

To set up file / Facilities

MASTER AGREEMENT
FOR THE
DEVELOPMENT, USE AND OPERATION OF
THE DALLAS BLACK DANCE THEATRE FACILITY
BY AND BETWEEN
THE CITY OF DALLAS
AND
DALLAS BLACK DANCE THEATRE

December 14, 2005

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**MASTER AGREEMENT FOR THE DEVELOPMENT AND OPERATION
OF THE DALLAS BLACK DANCE THEATRE FACILITY**

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS AGREEMENT for the development, construction, use, operation and maintenance of the Dallas Black Dance Theatre Facility (the "Agreement") is made and entered into effective as of the 14th day of December, 2005 (the "Effective Date"), by and between the City of Dallas, Texas, a municipal corporation of the State of Texas and a home rule city (the "City") and Dallas Black Dance Theatre, Inc., a Texas non-profit corporation ("DBDT").

RECITALS

A. The DBDT is the current owner of the approximately 20,058 square feet of land improved with a four story building containing approximately 26,307 square feet of space located at 2700 Flora Street within the City of Dallas, more particularly identified and described in **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes (such real property, and all improvements thereon shall be referred to herein as the "Premises").

B. DBDT is a Texas non-profit corporation established and existing in the State of Texas for the purpose of instructing dancers, promoting dance and operating a first-class dance company and in furtherance of said purposes DBDT has undertaken to raise donated funding from private sources for the renovation of the Premises to include a multi-use dance rehearsal and instructional facility and headquarters' office for DBDT.

C. The City recognizes the economic, cultural, social and civic benefits of having a dynamic, first-class dance organization headquartered within the City of Dallas and its Arts District.

D. On February 12, 2003, the City Council of the City approved Ordinance No. 030647 (the "Bond Ordinance") calling a public election (the "Election") for the City's voters to vote on certain bond propositions, including propositions for permanent public improvements.

E. On May 3, 2003 the Election was held and Proposition 12 passed, providing for an aggregate of \$17,666,519 to be used for permanent public

improvements, including the planning, designing, constructing, renovating, equipping, and expanding of cultural arts facilities, including acquisition of land therefor (the "Bond Fund Purposes"). Of this amount, the City has appropriated **\$3,263,976.00** (the "City Construction Contribution") for the design, development and construction of a renovated multi-use dance rehearsal and instructional facility and offices currently intended for use as DBDT's headquarters.

F. DBDT has undertaken to raise upwards of **\$2,228,354.00** (the "DBDT Construction Contribution") from private sources to be used along with the City Construction Contribution for the design, development and construction of a renovated multi-use dance rehearsal and instructional facility and headquarters' office.

G. On December 14, 2005, the City Council of the City adopted Resolution No. 053604 authorizing the City Manager of the City to negotiate and prepare a comprehensive agreement with DBDT for the acquisition of the Premises and the development and operation of a multi-use dance rehearsal and instructional facility and office space to be used by DBDT as its headquarters, said Agreement to include such other terms as are determined to be necessary or convenient by the City, and approved as to form by the City Attorney before execution by the City Manager on behalf of the City.

H. The City and DBDT now desire to set forth in this Agreement the definitive terms and conditions pursuant to which the City shall receive ownership of the Premises, upon which the parties will undertake to design, develop, construct, maintain, manage, use and operate a renovated multi-use dance rehearsal and instructional facility and headquarters' office.

I. The multi-use dance rehearsal and instructional facility and headquarters' office will be located on the Premises as approximately identified on the map attached to this Agreement as **Exhibit "B"**.

J. The City and DBDT currently estimate that the Project Costs (defined below) will be approximately **\$5,492,333.00**, to be funded as provided herein.

A G R E E M E N T

NOW THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein, the parties do hereby agree as follows:

ARTICLE 1.

Subject of Agreement; Term and Occupancy Date

1.1 The Project. The purpose of this Agreement is to set forth the terms and conditions upon which the City will acquire ownership of the Premises and undertake to design, develop, construct, convert and/or renovate the Premises into a multi-use dance rehearsal, instructional and office space. The further purpose of this Agreement is to set forth the terms and conditions upon which DBDT will donate ownership of the Premises to the City; participate in and help fund the design, development, construction, conversion and renovation of the Premises; and occupy, use, operate, manage and maintain the Premises.

Subject to the terms and conditions set forth in this Agreement, (a) the City shall receive ownership of the Premises; (b) the City shall plan, design, develop, construct, complete and make operational, the Premises; (c) DBDT shall equip, furnish, maintain, operate, and manage the Premises as its dance rehearsal and headquarters' office facility; and (d) the City and DBDT shall fund their respective funding commitments as contemplated herein.

1.2 Commencement and Term. The term ("Term") of this Agreement shall commence on the Effective Date and expire on the last day of the month in which the forty (40) year anniversary of the Effective Date occurs unless earlier terminated in accordance with the provisions of this Agreement.

1.3 Closing Date. The date on which the City receives, accepts and records the General Warranty Deed, conveying good, marketable and indefeasible title in the Premises to the City, shall be referred to as the "Closing Date" for purposes of this Agreement.

1.4 Occupancy Date. The City shall have exclusive possession of the Premises upon Closing. Upon completion of the renovation described herein as evidenced by issuance of a certificate of occupancy, the City shall send written notice to DBDT that it may take occupancy of the Premises, subject to the terms of this Agreement. DBDT shall not occupy or have any right to occupy the Premises prior to receipt of said written notice. The date on which this notice is sent shall be the date on which DBDT may first occupy the Premises (the "Occupancy Date"). The time period from the Occupancy Date until the termination of this Agreement shall be referred to as the "Occupancy".

ARTICLE 2

Due Diligence and Closing

2.1 Inspection of the Premises. The City shall have a period of one hundred eighty (180) days from the Effective Date (the "Inspection Period") during which the

City may inspect and perform such tests, evaluations, examinations, studies or assessments upon and/or relating to the Premises as the City, in its sole and unqualified discretion, deems advisable, prior to accepting title to the Premises. Such investigations may include, without limitation, examination of title, surveying, inspection of the Premises (including both the land and Improvements thereon), environmental site assessments, structural assessments, feasibility studies and any other tests of the Premises as the City deems appropriate. If the City, in its sole and unqualified discretion is not satisfied with any aspect of such tests, assessments or studies or with any matter relating to the Premises for any reason whatsoever, the City shall be under no obligation to acquire or accept ownership of the Premises and the City may terminate this Agreement by giving written notice of termination to DBDT at any time prior to accepting and recording a deed to the Premises. If the City does not acquire or accept ownership of the Premises as provided in this Agreement, the City shall, at its sole cost, repair any physical damage caused by its investigation of the Premises and restore same to its original condition before said inspection.

2.2 Access to Inspect. The City and the City's agents, contractors, consultants and representatives shall have reasonable access to the Premises at all times from the Effective Date. However, the City shall give DBDT reasonable notice of the City's intention to enter onto the Premises. The City and the City's agents shall have the right to physically inspect the Premises and to conduct such tests and other inspections as it deems appropriate, including without limitation, destructive testing. DBDT shall promptly deliver to the City complete, true and correct copies of all title commitments, surveys, inspections, reports, appraisals and studies within its possession and/or control relating to the Premises and complete, true and correct copies of all permits, contracts, licenses or leases involving the Premises within seven (7) days following the City's request for such documents or a sworn statement certifying that there are no such documents to deliver. The costs and expenses of the City's investigations, inspections and tests shall be borne by the City; provided, however, if the City accepts title to the Premises it may treat said costs and pay or reimburse same as Project Costs, as defined hereunder.

2.3 Closing. Should the City elect, in its sole and unqualified discretion to accept donation of and title to the Premises, it shall notify DBDT of the Closing Date, time and place which shall be not later than fifteen (15) days following the end of the Inspection Period. Closing shall be at the offices of and through a title company designated by the City. At Closing, DBDT shall deliver to the City a General Warranty Deed conveying good, marketable and indefeasible title to the Premises to the City and subject only to those title matters approved by the City Attorney. DBDT shall likewise execute and deliver a Bill of Sale conveying any and all personal property necessary to the normal operation of the Premises. Any permits, contracts, licenses or leases applicable to the Premises shall be either terminated by DBDT or assigned to the City as the City shall direct. The General Warranty Deed, Bill of Sale and contract assignments, if any, shall be in a form and substance and subject only to those matters approved by the

City Attorney. The City shall receive possession of the Premises as of Closing. DBDT shall be liable for and pay at closing all utilities, taxes, including without limitation all roll-back taxes arising due to change in ownership and/ or use, and other assessments and charges attributable to the Premises for the period prior to closing. The parties shall bear their own attorneys' fees and closing costs. The City may obtain and condition closing on the issuance of an owner's title policy acceptable to the City Attorney.

2.4 Parking as a Condition for Closing. The parties acknowledge and understand that the City may require additional off-Premises parking to accommodate the anticipated development and use of the Premises contemplated by this Agreement and that Closing is conditional upon DBDT providing this parking at DBDT's own expense through an arrangement that is mutually acceptable to both DBDT and the City, prior to Closing. In the event the City is unwilling or unable to issue a Certificate of Occupancy for the Premises due to an inadequate number of parking spaces on the Premises, DBDT shall provide for any additional parking necessary to the Premises by either contracting for such parking with a third-party entity or, in the alternative, by granting an easement to the City on DBDT's land adjacent to the Premises (the "DBDT Parking Lot", more particularly identified and described in **Exhibit "C"**), but subject to the City's approval of the proposed arrangement. If DBDT grants an easement to the City, then DBDT shall dedicate a sufficient portion of the DBDT Parking Lot as parking for the Premises. This easement may include a location clause limiting the easement to a mutually-agreeable location.

2.5 Failure to Close; Termination. In the event that either party fails to close on the Premises within 180 days following the end of the Inspection Period, then either party may terminate this Agreement by providing written notice of termination in accordance with the terms of this Agreement as each party's sole and exclusive remedy hereunder.

ARTICLE 3

Premises Development

3.1 Ownership of Premises

(a) Land and Improvements. After Closing, the City shall own the land, all improvements existing or to be installed or constructed thereon and all items of tangible personal property located therein necessary or convenient to the operation of the Premises.

