. Year 5: 12 weeks reserved for non-resident groups

DTC must implement the Equitable Access Plan during Extension Term years 2 through 5.

11. Miscellaneous Provisions. The Lease shall be, and same hereby is amended to add the following Section 45.0 captioned “MISCELLANEOUS PROVISIONS.” Section 45.0 captioned “MISCELLANEOUS PROVISIONS” shall read as follows:

Section 45.1 Force Majeure.

Neither Tenant nor the City shall be liable to each other for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Lease due to causes beyond their respective control, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor

disputes, embargoes, acts of nature, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not in its own power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer a period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch. Nothing in this Section shall be construed to preclude the use of available insurance proceeds from the Insurance to remove or overcome any event of force majeure.

Section 45.2 Venue.

The obligations of the parties under this Lease are performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce any obligations or rights under this Lease, exclusive venue shall lie in Dallas County, Texas.

Section 45.3 Governing Law.

This Lease 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.

Section 45.4 Conflicts of Interest.

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

"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.

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(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. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)”

Section 45.5 Gift to Public Servant.

City may terminate this Lease immediately if Tenant has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting. Tenant shall not, and shall use commercially reasonable efforts to cause its contractors and agents to 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 Lease, “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 complimentary admission to theatrical performances, pre-show dinners, and the like, nor any contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Tenant to remove any employee of Tenant from the services 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.

Section 45.6 Notice of Contract Claim.

This Lease 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 Lease as if written word for word in this Lease. Tenant, its employees, contractors and agents shall comply with the requirements of this ordinance as a precondition of any claim relating to this Lease, in addition to all other requirements in this Lease related to claims and notice of claims.

Section 45.7 Mediation/Resolution of Conflicts.

If the parties have any dispute or disagreement arising under this Lease, it shall first be discussed in good faith between the parties in an attempt to reach an amicable solution. As part of that process, the parties will in good faith seek mediation of any such dispute or disagreement. Nothing contained in this Lease shall limit any of the parties from obtaining injunctions or seeking other legal or equitable relief from a court of competent jurisdiction.

Section 45.8 Legal Construction; Severability; Survival.

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

Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there will be added automatically as part of this Lease a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable. All terms, obligations, and liabilities under this Lease that contemplate performance or impact after expiration or termination of the AR Term under this Lease shall survive and remain effective from and after such expiration or termination.

Section 45.9 Landlord Lien; Security Interests.

(a) The City hereby waives any and all landlord's liens to which it may be entitled, by contract, statute or otherwise, against the property of the Tenant.

(b) Tenant shall not mortgage, pledge, or otherwise encumber its rights and interests under this Lease, including to secure financing, except with the City's prior written approval, but nothing in this Lease will prevent Tenant from obtaining financing based upon funds anticipated to be received by it, as long as said financing (i) does not involve an assignment, pledge, or other encumbrance of any interest in this Lease or the Premises; (ii) under no circumstances would constitute a liability or obligation of the City; and (iii) is in all respects subject to and inferior to this Lease and the City's rights hereunder.

Section 45.10 Authority to Execute and Perform Lease.

Each party, as to itself only, represents and warrants that it has the full power and authority to enter into this Lease and perform its obligations under this Lease.

Section 45.11 Counterparts.

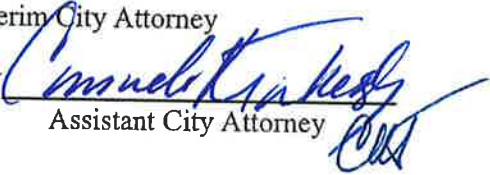
This Third Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument."

12. Except as expressly modified herein by this Third Amendment, all the terms, provisions and conditions of the Lease shall remain in full force and effect.

(Signature Page follows)

EXECUTED on this the ___ day of _____, 2020, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No.19-0889, adopted by the City Council on June 12, 2019, and by Tenant, acting through its duly authorized official.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO
Interim City Attorney

BY 
Assistant City Attorney

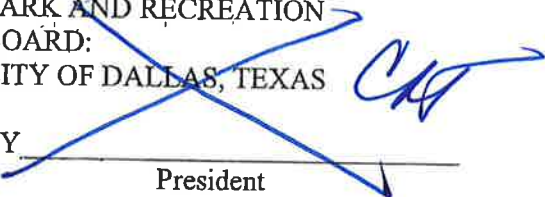
CITY OF DALLAS:
T.C. BROADNAX,
City Manager

BY 
Assistant City Manager

ATTEST:

BY 
City Secretary

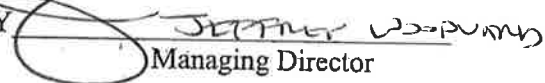
PARK AND RECREATION
BOARD:
CITY OF DALLAS, TEXAS

BY 
President

RECOMMENDED BY
THE DIRECTOR OF ARTS AND CULTURE:

BY 

DALLAS THEATRE CENTER

BY 
Managing Director