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CITY SECRETARY

DALLAS TEXAS

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (“Fourth Amendment”) is entered effective as of January 29, 2021 (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 on March 27, 1991; and

WHEREAS, the City, acting by and through its Office of Arts and Culture subsequently executed the Third Amendment to the Original Lease Agreement (hereinafter called the “Third Amendment”, and collectively with the Original Lease Agreement, the First Amendment, the Second Amendment, the Third Amendment, the “Lease”) to be effective June 12, 2019; and

WHEREAS, as regards the Updated Master Plan requirements set forth in Section 9 of the Third Amendment, the City and Tenant acknowledge and agree that Tenant’s performance thereunder has become interrupted and delayed due to the unforeseen impact of the worldwide COVID-19 pandemic; and

WHEREAS, in response to said unforeseen impact of the worldwide COVID-19 pandemic, the City and Tenant have negotiated acceptable terms for this Fourth Amendment to the Lease to enable Tenant to complete performance of the Updated Master Plan and now desire to supplement, modify and amend the Lease to extend the delivery requirements for the Updated Master Plan in accord with Tenant’s operation of the Premises 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 Fourth Amendment have the definitions ascribed to such terms in the Lease.

2. Updated Master Plan. Section 43.0 captioned “UPDATED MASTER PLAN” of the Lease shall be deleted in its entirety, and same hereby is amended to substitute the following in lieu thereof to 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, 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 New 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.
- g. That the New Master Plan Update to the 2010 Master Plan shall be completed the earlier of (i) the date Tenant has been fully operational for eighteen consecutive months, measured from the first public performance in fully operational status as defined below or (i) January 1, 2023. For the purposes set forth herein in this Fourth Amendment, “fully operational” shall mean that (a) Tenant has been permitted to sell all seats to public performances at the main stages of the Wily Theater or Kalita Humphreys Theater without restrictions on occupancy or the requirement of social distancing; and (b) the relevant unions, including Actors Equity Association, allow Tenant to rehearse and produce plays in DTC facilities without capacity restrictions. Actors Equity Association is granting permissions locality by locality based on the local rates of COVID-19 cases, and the parties acknowledge and agree that the rates in Dallas will likely far exceed the limits imposed by Actors Equity Association until there is a signification mitigation through vaccination or other efforts.

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 the timeframe described above 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.

3. 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 Fourth Amendment and perform its obligations under this Lease.

4. Counterparts.

This Fourth Amendment may be executed, including via certified electronic or facsimile signatures, in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

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

(Signature Page follows)

EXECUTED on this the 29th day of January, 2021, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 21-0136, adopted by the City Council on January 13, 2021 and by Tenant, acting through its duly authorized official.

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

BY *Consuelo R. Tankersley*
Consuelo R. Tankersley (Jan 29, 2021 11:42 CST)
Assistant City Attorney

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

BY *Joey Zapata*
Joey Zapata (Jan 28, 2021 17:42 CST)
Assistant City Manager

RECOMMENDED BY
THE DIRECTOR OF ARTS AND CULTURE:

BY *Jennifer Scripps*
Jennifer Scripps (Jan 28, 2021 17:20 CST)

DALLAS THEATRE CENTER

BY *Jeffrey Woodward*
Jeffrey Woodward (Jan 26, 2021 10:50 CST)
Managing Director

210136

January 13, 2021

WHEREAS, the City owns the Kalita Humphreys Theater located at 3636 Turtle Creek Boulevard in Dallas, as well as the land and improvements comprising approximately 9.87 acres of land and appurtenances thereto; and

WHEREAS, the City executed a lease agreement with the Dallas Theater Center (DTC) dated September 26, 1973 for the Kalita Humphreys Theater; and

WHEREAS, the lease agreement was amended by the City and DTC by the First Amendment on November 17, 1982 for the 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 on March 27, 1991; and

WHEREAS, the City, acting by and through its Office of Arts and Culture, subsequently executed the Third Amendment to the original Lease Agreement to be effective June 12, 2019; and

WHEREAS, as regards the Updated Master Plan requirements set forth in the Third Amendment, the City and DTC acknowledge and agree that DTC's performance thereunder has become interrupted and delayed due to the unforeseen impact of the worldwide COVID-19 pandemic on the theater industry; and

WHEREAS, in response to the unforeseen impact of the worldwide COVID-19 pandemic on the theater industry, it is desirable to amend the Lease to enable DTC to complete performance of the Updated Master Plan by extending the delivery requirements of the Updated Master Plan.

Now, Therefore,

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

SECTION 1. That the City Manager is hereby authorized to execute Fourth Amendment to the Lease Agreement with the Dallas Theater Center, approved as to form by the City Attorney, to extend the delivery requirements for the Updated Master Plan, due to the COVID-19 pandemic impact on the theater industry, to the earlier of eighteen months after the DTC has been fully operational or January 1, 2023.

SECTION 2. 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.