(b) Intellectual Property. Subject to any limitation provided herein, the City shall own all intellectual property rights in, to and relating to the Premises, whether now in existence or created in the future, including without limitation all copyrights, trademarks, trade dress and merchandising rights in the Premises,

architectural plans and drawings, names, logos and likenesses, as well as all rights to protect, enforce and license same (the “Plans”).

(c) Naming and Sponsorship. DBDT shall have the sole right to contract for and grant sponsorships, advertising space and naming rights for areas, events, programs, and advertising panels involving the Premises subject to applicable laws, zoning and ordinances and subject to the advance written approval by the City of said sponsorships, advertising and naming rights, which approval shall not be unreasonably withheld. Any such arrangements shall (i) be of a first-class quality, tasteful, attractive, and suitable for facilities of this nature, and (ii) 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. Any such sponsorship agreements entered into by DBDT shall be assumable by the City at its election or otherwise terminate upon any termination of this Agreement pursuant to which DBDT ceases to occupy and use the Premises.

3.2 Design and Construction of the Premises. Subject to the provisions of this Agreement, the City will oversee and cause to be performed, the planning, design, engineering, and construction of the Premises as it deems appropriate.

3.3 DBDT Input. To ensure that DBDT has a reasonable opportunity to provide input during the design and construction process, the City shall keep DBDT reasonably informed about the designs, engineering plans and construction plans for the Premises. The City will consider, in good faith, reasonable suggestions from DBDT; provided, however, design and construction rests solely within the City’s unqualified and absolute discretion. Without in any way limiting the foregoing, the City shall be under no obligation to consider any suggestion that would increase the cost of construction, lengthen the time of completion, increase the cost of operation or maintenance of the Premises or limit the flexibility and usefulness (from the City’s perspective) of any component of the Premises.

3.4 Architect(s) and Engineer(s) The City shall have all authority, control and rights in selecting, terminating and replacing any architect (the “Architect”) and engineers (the “Engineers”) for the Premises and this project.

3.5 General Contractor. The City shall have exclusive authority, control and rights in selecting, terminating and replacing any and all general contractor(s) (each, a "General Contractor") for any and all components of the Premises.

3.6 Joint Cooperation. During the planning, design, development and construction of the Premises, DBDT agrees to fully cooperate and coordinate with the City and its contractors and consultants, and to assign appropriate, qualified personnel to this project. To ensure that neither the design nor the construction of the DBDT Premises is delayed due to delays in the delivery of DBDT responses to City requests for approvals, documents and the like or delays in other required DBDT actions, DBDT shall cause its Executive Director, her designee and other DBDT personnel to respond in an expeditious manner to all submissions and requests by the City, its Project Manager, Architect, Engineers or the General Contractor. If DBDT fails to disapprove or inform the City in writing of the need for additional review time within fifteen (15) days of a request for approval from the City, DBDT shall be deemed to have approved the request as submitted. The City will attempt to reasonably accommodate any request for additional review time, but shall not be bound by same.

3.7 Construction Contracts. The City shall have the sole right and responsibility to negotiate and enter into all contracts necessary for the design, engineering, construction and completion of the Premises; provided, however, that the City shall not be required to be a party to subcontracts between the General Contractor and any subcontractor or any other contractor and any subcontractor.

3.8 Warranties. All rights under construction warranties shall belong to the City. The City shall own the Premises; provided however, DBDT shall repair and maintain the Premises after occupancy to the extent provided herein. For purposes of repairing and maintaining the Premises after occupancy, DBDT shall administer any warranties belonging to the City during the Term of this Agreement and the City shall reasonably cooperate with and facilitate DBDT's efforts in this regard. Any net funds received after deduction of expenses by DBDT in settlement or compromise of, or otherwise resulting from, rights associated with any of such warranties shall belong to, and promptly be paid to the City to the extent such funds are not spent to repair, replace or correct the Premises to conform to approved plans and specifications.

3.9 Right of the City to Make Alterations. The City, its agent and employees, shall have the right, at any time, and from time to time, both before and after DBDT's occupancy, to enter the Premises for the purpose of inspection or, if DBDT is in default or in the event of an emergency, to make 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 DBDT under the Agreement but which DBDT has failed to perform; and DBDT shall not offer any obstruction, or hindrance to any such repairs or alterations;

provided; however, that nothing contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations.

3.10 Conditions to Commencing Construction. The City shall have no obligation to commence construction unless and until the following are satisfied:

- (a) execution of this Agreement by the parties;
- (b) closing of the conveyance of the Premises to the City pursuant to this Agreement.
- (c) approval of all plans and specifications for all improvements and renovation by the City, in the City's unqualified discretion; and
- (d) DBDT makes available the DBDT Construction Contribution to the City or provides other proof of fund availability satisfactory to the City, in its sole and unqualified discretion, as described in Article 4 below;

3.11 Interim Period. During the time period from the Closing Date to the Occupancy Date (the "Interim Period") the City shall operate and maintain the Premises as it deems fit in its sole and exclusive discretion. This includes, without limitation, the right to manage and/or use the Premises, to lease the Premises for events, to maintain the Premises in its current condition and/or moth-ball the Premises, in the City's sole determination and discretion.

ARTICLE 4

Funding for Construction of the Premises

4.1 The DBDT Construction Contribution; the Extension Options.

(a) Prior to the City commencing construction of the Premises, DBDT shall contribute and make available to the City not less than **\$2,228,354.00** as the DBDT Construction Contribution for construction and renovation of the Premises. DBDT shall provide the DBDT Construction Contribution on or before December 31, 2008. If, however, DBDT is unable to provide the DBDT Construction Contribution to the City by this date, DBDT shall have two additional, two-year periods (the "Extension Options") during which DBDT may raise the DBDT Construction Contribution and subsequently transfer this amount to the City.

(b) In order to exercise each of the Extension Options, DBDT must not otherwise be in default under this Agreement and deliver written notice no sooner than sixty (60) days, but no later than fifteen (15) days prior to each date specified herein of its intent to exercise each Extension Option to the City's Office of

Cultural Affairs in accordance with the Notice provisions of Section 17.14 of this Agreement.

(c) DBDT may exercise its first Extension Option no sooner than sixty (60) days, but no later than fifteen (15) days prior to December 31, 2008. If the first Extension Option is duly exercised DBDT may exercise its second Extension Option no sooner than sixty (60) days, but no later than fifteen (15) days prior to December 31, 2010. On or before the end of the Term, as extended, DBDT shall make available and transfer to the City the entire amount of the DBDT Construction Contribution. If DBDT is unable to contribute the entire amount of the DBDT Construction Contribution, this Agreement shall terminate, unless the City chooses to extend the Agreement by resolution of its City Council.

4.2 The City Construction Contribution.

(a) Obligation and Amount. The City's total out-of-pocket financial contribution under this Agreement to the costs of designing, planning, developing, and constructing the Premises shall be limited to a portion of the Bond Funds, in a maximum amount of **\$3,263,976.00** (the City Construction Contribution). In no event shall the City have any obligation or commitment to fund more than said amount. On or after December 1, 2005, the City intends to raise the Bond Funds through the sale of general obligation bonds, as authorized by Proposition 12. The principal amount, structures, maturities, interest rates, provisions and special terms of the Bonds and any other City financing shall be as approved by the City; provided, however, in no event shall it be secured by a lien, security interest or any similar interest on the Premises.

(b) Application of the City Construction Contribution. The City's Construction Contribution shall only be expended from Bond Funds on expenses incurred for Bond Purposes and in conformity with all legal requirements for expenditure of municipal bond funds ("Bond Eligible Project Costs"). The City, from time to time during the course of this project, may identify portions of the project that are eligible for the use and expenditure of the City Construction Contribution. The City shall verify whether or not said Project Cost can legally be paid with Bond Funds. The determination of the Director of the Public Works and Transportation Department (the "Director") shall be final on this issue. Bond Eligible Project Costs may be paid from the City's Construction Contribution up to but in no event exceeding the amount of the City's Construction Contribution.

4.3 Project Costs. The costs of the Premises (collectively, the "Project Costs") shall include without limitation the following:

(a) Improvements' preparation costs, including without limitation: (i) all environmental remediation necessary with respect to the Premises; (ii) all asbestos abatement necessary with respect to the Premises; (iii) surveys, (iv) soils and

hydrological testing and studies (v) engineering work and (vi) the cost of utilities that will be necessary or convenient to service the Premises during the construction period;

(b) land planning, design, architectural and engineering costs incurred after the date of this Agreement by the City for preparation of plans, specifications and designs for the Premises and for appropriate construction oversight and assessments by the Architect and Engineers;

(c) costs incurred for any related, necessary infrastructure not located on the Premises, and including without limitation (i) costs incurred by the City for demolition, grading, paving, landscaping, and installing lighting and (ii) costs of utilities servicing the Premises prior to the Occupancy Date;

(d) permit, license and inspection fees, if any, incurred after the date of this Agreement by the City;

(e) fees and expenses of the General Contractor, subcontractors, consultants and similar persons incurred after the date of this Agreement by the City, directly or indirectly in connection with the planning, design, engineering and construction of the Premises;

(f) costs incurred after the date of this Agreement by the City in complying with the requirements of Articles 2 and 3 hereof;

(g) costs incurred after the date of this Agreement by the City in connection with removing, or providing security for, any lien or encumbrance that arose in connection with the design, engineering or construction of the Premises;

(h) reasonable general and administrative expenses of the City allocable to the administration or oversight of the activities contemplated in clauses (a) through (g) above and incurred after the date of this Agreement by the City, directly or indirectly, in connection with the planning, design, engineering or construction of the Premises; and

(i) such other costs and expenses as the City shall incur in completing construction.

4.4 Use of the DBDT Contribution. The City shall not be required to begin or proceed with any construction until the DBDT Construction Contribution is deposited with the City or the City is provided with proof of other arrangements demonstrating unconditional availability of these funds satisfactory to the City in its sole and unqualified discretion. The City shall receive and hold the DBDT Construction Contribution for application to the construction of the Premises. If the DBDT Construction Contribution is deposited with the City it shall be held by the City in an account separate from other City programs, projects or general funds and applied as

herein provided. The City may, but shall have no duty to invest or earn returns on these funds. Any interest earned shall be retained in the account by the City and applied to the construction of the Premises. Any amounts remaining in this account after construction is fully completed and paid for shall be returned to DBDT within thirty (30) days.

4.5 Administration of Project Funds. DBDT and the City acknowledge that the City Construction Contribution and the DBDT Construction Contribution (collectively the “Project Funds”) shall be dedicated solely to the payment of Project Costs. The Project Funds shall be administered and controlled by the City and shall be disbursed by the City in the manner provided in Section 4.6 below. Pending disbursement of the Project Funds, the City may, but is not obligated to, invest all or any portion of such Funds.

4.6 Disbursement of Project Funds. The Project Funds shall be periodically disbursed by the City in direct payment of such Project Costs, in accordance with the following provisions:

(a) the City Contribution will only be used for Bond Eligible Project Costs.

(b) the City shall, in its sole and unqualified discretion, determine the order and manner in which the DBDT Construction Contribution and the City Construction Contribution shall be applied to the Project Costs of the Premises. Without limiting the foregoing, the parties acknowledge that the City may choose to spend the DBDT Construction Contribution for Project Costs prior to expending any funds from the City Construction Contribution, regardless of whether such Project Costs constitute Bond Eligible Project Costs.

4.7 Cost Overrun Funding Commitment. If any Project Costs are incurred after the City Construction Contribution and the DBDT Construction Contribution are completely depleted (any such excess Project Costs being referred to herein as “Overruns”), DBDT shall promptly pay (or at the City’s election, contribute to the City to be held for payment, from time to time as necessary, cash in an amount equal to) such Overruns. If the City reasonably believes at any time that the funds remaining on hand and available for payment of Project Costs are insufficient to complete the Premises, the City may require DBDT to put up funds sufficient to cover the projected overage or provide proof, satisfactory to the City in the reasonable exercise of its discretion, of the availability of sufficient DBDT funds.

ARTICLE 5.

Rent

5.1 Annual Base Rent. After taking occupancy as herein contemplated, DBDT shall pay an annual base rent of **Ten and No/100 Dollars** (\$10.00) per year during the Term (the "Annual Base Rental"), with one such annual installment to be due and payable on or before the Rent Commencement Date (defined below) and a like annual installment to be due and payable on or before each succeeding annual anniversary of the Rent Commencement Date during the Term. All payments of rent shall be made to the City as the same shall become due, by check, cashier's check, bank wire or automated clearinghouse credit, at the address specified herein for Notices, or to such other address as may hereafter be designated by the City by written notice delivered to DBDT at least twenty (20) days prior to the next ensuing rental payment date.

The Rent Commencement Date shall be the first day of the immediately following month after DBDT receives written notice from City that it may take occupancy of the Premises.

5.2 Additional Rent. All amounts to be paid by DBDT under the terms of this Agreement, in addition to the Annual Base Rental are deemed to be and shall be herein referred to as "Additional Rent."

5.3 Further Consideration. As further and additional consideration for this Agreement DBDT has and/or will do the following:

(a) Real Premises Transfer. Transfer ownership of the Premises to the City including all improvements existing or to be installed or constructed thereon and all items of tangible personal property located therein necessary or convenient to the operation of the Premises, as provided in this Agreement.

(b) Development. Finance renovation of the Premises in accordance with Article 4 above, including but not limited to the raising and contribution of not less than \$2,228,354.00 in private funds to the City for this purpose, as provided in this Agreement.

(c) Operation and Maintenance. Operate, maintain, and manage the Premises in accordance with this Agreement, including without limitation, the establishment of a headquarters for DBDT.

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

ARTICLE 6

Condition of Premises as of Occupancy

6.1 Condition of Premises; Disclaimer. DBDT has previously inspected the Premises and will accept the Premises for DBDT use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis and subject to all matters of record and zoning. DBDT 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 DBDT 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. DBDT further acknowledges and agrees that as previous owner of the land and improvements comprising the Premises and having been given the opportunity to inspect the Premises as renovated, DBDT 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. DBDT 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.

6.2 Alterations, Additions and Improvements.

(a) Substantive. DBDT shall not make or undertake any additions, improvements and/or renovations of the Premises without the prior written consent of the City to said actions and written approval by the City of the proposed plans and specifications, proposed contractor(s), and the construction schedule. All such additional, future improvements and renovations shall become the property of the City, free and clear of all liens and encumbrances, subject to the terms of this Agreement. The contractor(s) performing the work shall meet the insurance and indemnification requirements of the City, defend and hold the City harmless, 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 DBDT 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 Improvements and zoning codes and other legal requirements. Upon completion of construction, DBDT 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. DBDT shall thereafter furnish the City with copies of the updated plans showing all changes and modifications thereto. DBDT shall also furnish to the City copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable laws.

(b) Decorative and/or Theatrical. This Section shall not be construed as to limit DBDT's ability to construct temporary sets, designs, staging, lighting and sound systems or other alterations of a theatrical or decorative nature in the Premises which does not alter the structural integrity or fundamental character or appearance of the Premises. DBDT or its contractors shall carry sufficient and appropriate insurance for such activities as may be required by the City. Upon termination of this Agreement, the City may require DBDT, at DBDT's expense, to remove said improvements and restore the Premises to its previous condition.

6.3 Personal Property. Upon its occupancy, as provided herein, DBDT may place or install in or on the Premises such personal property (including without limitation, furniture, removable fixtures and equipment) as DBDT shall deem desirable for its operation. Personal property, used in the conduct of activities by DBDT (as distinguished from personal property necessary to the operation and maintenance of the Premises) placed by DBDT on or in the Premises shall not become part of the real property, but shall retain its status as personal property. All personal property installed or

situated from time to time on the Premises and paid for by DBDT from funds other than from the DBDT Construction Contribution as such term is defined in Article 4.1, shall remain the property of DBDT. 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. DBDT's personal property may be removed by DBDT at any time, so long as DBDT is not in default under this Agreement and so long as any damage occasioned by such removal is thereupon repaired. All other personal property, placed, constructed or installed upon the Premises shall be deemed to become part of the real property and shall become the sole and exclusive property of the City, free of any and all claims of DBDT or any person or entity claiming by or through DBDT. In the event DBDT does not remove DBDT's personal property that it is permitted by this section to remove from the Premises within ten (10) days following the termination of the Agreement, the City may treat said personal property as abandoned and retain the personal property and treat it as part of the Premises or have the personal property removed and stored at DBDT's expense. DBDT shall promptly reimburse the City for any damage caused by the removal of personal property whether removal is by DBDT or by the City and/or the cost of removal and storage as applicable.

ARTICLE 7

Use, Revenues and Expenses during Occupancy

7.1 Use. After the Occupancy Date and during the Term, DBDT shall have the sole right, power, responsibility and authority to use, manage and operate the Premises as a multi-use dance rehearsal and headquarters' office Premises for DBDT and to retain any and all revenue, income, proceeds and other amounts that may be generated at or from the Premises. DBDT shall be liable and obligated to pay all of the costs to operate, maintain, repair and use the Premises except for those items expressly provided in this Agreement to be paid directly by the City or reimbursed to DBDT by the City.

7.2 Revenues. DBDT shall have and control all revenue generating opportunities at the Premises, subject to the use restrictions contained herein. DBDT shall undertake to fully exploit said opportunities in a manner consistent with the nature and purpose of the Premises, DBDT's mission, and DBDT's non-profit status.

7.3 Parking. DBDT shall operate and control the parking located on and/or benefiting the Site. DBDT shall use the parking to accommodate the Premises users, visitors, personnel and performers when at the Premises ("Premises Parking"). When and to the extent not needed for Premises Parking the parking may be made available by DBDT to the general public, on an unassigned, unreserved, first-come, first-served basis subject to all laws, rules and regulations applicable to said public parking.

7.4 Compliance with Laws. DBDT 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 Premises, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by DBDT of this provision (i) so long as DBDT shall, in good faith within a reasonable time after DBDT 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 DBDT 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. DBDT shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by DBDT, its officers, agents, or employees, in or upon or connected with the Premises, and shall pay for the costs of compliance.

7.5 Prohibited Uses. Without in any way limiting the foregoing section, DBDT shall not permit the Premises to be used in any manner that would render the insurance thereon void or the insurance risk more hazardous. DBDT shall not use or occupy the Premises, or permit the Premises to be used or occupied, (i) contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto or (ii) in any manner which would violate any certificates of occupancy or permit affecting same, cause structural injury to then existing improvements, cause the usefulness of the Premises to diminish, constitute a public or private nuisance or waste, is immoral or obscene or is a threat to the welfare of the general public. DBDT 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 the Premises, DBDT and/or the City.

7.6 Additional Requirements. DBDT shall be responsible for and shall take all reasonable action necessary for the operation, maintenance, and management of the Premises, including without limitation the following:

(a) manage and operate the Premises as a multi-use dance rehearsal, instructional and headquarters' office Premises for DBDT;

(b) assure that all uses and events scheduled in the Premises are compatible with a Premises of this nature;

(c) provide professional management to schedule and promote the maximum utilization and efficient operation of the Premises;

(d) provide security guards and other personnel necessary for the safe, efficient and first-class operation of the Premises;

(e) establish operating policies and procedures for the Premises;

(f) pay all management, maintenance, repair, and operating expenses, and all other costs of the Premises, except as otherwise expressly provided in this Agreement;

(g) prepare and submit to the City annual budgets and other financial reports, in accordance with this Agreement;

(h) collect and account for all Premises revenue, using all reasonable efforts to obtain all fees, rents and other amounts due from users, vendors, concessionaires, advertisers, sponsors and tenants, if any, and to achieve reasonable financial and operational success in light of the objectives of the City and DBDT for the Premises;

(i) 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 DBDT; provided, however, no such legal action by DBDT that requires joinder of the City will be required of DBDT unless the City so participates;

(j) employ, pay, supervise and discharge all personnel DBDT determines to be necessary for the management, maintenance, and operation of the Premises;

(k) purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the management, maintenance and operation of the Premises;

(l) maintain the Premises in a good, safe, attractive, sanitary order and repair consistent with the industry standards and practices;

(m) establish, coordinate and administer a preventive maintenance program for the Premises and its machinery and equipment;

(n) arrange for all utility and other services for the Premises and pay or cause to be paid when due all charges for water, sewer, gas, lights, heat, telephone, electricity, internet, refuse disposal, and other utilities and services rendered to or used in, on or about the Premises, except as otherwise expressly provided in this Agreement;

(o) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Premises;

(p) 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 DBDT of taxes and/or assessments shall be made by DBDT on or before thirty (30) days before the last day on which such payments may be made without penalty or interest; provided, however, DBDT 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 DBDT shall not be obligated to make such payments. DBDT shall furnish to the City receipts or other appropriate evidence establishing the payment of such amounts;

(q) promptly furnish to the City such reports and other information concerning the Premises and the management, maintenance, and operation thereof as may be reasonably requested from time to time by the Director of the Office of Cultural Affairs, or her designee;

(r) procure and maintain in force all insurance policies relating to the Premises and in connection with DBDT's operation of same, as may be required by this Agreement;

(s) develop and implement a meaningful program of community outreach, enrichment and education in coordination with performance offerings and events at the Premises, with a particular emphasis on youth, seniors, and historically underserved communities;

(t) provide janitorial service and repair and maintenance of the interior and exterior areas of the Premises;

(u) maintain the heating, ventilation and cooling systems; and

(v) maintain the Premises grounds and structures in a good, safe, clean and attractive condition and in compliance with applicable laws.

7.7 Promotion. DBDT shall plan, prepare, implement, coordinate and supervise all advertising, public relations and other promotional programs for the Premises and may 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 the 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 of the City. Cross-promotion of the Premises with other Arts District cultural facilities,

institutions and events is a prime objective and shall be exploited by DBDT whenever practical. DBDT agrees to acknowledge the City of Dallas in all appropriate printed materials in a form reasonably acceptable to the City.

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

7.9 Fees and Charges. DBDT may specify and control any and all fees, deposits, charges and consideration for services, concessions or uses 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 DBDT toward the design, development, construction, renovation, equipping, operation and maintenance of the Premises and the DBDT's mission.

7.10 Contracts Related to Management and Operation of the Premises; General Provisions.

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

officers and employees as additional insureds, (v) indemnify the City and its officers and employees against any costs or liabilities thereunder using language substantially similar to DBDT'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 MASTER AGREEMENT FOR THE PREMISES BETWEEN THE CITY OF DALLAS AND DBDT (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 current list of all Management Contracts, including the parties thereto, the primary purpose thereof and applicable contract, agreement or license fees, shall be maintained by DBDT, and, upon the request of City, DBDT shall provide the City a copy of such list, delivery of which shall not be withheld or unreasonably delayed. The City shall be entitled to review the Management Contracts for compliance with the requirements of this Agreement at DBDT's office during normal business hours.

(c) Commercially Reasonable. All Management Contracts, as well as staff salaries, compensation, perquisites and benefits relating to the Premises, shall be commercially reasonable and consistent with good practice and industry standards for similar facilities and operations.

7.11 City Use. In addition to the rights of access reserved elsewhere herein, the City may reasonably use and occupy the Premises, or parts thereof, at times and locations that do not unreasonably interfere with functions and activities previously scheduled or anticipated for or the normal operations of the Premises. The City shall give DBDT no less than thirty (30) calendar days written notice of its desire to use the Premises. The notice shall describe the location, time and purpose for such use. The City's desired use shall not be unreasonably denied, hindered or delayed. The City shall, subject to appropriation and all necessary approvals, reimburse DBDT for costs incurred directly related to the City's use of the Premises pursuant to this section, including without limitation personnel and utility costs, damages to facilities, etc. The City shall coordinate its use through DBDT as manager of the Premises.

7.12 Tax Exemption. It is the desire and intention of the parties that the components of the Premises located on City-owned land and otherwise owned by the City shall be exempt from ad valorem taxes. The parties shall take all reasonable precautions to protect and preserve said exemption from ad valorem taxes.

ARTICLE 8

Utilities and Impositions during Occupancy

8.1 Utilities. From and after Occupancy, DBDT shall be liable and obligated to pay, as Additional Rent, all charges, fees, costs and assessments incurred for the use of all utilities at the Premises including, without limitation, gas, electricity, water, sewer, telephone, telecommunications and cable. Notwithstanding DBDT's ultimate obligation to pay utilities, DBDT shall undertake all reasonable efforts to minimize utility expenses at the Premises and institute utility efficiencies.

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

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

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

(i) Intended Tax Exempt. The City and DBDT acknowledge that it is anticipated and intended that the Premises and improvements constructed thereon be and remain exempt from ad valorem taxes, and it is the intention of the parties that during the Term, DBDT not incur any ad valorem taxes relating to the Premises or DBDT's interest in the Premises. The City, at the request and expense of DBDT, agrees to cooperate fully in seeking and preserving said tax exempt status.

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

ARTICLE 9

City contributions to Operations and Utilities Costs during Occupancy

9.1 Annual City Operating Expenses. DBDT shall be responsible for any and all operation, management, ordinary maintenance, repair and utilities costs ("Operation and Utilities Costs") for the Premises. Beginning with the first year after Occupancy by DBDT, the City as the Premises owner and in consideration of the donation of the Premises to the City and DBDT's operations of same, subject to annual appropriation by the City's City Council, shall pay a portion of the annual Operation and Utilities Costs of the Premises up to, but not exceeding **\$93,000.00** per calendar year after Occupancy ("Annual City Operating Expenses Cap"). The Annual City Operating Expenses Cap shall be subject to periodic adjustment as follows:

a. DBDT's annual utility usage for the first three years of operation after Occupancy shall be averaged to establish an "Annual Utility Usage Amount."

b. The Annual Utility Usage Amount shall be multiplied by the utility rate in effect for each applicable utility provider at the end of the third year after Occupancy began. The resulting product shall be known as the "Initial Utility Cost."

c. Commencing at the end of the fourth year after Occupancy began and again every year thereafter (the "Adjustment Date") the utility rate then in effect will be multiplied by the Annual Utility Usage Amount. The resulting product will be known as

the Current Utility Cost. If the Current Utility Cost calculated on an Adjustment Date is greater than or less than the Current Utility Cost calculated on the immediately prior Adjustment Date (the Initial Utility Cost in the case of the first such adjustment at the end of the fourth year after Occupancy), the Annual City Operating Expense Cap shall be increased or decreased by said difference as applicable; provided, however, the Annual City Operating Expense Cap shall never be adjusted by this procedure below the initial \$93,000.00 amount.

This procedure is intended to allow for changes in the Annual City Operating Expense Cap due to changes in the utility rates charged DBDT but not for changes due to fluctuations in usage by DBDT.

For purposes of this adjustment calculation, "Utility" shall be defined as all charges, fees, costs and assessments charged by applicable providers for gas, electricity, water, sewer, telephone, telecommunications and cable.

9.2 Payment of City Operating Expenses. The City shall pay its proportionate share of the Annual City Operating Expenses to DBDT on a monthly basis within thirty (30) days after receipt of invoice from DBDT during the Term of the Agreement.

9.3 Total Funding. The Annual City Operating Expenses provided in this Article and the Capital Maintenance, if any, described in Section 11.3, represent the City's total funding requirements for Operations and Utilities Costs for the Premises under this Agreement and are strictly subject to annual appropriation and funding by the City's City Council, in its discretion. All other necessary operating and maintenance expenses of the Premises shall be paid by DBDT. Notwithstanding the foregoing, DBDT from time to time may apply to OCA for additional funding for programs or special projects, all in accordance with OCA's established funding policies for cultural organizations and facilities, as such policies may change from time.

ARTICLE 10

Insurance and Indemnification

10.1 The City's Insurance Obligation. The City, at the City's expense, shall procure and at all times from and after the Closing Date maintain property insurance against loss or damage by fire and other casualties to the Premises as are customarily included in the so-called "Extended Coverage Endorsement" in an amount not less than one hundred percent (100%) of the replacement value thereof and with such other endorsements and additions as the City may deem necessary or advisable. Such property insurance shall name the City as the named insured and the loss payee. In satisfaction of this obligation the City may at its election carry the Premises on any master casualty

insurance policy covering City properties and facilities provided it makes adequate arrangements for any deductibles.

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

(a) Liability Insurance. DBDT agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term of this Agreement with responsible insurance companies, legally authorized to transact business in the State of Texas for bodily injury (including death) and Premises damage with minimum limits of \$10,000,000 Combined Single Limit protecting the City and DBDT against any liability, damage, claim or demand arising out of or connected with the condition or use of the Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It must be maintained by any combination of single policies and umbrella policies and may be obtained and maintained by DBDT with respect to that portion of the Premises subleased by it through the respective subtenant. The City shall be named as an additional insured on all insurance policies required in this Section, whether provided by DBDT or by any subtenant, including policies providing higher limits of liability or other coverages. The City, at least every five years during the Term, shall adjust the above referenced limits of liability to reflect percentage increases during such period in similar coverages at comparable facilities in the City of Dallas.

(b) Workers' Compensation Insurance. DBDT agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term, and if so required, with statutory limits and employer's liability with limits of \$100,000 each accident, \$100,000 disease each employee and \$500,000 disease per policy. The policy will be endorsed to provide a waiver of subrogation as to the City.

(c) Premises Insurance. At all times during the Term of this Agreement, DBDT shall, at its sole expense, keep all of its personal Premises located in the Premises insured against "all risk" of loss for full replacement cost coverage, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery, and flood. Coverage must be written by responsible insurance companies legally authorized to transact business in the State of Texas.

(d) Builder's Risk Insurance. Contingent liability and builder's all-risk insurance in an amount reasonably satisfactory to the City during construction of any subsequent improvements, renovations or additions to the Premises or any restorations,

alterations, or changes in the Premises that may be made by DBDT at a cost in excess of Five Thousand and No/100 Dollars (\$5,000.00) per job.

10.3 Insurance Policies. All insurance policies required of DBDT by this Article shall provide for at least 60 days written notice to the City before cancellation and certificates or copies of policies of insurance shall be delivered to the City, and the form and substance thereof shall be subject to the reasonable approval of the City. If any blanket general insurance policy of DBDT complies with the terms of these provisions, the naming of the City therein as additional named insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. The City and DBDT hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party by subrogation or otherwise may now or hereafter have against the other party or any of the other party's partners, directors, officers, employees, or agents, for bodily injuries (including death) to persons, or loss or damage to Premises of the City and DBDT whether caused by the negligence or fault of the City and DBDT or their partners, directors, officers, employees or agents or otherwise, to the extent that the injuries, loss or damages are covered by the proceeds of insurance policies maintained by either party.

10.4 Application of Proceeds of Premises Insurance. All proceeds payable pursuant to the provisions of any policies of Premises insurance required to be carried under the terms of this Agreement (net of reasonable expenses of collection) shall be received and held in trust and applied for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Agreement, as a fund for the restoration and repair of the portion of the Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any such proceeds not disbursed pursuant to subsection (a) above shall be paid over to and be the Premises of the City.

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

10.6 Indemnity. During the Term, DBDT agrees to defend, indemnify and hold harmless the City, its officers, employees, representatives and agents from and against any and all claims, injuries (including death), demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from (i) DBDT's failure to perform its obligations under this Agreement, including any insurance obligation, (ii) the negligence of DBDT, its officers, agents, employees, representatives or contractors, or (iii) the use, possession, management and maintenance of the Premises during the Term or any other occurrence on the Premises after the Effective Date, except to the extent that such is caused by the breach of this Agreement by the City or by the negligent act or omission of the City or its officers, employees, representatives, agents or contractors (other than the City). The City shall give DBDT written notice of any claim filed, made or asserted against the City by any person or entity other than DBDT that could result in liability of DBDT under the provisions of this Section ("Indemnity Liability") reasonably promptly after the City becomes aware that such claim has been filed, made or asserted against the City.

ARTICLE 11

Repair, Maintenance and Security during Occupancy

11.1 DBDT Obligation. During the Occupancy, DBDT shall keep the Premises and all permanent Improvements that from time to time may be on or a part of the Premises in a state of good, safe, and attractive repair on a regular and ongoing basis consistent with the standards of maintenance and repair of "Class A" commercial properties in Downtown Dallas, Texas and facilities comparable to the Premises. At all times during the Occupancy DBDT shall neither commit nor suffer any waste to the Premises. In the event this Agreement shall terminate DBDT shall deliver up the Premises as then constituted in good condition with reasonable wear and tear, obsolescence, and loss by casualty excepted (except to the extent that DBDT is required under this Agreement to repair casualty damage). If the Premises are not in substantial conformity with this Section, the City may, at its option and in addition to any other remedies under this Agreement, perform the appropriate maintenance and repair, in which event DBDT shall immediately pay to City the cost of same.

11.2 Routine Maintenance and Security. DBDT shall maintain and provide janitorial, trash collection, landscaping and security service for the Premises during the Occupancy, 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. DBDT further agrees to take care of the grounds at the Premises, including without limitation, the mowing of grass, care of shrubs, and general landscaping.

11.3 Capital Maintenance. The City shall perform all Capital Maintenance the City deems necessary or advisable with respect to the Premises during the Term; provided, however, that such Capital Maintenance is subject to prior City approval of the need, timing, scope and cost of the Capital Maintenance and appropriation of funds by the City Council. For purposes hereof, "Capital Maintenance" shall mean those certain repairs and improvements to the Premises, consistent with then-existing industry standards for "Class A" commercial properties in Downtown Dallas and Arts facilities comparable to the Premises, that the City, in its reasonable discretion, determines would increase the utility or operating efficiency of such a Premises and would be treated as a capital item and not as an expense under generally accepted accounting principles; provided, however, that the City's determination as to whether a repair or improvement is Capital Maintenance shall be final. Notwithstanding the foregoing, DBDT, at DBDT's option, shall have the right to request the City to perform certain Capital Maintenance, in which event the City shall duly consider said request and subject to prior City approval of the need, timing, scope and cost of the Capital Maintenance and appropriation of funds by the City Council, perform such Capital Maintenance in a timely manner as it deems appropriate.

11.4 DBDT's Repairs. DBDT shall make any and all additions, alterations or 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. Before DBDT 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 of Public Works and Transportation for approval and DBDT 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 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 agents 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 DBDT 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 DBDT under the Agreement but which DBDT has failed to perform; and DBDT 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 Equipment, Fixtures and Signs. DBDT shall have the right to erect, install, maintain and operate on the Premises such equipment, trade and business fixtures,

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

ARTICLE 12

Casualty and Condemnation during Occupancy

12.1 Casualty.

(a) Notice. From the Occupancy Date, if all of the Premises, or any material part thereof, is destroyed or damaged by fire or other casualty, DBDT shall promptly deliver written notice thereof to the City.

(b) Restoration Obligation. With regard to casualty damage to the Premises, the City will as soon as practical, commence the work of repair, reconstruction or replacement of the damaged Premises, provided that the City's obligation in this regard shall be limited to the amount of net insurance proceeds received by the City. Notwithstanding the foregoing sentence, if the casualty occurs after the 20th year of this Agreement and the extent of damage to the Premises is greater than 20% of the then replacement value thereof (exclusive of the Land value), the City shall have the option, within 180 days from the date of the occurrence of such casualty damage, to terminate this Agreement by giving written notice of such termination to the other party within said 180-day period, in which event this Agreement shall terminate as of the termination date specified in such notice, which shall not be less than 30 days after the date of such notice, and DBDT shall pay all Annual Base Rental for the year in which the Agreement is terminated and all other payments due and owing as of the termination date, the City shall not be required to repair the damage, and all insurance proceeds available as a result of such damage shall be paid to and be the Premises of the City.

(c) Application of Proceeds. All insurance proceeds payable under insurance policies maintained by the City by reason of the occurrence of such fire or other casualty to the Premises shall be paid and applied as provided in Section 10.4 hereof. Insurance proceeds in excess of the cost of such restoration shall be paid to and be the Premises of the City.

(d) Restoration Activity. To the extent practical the City will attempt to accommodate DBDT's continued occupancy and use of any undamaged portions of the Premises; provided however, DBDT shall under no circumstances interfere with or obstruct the City's efforts to restore the Premises. The City may direct DBDT to vacate

all or part of the Premises to accommodate restoration. City's determination of what is necessary for restoration of the Premises is final and conclusive. If repair cannot be commenced and completed within 180 days and/ or DBDT is denied use of the Premises due to repairs for more than 180 days DBDT may, as its sole and exclusive remedy, terminate this Agreement.

12.2 Condemnation.

(a) Definitions. Whenever used in this Article, the following words shall have the definitions and meanings hereinafter set forth:

(i) "Condemnation Proceedings". Any action brought for the purpose of any taking of the Premises, or any part thereof or any Premises interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), 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.

(ii) "Taking" or "Taken". The event and date of vesting of title to the Premises or any part thereof or any Premises interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), pursuant to a Condemnation Proceeding.

(iii) "Efforts to Prevent Taking". The City shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Premises, or any part thereof or any interest therein, during the term of this Agreement.

(b) Entire Taking. If all or substantially all of the Premises shall be taken in Condemnation such that it may not be developed and used as contemplated in this Agreement, this Agreement shall terminate and from and after such date and the City and DBDT 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 Premises of 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 Premises or otherwise, and DBDT hereby assigns to the City DBDT's right, title and interest in and to any and all such award.

(c) Partial Taking.

(i) Abatement for Part Taken. If less than all of the Premises 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 DBDT and the City shall not have any other obligations under this Agreement with respect to the portion of the Premises that has been taken.

(ii) Restoration Reasonable. If a Taking involves less than all of the Premises such that it can be reasonably restored to functional utility through reconstruction, reconfiguration and redesign, City shall promptly and diligently proceed to restore the functionality and utility remainder of the Premises and affected improvements. The City's obligation to so repair, reconfigure or reconstruct shall be limited to the net proceeds of the condemnation award actually received by the parties. For such purpose the City shall receive and shall hold in trust the amount of the award relating to the Premises taken and shall disburse such award to apply on the cost of such restoration. If the City cannot or does not complete such restoration within a reasonable period after such taking or condemnation, not to exceed one hundred eighty (180) days, then as its sole and exclusive remedy DBDT may terminate this Agreement in which event the parties will have no further obligations hereunder.

(d) Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Premises shall be Taken, the obligations 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 DBDT are deprived of usage of all or part of the Premises as the result of such Taking does not materially interfere with the ability of City to continue renovation and /or DBDT's use of the Premises after occupancy. 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

Holdover

13.1 Holding Over by DBDT. Should DBDT or any permitted assignee, subtenant or licensee of DBDT holdover within the Premises or any part thereof after the expiration of the Term, then, unless otherwise agreed in writing, such holdover shall constitute and be construed as a tenancy from month-to-month only, upon the same terms and conditions as during the Term; provided, however, DBDT shall pay a Base Rental of \$350 per month for the Premises and the City shall have no further obligation to fund its Annual City Operating Expenses otherwise provided in this Agreement.

ARTICLE 14

Limitation of Assignment and/or Subletting

14.1 Limitation of Assignment and/or Subletting. DBDT may not, at any time during the Term of this Agreement, assign this Agreement and/or sublet all or any portion of the Premises without the City's prior written consent. Without in any way limiting the foregoing, in the event of an approved assignment or subletting, DBDT shall at all times during the Term remain primarily liable and responsible for all of the duties and obligations of DBDT under this Agreement. Upon any such approved assignment, the assignee shall execute and deliver to the City a written assumption, in form and substance reasonably satisfactory to the City, of all of the obligations of DBDT pertaining to the Premises and accruing under this Agreement after such assignment.

ARTICLE 15

Representations and Warranties

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

(a) Existence. The City is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

(b) Authority. The City has all requisite power and authority to own the Premises, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Agreement is a valid and binding obligation of the City and is enforceable against the City in accordance with its terms.

(d) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for the City to enter into this Agreement, make the agreements herein contained or perform the obligations of the City hereunder other than those which have been obtained.

(e) Quiet Enjoyment. During its occupancy and subject to the terms of this Agreement, DBDT shall have the quiet enjoyment and peaceable possession of the

Premises against hindrance or disturbance by the City or by any person or entity acting by, through or under the City.

(f) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of the City, threatened or asserted against the City affecting the City or any portion of the Premises, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(g) Impositions. The City has not received any notice of any condemnation actions, special assessments or increases in the assessed valuation of taxes or any Impositions of any nature that are pending or being contemplated with respect to the Premises or any portion thereof.

(h) Compliance with Laws. The City has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Premises or any portion thereof.

(i) Encumbrances. The City has not placed or granted any liens or security interests against the Premises, and there are no actions pending, to the knowledge of the City, which would result in the creation of any lien on any portion of the Premises, including, but not limited to, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. During the Term, the City shall not grant any liens or security interest on all or any portion of the Premises.

(j) Limitations. Except as otherwise expressly provided herein, this Agreement is made by the City on an “**AS IS, WHERE IS, WITH ALL FAULTS**” basis, without representation or warranty of any kind, either express or implied, as to the condition of the Premises, its merchantability, its condition or its fitness for DBDT's intended use or for any particular purpose.

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

(a) Existence. DBDT is a duly organized and validly existing non-profit corporation under the laws of the State of Texas and the Internal Revenue Code and shall maintain said status during the Term of this Agreement.

(b) Authority. DBDT has all requisite power and authority to own its Premises, operate its business, to enter into this Agreement and to consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Agreement is a valid obligation of DBDT and is binding upon DBDT in accordance with its terms.

(d) No Default. The execution by DBDT of this Agreement and the consummation by DBDT of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or lapse of time or both would ripen into default under the organizational documents of DBDT or under any indenture, agreement, instrument or obligation to which DBDT is a party or is bound.

(e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for DBDT to enter into this Agreement or consummate the transactions herein contemplated, other than those which have been obtained.

(f) As-Is. Except as otherwise expressly provided herein, this Agreement is accepted DBDT on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, without representation or warranty of any kind, either express or implied, as to the condition of the Premises, its merchantability, its condition or its fitness for DBDT's intended use or for any particular purpose.

ARTICLE 16

Default and Remedies

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

(a) DBDT shall fail to pay any monetary sum 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 DBDT;

(b) DBDT shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment money, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the DBDT (provided that if such default cannot reasonably be cured within ninety (90) days, then the DBDT shall promptly commence and diligently prosecute cure and shall have an additional reasonable period of time within which to cure such default, but in no event exceeding 180 days);

(c) a receiver or trustee is appointed to take possession of all or substantially all of the assets of the DBDT; or if any action is taken or suffered by DBDT pursuant to an insolvency, bankruptcy, or reorganization act; or if DBDT 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 for herein shall not be required of 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.

16.2 City's Remedies. Upon the occurrence of an Event of Default by DBDT, 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 DBDT 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 DBDT shall assign to the City any of its contracts and agreements requested by the City to be so assigned. DBDT contracts and agreements not assumed by the City shall terminate immediately upon termination of this Agreement. DBDT 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 DBDT 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 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 DBDT to the City and shall thereafter bear interest at the rate specified in this Agreement. All remedies of the City under this Agreement shall be cumulative.

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

(a) the City shall fail to pay any monetary sum payable under this Agreement as and when the same shall become due and payable and shall not cure such default within thirty (30) days after written notice thereof is given by DBDT to the City; and

(b) the City shall fail to comply with any term, provision or covenant of this Agreement, other than the payment of a monetary amount and shall not cure such failure within ninety (90) days after written notice thereof is given by the DBDT 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, but in no event exceeding 180 days); and

16.4 DBDT's Remedies. Upon the occurrence of any Event of Default by the City, DBDT may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement without

any further notice or demand whatsoever. Termination or non-termination of this Agreement by DBDT in the event of a City Default shall not prevent DBDT from suing for specific performance, injunctive relief or other remedies.

16.5 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 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 Agreement as if written word for word herein. The parties shall fully comply with the requirements of this ordinance as a condition precedent to any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

16.6 No Waiver. 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.

16.7 The City's Right to Perform DBDT's Covenants. If DBDT shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without DBDT curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, the City after 10 days additional written notice to DBDT specifying such failure (or shorter notice if any emergency [meaning that there is imminent danger to the safety of persons or of substantial damage to Premises] exists) may (but without any obligation so to do) perform the same for the account and at the expense of DBDT, and the amount of any payment made or other reasonable expenses, with interest thereon at the rate of interest provided herein, shall be payable by DBDT to the City on demand, or if not so paid, shall be treated at the City's option as a monetary default hereunder. This provision is not in lieu of, but is in addition to, any other rights or remedies the City may have with respect to any such failure of performance to the City.

ARTICLE 17

Miscellaneous

17.1 Non-appropriation Notwithstanding any provisions contained in this Agreement to the contrary, the City has the right to terminate this Agreement on the last day of the then current fiscal year in the event of non-appropriation of funds by the City. The City agrees to notify DBDT of such non-appropriation at least 180 days prior to the end of the City's then current fiscal year.

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

17.3 Recording. DBDT may not record this Agreement or any memoranda of this Agreement in the Dallas County Real Premises Records.

17.4 Late Charge and Interest. In the event DBDT fails to make any payment to City due hereunder upon the date due, City shall be entitled to collect from DBDT 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 DBDT is obligated to pay hereunder, or that is made on behalf of DBDT, the City shall be entitled to receive reimbursement thereof from DBDT upon demand, together with interest thereon from the date of expenditure at the lesser of 18% per annum or the maximum rate allowed by applicable law to be charged by the City of DBDT. 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.

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

17.6 Further Agreements. The City and DBDT each will use their good faith efforts to complete and execute, as soon as practicable following the execution of this Agreement, all documentation necessary, appropriate or desirable to carry out the transactions agreed to by the parties in this Agreement.

17.7 Governing Law. This Agreement shall be interpreted and the rights of the parties determined in accordance with the laws of the United States applicable thereto and the laws of the State of Texas applicable to an agreement executed, delivered and performed in such state.

17.8 Venue for Actions. The venue for any legal action arising out of this Agreement shall lie exclusively in Dallas County, Texas.

17.9 Obligations to Defend the Validity of the Agreement. If litigation is filed by a third party against the City or DBDT in an effort to enjoin either party's performance of this Agreement, the parties hereto shall take all commercially reasonable steps to support and defend the validity and enforceability of this Agreement. Either party may intervene in any such matter in which the other party hereto has been named as a defendant. Each party shall be responsible for its attorneys' fees and costs of litigation.

17.10 Successors and Assigns. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17.11 Entire Agreement; Amendment. This Agreement (including the Exhibits attached hereto) and the other documents delivered pursuant hereto and referenced herein constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersede any prior or contemporaneous, written or oral agreements or discussions between the parties. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

17.12 Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

17.13 Representatives. (a) During the term of this Agreement, the City Manager (and, where expressly provided for in this Agreement, the Director or his designee) shall have full authority to administer this Agreement on behalf of the City. DBDT shall be entitled to rely on the authority of the City Manager (or, where indicated, the Director or his designee) for such purposes under this Agreement.

(b) During the term of this Agreement, DBDT shall designate two individuals who shall have full authority (acting together or alone) to administer this Agreement on behalf of DBDT. The initial DBDT representatives shall be Marvin Robinson and Zenetta Drew. DBDT may designate a permanent or temporary replacement for either DBDT representative by delivering a written notice to the City executed by DBDT.

17.14 Notices. 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 Office of Cultural Affairs Majestic Theater 1925 Elm Street Dallas, Texas 75201 Attn: Director Telephone: 214-670-0634 Facsimile: 214-670-1404
with copy to:	City of Dallas City Attorney's Office 1500 Marilla , Room 7CN Dallas, TX 75201 Attn: Ian Fredrickson, Esq. Telephone: 214-670-1330 Facsimile: 214-670-0622
If to DBDT:	If to DBDT: Dallas Black Dance Theatre, Inc. Attn: Zenetta Drew Executive Director 2515 Ross Ave. Dallas, Texas 75201 Telephone: 214-871-2376 Fax: 214-871-2842
with copies to:	Robinson & Hoskins, L.L.P.

400 South Zang Blvd., Suite 920
Dallas, Texas 75208
Attn: Sonya D. Hoskins
Telephone: 214-941-0717
Fax: 214-941-3375

17.15 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be reformed to the extent necessary to permit enforcement thereof, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17.16 No Third-party Beneficiaries. The City and DBDT intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City, DBDT or assignees of such parties.

17.17 No Joint Venture. Nothing contained in this Agreement or any other agreement between the City and DBDT is intended by the parties to create a partnership or joint venture between the City, on the one hand, and DBDT on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

17.18 Counterparts. This Agreement 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.

17.19 Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

This Agreement has been executed and delivered as of the date first written above.

* * *

THE CITY OF DALLAS:
MARY K. SUHM,
City Manager

By: 
Assistant City Manager

APPROVED AS TO FORM:
THOMAS, P. PERKINS, JR.,
City Attorney

By: 
Assistant City Attorney

RECOMMENDED BY DIRECTOR:
OFFICE OF CULTURAL AFFAIRS
Maria Munoz-Blanco, Director

Name: 

DALLAS BLACK DANCE
THEATRE, INC., a Texas non-profit
corporation

By: 
Name: MARVIN E. ROBINSON
Title: President

EXHIBITS

EXHIBIT A- Metes and Bounds description of the Premises

EXHIBIT B- Map identifying the Property

EXHIBIT C- Metes and Bounds description of the DBDT Parking Lot

December 14, 2005

WHEREAS, the Dallas Black Dance Theatre ("DBDT") is a world-class modern dance company, whose mission is to achieve artistic excellence through performance and educational programs bridging cultures, reaching diverse communities and encompassing ever-expanding national and international audiences; and,

WHEREAS, in 1999, DBDT acquired the former Moorland Y.M.C.A., an approximately 20,058 square foot tract of land improved with a building, located at 2700 Flora Street for conversion into a multi-use dance rehearsal, instructional and administrative office facility for DBDT; and,

WHEREAS, in the City's 2003 Bond election, the voters approved a proposition which included \$3,263,976 for the planning, design, construction and renovation of the former Moorland Y.M.C.A. building as a multi-use dance rehearsal, instructional and administrative office facility for DBDT; and,

WHEREAS, the projected cost to renovate the property is approximately \$5,500,000 and DBDT, as a private non-profit corporation, has undertaken a private fundraising campaign to finance a significant portion of the renovation and reconstruction of the facility; and,

WHEREAS, the City's financial contribution for the reconstruction and renovation of the facility shall not exceed \$3,263,976; and,

WHEREAS, DBDT wishes to transfer title of the property to the City, after a due diligence period as contemplated in a Master Agreement, in exchange for a 40 year lease of the facility from the City to DBDT; and,

WHEREAS, the City wishes to take title to the property after a due diligence period and enter into a forty (40) year lease with DBDT as described in a Master Agreement; and,

WHEREAS, the City will provide an initial annual amount not to exceed \$93,000 to DBDT for operations and maintenance costs for the facility, subject to annual appropriation and City Council approval, as described in a Master Agreement; and,

WHEREAS, the City of Dallas wishes to execute a Master Agreement with Dallas Black Dance Theatre for the donation of the facility to the City and the design, development, construction, maintenance, management, use and operation of the facility as a renovated multi-use dance rehearsal, instructional and administrative office facility; and,

WHEREAS, the City will not commence construction of improvements to the facility until DBDT has secured the necessary additional funding in excess of the City's \$3,262,976 contribution; and,

053604
December 14, 2005

WHEREAS, DBDT has agreed to be responsible for the costs of renovating and reconstructing the facility beyond the total estimated cost of \$5,500,000; and,

WHEREAS, local Government Code Section 272.001 would not require an advertised public bidding of this Master Agreement.

Now, Therefore,

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

SECTION 1. That the City Manager is hereby authorized to negotiate a comprehensive Master Agreement for the development and use of the facility between the City of Dallas and Dallas Black Dance Theatre for the donation of the facility to the City and the design, development, construction, maintenance, management, use and operation of the facility at 2700 Flora Street, said Master Agreement to be within the general parameters outlined on the term sheet (Attachment A) and include such other and additional terms as are determined to be necessary or convenient.

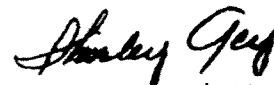
SECTION 2. That the City Manager is hereby authorized to execute such negotiated Master Agreement upon approval as to form by the City Attorney.

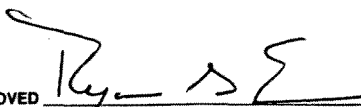
SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

Distribution: Public Works and Transportation, Cheryl Nichols, OCMC, Room 101
Property Management
City Attorney
Office of Cultural Affairs

APPROVED BY
CITY COUNCIL

DEC 14 2005


City Secretary

APPROVED 
HEAD OF DEPARTMENT

APPROVED 
CITY CONTROLLER

APPROVED 
CITY MANAGER

Term Sheet

- A. Parties:** The City of Dallas, Texas, a municipal corporation of the State of Texas and a home rule city (the "City") and Dallas Black Dance Theater, a Texas non-profit corporation ("DBDT").
- B. Property:** An approximately 20,058 square foot tract of land improved with a multi-level building located at 2700 Flora Street, Dallas, Dallas County, Texas (the "Property").
- C. Term:** 40 years from the date of execution.
- D. Property Transfer / Acquisition:** DBDT will donate good and indefeasible fee simple title to the Property to the City within 15 days following City's satisfactory completion of a 180 day due diligence investigation (the "Inspection Period"). Each party shall bear its own closing costs.
- E. Renovation Budget:**
- i.** The anticipated total cost for the renovation of the Property is currently estimated at \$5,500,000.
 - ii. The City's Contribution:** The City's has \$3,263,976.00 in bond funds to pay for the planning, design, construction and renovation of the Property. The City's contribution shall in no event exceed this amount for these purposes.
 - iii. DBDT's Contribution:** DBDT's contribution for the costs of renovating and reconstructing the Property is estimated to be in excess of approximately \$2,200,000. DBDT shall be responsible for any costs of renovation in excess of the approved final budget amount (currently estimated at \$5,500,000).
- F. DBDT Funding:**
- i.** DBDT shall have an initial 3 year term, plus two 2-year extension options, within which to raise its contribution obligation.
 - ii.** DBDT shall provide proof of funding satisfactory to the City in the City's sole discretion.
 - iii.** If DBDT is unable to raise said funds within the period(s), the City may terminate the Master Agreement and shall retain the property without further obligation.

- G. Construction and Renovation:** City will oversee and cause to be performed the planning, design, engineering and construction of the Facility as it deems appropriate, in conformance with its standard practices for bidding, contracting, bonding, insurance, completion, etc. for like projects. The City will collaborate with DBDT in the design of the facility, however, the City shall have final design approval.
- H. Use:** DBDT will assume occupancy of the Property upon completion of renovation (issuance of a certificate of occupancy). DBDT shall have the right, power, responsibility and authority to use, manage and operate the Property after assuming occupancy as a multi-use dance rehearsal, instructional and administrative office facility.
- I. DBDT Operation, Maintenance and Management Obligations:** DBDT shall be responsible for and shall take all reasonable action necessary for the operation, maintenance and management of the Property.
- J. Prohibited Uses:** DBDT shall not use or occupy the Property in any manner contrary to federal, state or local law or regulation or which would violate its certificate of occupancy, cause injury or otherwise inhibit the usefulness of the Property or cause such to become a threat to the general welfare.
- K. Rent:** Ten dollars per year and other good and valuable consideration including, but not limited to DBDT's donation of the Property to the City; DBDT's cash contribution to renovation of the Property; DBDT's undertaking to operate, maintain, etc. the Property; and DBDT's dance, educational, and cultural programming at the Property.
- L. Utilities:** DBDT shall pay and be responsible for the costs of all utilities after assuming occupancy.
- M. Parking:** The City is to be provided with sufficient parking on DBDT's adjacent property to supplement the on-site parking at the Property as renovated.
- N. Insurance:**
- i. City obligation:** The City shall procure and pay for property insurance covering the Property.
 - ii. DBDT obligation:** After assuming occupancy DBDT shall procure and pay for liability insurance, worker's compensation insurance and builder's all-risk insurance for any subsequent improvements to the Property undertaken by DBDT on policies and under terms acceptable to the City.

- O. Alterations:** After assuming occupancy DBDT may, upon the City's prior written consent, make alterations, additions or improvements to the facility in a good and workmanlike manner, upon submission of plans and specifications to City and in conformance with City insurance and bonding requirements.
- P. Revenues:** DBDT shall retain all revenues from its operation and use of the Property, subject to the prohibited and permitted use provisions. Naming rights and sponsorships arrangements shall be subject to the City's prior written approval, which shall not be unreasonably withheld.
- Q. Laws, Rules and Regulations Applicable to the Property:** DBDT shall be obligated to comply with any and all laws, rules and regulations applicable to the Agreement and/or Property.
- R. City Use:** The City shall be entitled to use the Property subject to prior scheduling and consent of DBDT and reimbursement of costs.
- S. DBDT Management Contracts:** Any and all DBDT management, concession, and/or property contracts related to the Property will be subject to the Agreement and such other commercially reasonable limitations as the City shall determine.
- T. Taxes and Impositions:** DBDT shall be responsible for any taxes or impositions that arise pursuant to the Agreement and /or applicable to the Property. Without limiting the foregoing, it is the parties intention that the Property be and remain tax exempt.
- U. City's Contribution of Operations and Maintenance Costs:** The City shall pay DBDT \$93,000 annually for operation, management, ordinary maintenance, landscaping, repair and utilities costs (including, but not limited to electricity, water and gas). This amount may be adjusted on a periodic basis to account for actual increases in the utility costs due to rate increases imposed by the utility providers (as opposed to usage) based upon the average of the first three years full years of operation.
- V. Indemnification:** DBDT will indemnify the City for any and all losses, costs, damages, claims, etc. arising from this Agreement.
- W. Capital Maintenance:** The City will provide capital maintenance subject to the City's determination and approval of timing, scope, cost of same and appropriation of funds by the City Council.
- X. Casualty and Condemnation:** Commercially reasonable provisions acceptable to the City.

- Y. Assignment/Subletting:** DBDT may not assign, sublet or otherwise convey or pledge its interest in either the Property or the Agreement without the City's prior written consent.
- Z. Default:** Commercially reasonable default and remedies provisions acceptable to the City.
- AA. Non-appropriation:** The City shall have the right to terminate this Agreement in the event of non-appropriation of funds on the last day of its then current fiscal year. The City will endeavor to give not less than 180 days notice to DBDT prior to the end of the City's fiscal year.

EXHIBIT A

FIELD NOTES DESCRIBING A 20,058 SQUARE FOOT TRACT TO BE TRANSFERRED FROM THE DALLAS BLACK DANCE THEATRE TO THE CITY OF DALLAS IN BLOCK 566

ALL THAT certain lot, tract or parcel of land lying and being situated in the City and County of Dallas, Texas, more particularly described as follows:

BEING a 20,058 square foot tract of land situated in the JOHN GRIGSBY SURVEY, ABSTRACT NO. 495, Dallas County, Texas and being situated in Block 566, official City of Dallas numbers and being a part of that tract of land conveyed to Dallas Black Dance Theatre, by Deed dated September 15, 1999 and recorded in Volume 99181, Page 02247, Deed Records, Dallas County Texas (DRDCT) and being more particularly described as follows:

BEGINNING at the intersection of the Southeast line of Flora St. (50' Right-of-Way) and the Northeast line of Boll St. (50' Right-of-Way) from which a cut cross found bears South 2°44'45" West, a distance of 0.45 feet, said point of intersection also being the most Westerly corner of herein described tract;

THENCE North 45°26'00" East, with the Southeast line of said Flora St., a distance of 114.00 feet to a ½" Iron Rod found at the most Northerly corner of herein described tract, said Iron Rod also being at the most Westerly corner of a tract of land conveyed to Levco Enterprises, Inc. by deed recorded in Volume 88126, Page 3842, (DRDCT);

THENCE South 44°46'00" East, departing the Southeast line of said Flora St., along the common line between the Dallas Black Dance Theatre tract and the Levco Enterprises, Inc. tract, a distance of 100.00 feet to an inner ell corner from which a found ½" Iron Rod bears South 38°20'23", a distance of 0.15 feet;

THENCE North 45°26'00" East, along said common line, a distance of 3.00 feet to a point for corner from which a found Railroad spike bears South 1°41'31" East, a distance of 0.38 feet;

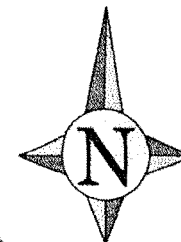
THENCE South 44°46'00" East, along said common line, a distance of 74.00 feet to a point for corner in the Northwest line of Forbes St. (16' Right-of-Way), from which a found 8d nail bears South 74°28'01" East, a distance of 0.20 feet, said point also being the most Easterly corner of herein described tract;

THENCE South 45°26'00" West, along the Northwest line of said Forbes St., a distance of 117.00 feet, to a ½" Iron Rod found at the intersection of the Northwest line of said Forbes St. and the Northeast line of said Boll St., said Iron Rod also being at the most Southerly corner of herein described tract;

THENCE North 44°46'00" West, along the Northeast line of said Boll St., a distance of 174.00 feet to the **POINT OF BEGINNING**, containing 20,058 square feet of land.

BASIS OF BEARING: The Southeast line of Flora St. (a 50' Right-of-Way), being North 45°26'00" East, as recorded in Volume 99181, Page 2247, of the Deed Records of Dallas County, Texas.





SCALE: 1" = 30'
SH. 2 OF 2

FLORA ST.

BLOCK 566

FORBES ST.

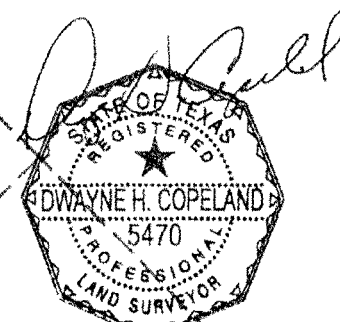
BOLL ST.

LEVCO ENTERPRISES, INC.
V. 88126, P. 3842

DALLAS BLACK DANCE THEATER
V.99181, P. 2247

LEVCO ENTERPRISES
INC.

DALLAS BLACK DANCE THEATER
V.99181, P. 2247



FND 1/2"
IRON PIPE

100.00
S44°46'00"E

3.00
N45°26'00"E

FND RR
SPIKE

FND 1/2"
IRON ROD

74.00
S44°46'00"E

FND 8D
NAIL

117.00
S45°26'00"W

FND 1/2"
IRON ROD

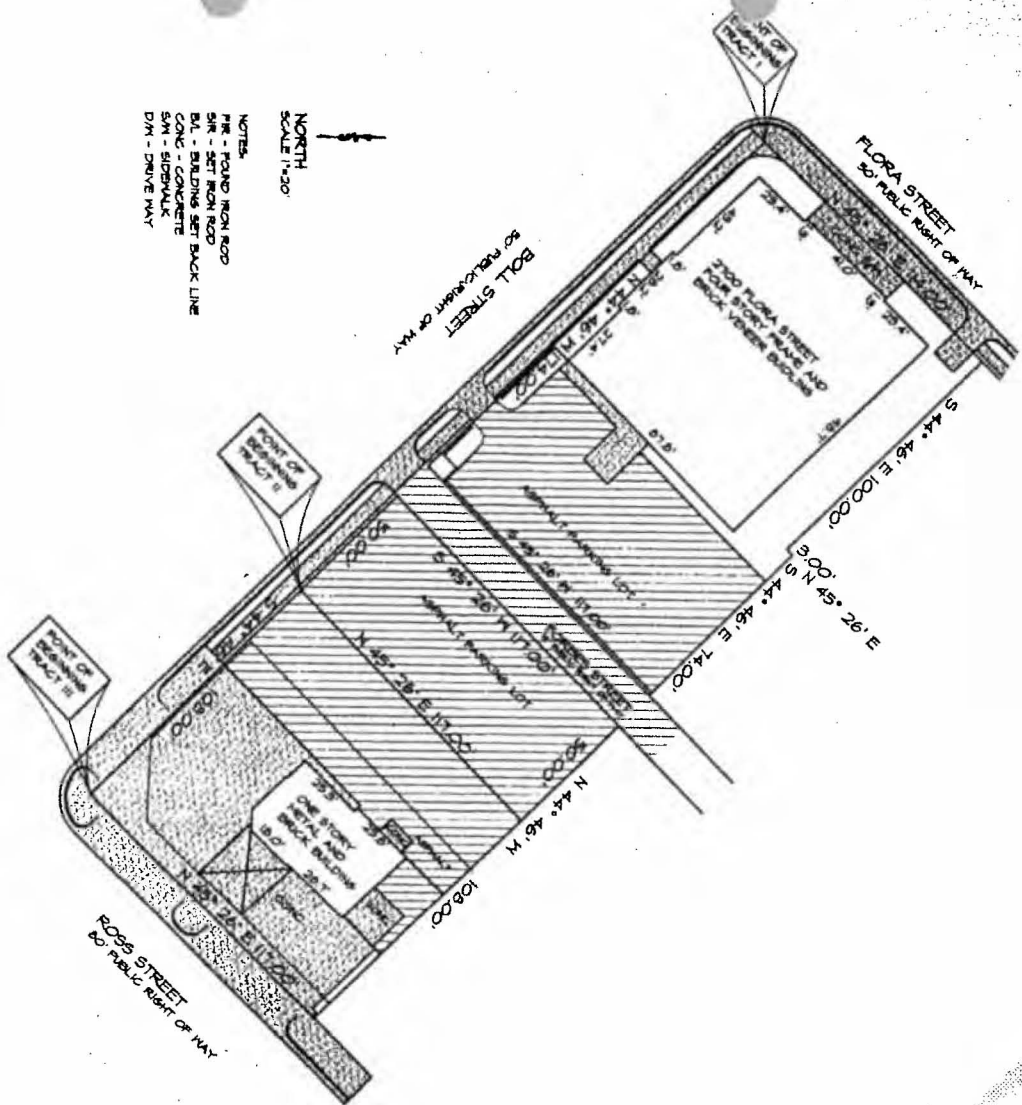
16'

174.00
N44°46'00"W

FND CUT
CROSS

50'

50'



TRACT I

Being a Tract of Land out of City Block No. 566, and being more fully described as follows:

Beginning at a point of intersection of the Northwest line of Boul Street with the Southeast line of Flora Street;

Thence South 45 deg. 26 min. East along the Southeast line of Flora Street 34.0 feet;

Thence South 44 deg. 46 min. East 100.0 feet;

Thence North 45 deg. 26 min. East 3.0 feet;

Thence South 44 deg. 46 min. East 74.0 feet to a point in the Northwest line of Forbes Street;

Thence South 45 deg. 26 min. West along the Northwest line of Forbes Street 17.0 feet to its intersection with said Northwest line of Boul Street;

Thence North 44 deg. 46 min. West along the Northwest line of Boul Street 74.0 feet to the point of beginning;

TRACT II

A tract of land situated in Dallas County, Texas, described as follows:

Being a tract 30 x 17 feet out of Block No. 566 of the City of Dallas, Texas, according to the official map of the City of Dallas, Texas, and being part of a lot conveyed by Edward J. Gorman by deed dated August 10, 1962, recorded in Volume 57, page 217 of the Deed Records of Dallas County, Texas, more particularly described as follows:

Beginning at a point in the Northwest line of Boul Street, 100 feet Northwest from the intersection of the Northwest line of said Boul Street with the Southeast line of the Avenue of the Americas, and being the Northwest corner of a lot conveyed by E. J. Gorman, Jr. Thence to John S. Tron by Deed dated January 24, 1941, and recorded in Volume 2256, Page 271, Deed Records, Dallas County, Texas;

Thence North 45 deg. 26 min. East with the Northwest line of said Tron lot, 17 feet;

Thence North 44 deg. 46 min. West 30 feet to the Southeast line of a lot-front along Forbes Street;

Thence South 45 deg. 26 min. West along the Southeast line of said lot-front (Forbes Street), 17 feet to the Northwest line of Boul Street;

Thence South 44 deg. 46 min. East along the Northwest line of Boul Street, 30 feet to the PLACE OF BEGINNING;

TRACT III

Situated in Dallas County, Texas, being described as follows, to-wit:

Being a part of Block No. 566, Official City Number, in the City of Dallas, Texas, and

Beginning at an "X" in concrete in the Northwest line of Ross Avenue (as extended) at its intersection with the Northwest line of Boul Street;

Thence North 45 deg. 26 min. East with the Northwest line of Ross Avenue, 17 feet to on iron pipe;

Thence North 44 deg. 46 min. West, parallel with the Northwest line of Boul Street, 100 feet to on iron pipe;

Thence South 45 deg. 26 min. West, 17 feet to on iron pipe in the Northwest line of Boul Street;

Thence South 44 deg. 46 min. East with the Northwest line of Boul Street, 100 feet to the PLACE OF BEGINNING, and containing 12,656 square feet of land, and being the same property conveyed to Investor Properties, Ltd. by Deed dated February 10, 1968, recorded in Volume 60050, Page 1236 of the Deed Records of Dallas County, Texas.

THIS SURVEY PLAT WAS PREPARED BY THE SURVEYOR OF DALLAS COUNTY, TEXAS, AND IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY PLAT ON FILE IN THE OFFICE OF THE SURVEYOR OF DALLAS COUNTY, TEXAS.	
PROPOSED BEGINNING: DALLAS BLACK DANCE THEATRE	DATE OF SURVEY: 10/1/68 BY: [Signature] [Signature] [Signature]

Long

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