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CITY SECRETARY
DALLAS, TEXAS**FIFTH AMENDMENT TO LEASE AGREEMENT**

THIS FIFTH AMENDMENT TO LEASE AGREEMENT ("Fifth Amendment") is entered effective as of August 11, 2021 (the "Effective Date") by the CITY OF DALLAS, a duly incorporated home rule city of the State of Texas located principally in Dallas County, Texas (the "City"), and the DALLAS THEATER CENTER, a corporation organized under the Texas Non-Profit Corporation Act ("Tenant" or "DTC").

WITNESSETH:

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

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

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

WHEREAS, the City Council approved the Fourth Amendment to the Original Lease Agreement as authorized by Resolution No. 21-0136 on January 13, 2021, which remains in full force and effect; and

WHEREAS, the City, acting by and through its Office of Arts and Culture subsequently executed the Fourth Amendment to the Original Lease Agreement (hereinafter called the "Fourth Amendment", and collectively with the Original Lease Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the "Lease") to be effective January 29, 2021; and

WHEREAS, as regards the Equitable Access Plan requirements set forth in Section 44 of the Lease, the City and Tenant acknowledge and agree that Tenant's performance thereunder has become interrupted and delayed due to the unforeseen impact of the worldwide COVID-19 pandemic; and

WHEREAS, in response to said unforeseen impact of the worldwide COVID-19 pandemic, the City and Tenant have negotiated acceptable terms for this Fifth Amendment to the Lease to enable Tenant to complete performance of the Equitable Access Plan and now desire to supplement, modify and amend the Lease to extend the delivery requirements for the Equitable Access Plan in accord with Tenant's operation of the Premises and provide for additional obligations of the parties, as otherwise specifically provided herein.

NOW, THEREFORE, the City and Tenant, for and in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby agree to supplement, modify and amend the Lease as follows:

1. Defined Terms. All capitalized terms not defined in this Fifth Amendment have the definitions ascribed to such terms in the Lease.
2. Extension of Term. The parties herein agree to extend the Term of the Lease for an additional twelve (12) month period through June 1, 2025. Accordingly, the Lease is hereby revised to state that the Term of the Lease which commenced on June 12, 2019 shall expire as of 11:59 p.m., June 1, 2025, unless terminated earlier in accordance with the Lease.
3. Equitable Access Plan. City and Tenant agree to revise the Equitable Access Plan to defer the implementation of the Equitable Access Plan by one year and defer the schedule for non-resident group rental by one year. Therefore, Tenant shall implement the Equitable Access Plan during year 4 through year 6 of the current Term. The following number of weeks are reserved for non-resident groups at the Kalita and the Heldt Annex Building:
 - a. Year 4: 4 weeks reserved for non-resident groups
 - b. Year 5: 8 weeks reserved for non-resident groups
 - c. Year 6: 12 weeks reserved for non-resident groups
4. Authority to Execute and Perform Lease. Each party, as to itself only, represents and warrants that it has the full power and authority to enter into this Fifth Amendment and perform its obligations under this Lease.
5. Counterparts. This Fifth Amendment may be executed, including via certified electronic or facsimile signatures, in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
6. Except as expressly modified herein by this Fifth Amendment, all the terms, provisions and conditions of the Lease shall remain in full force and effect.

(Signature Page follows)

EXECUTED on this the 30th day of August, 2021, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 21-1236, adopted by the City Council on August 11, 202 1, and by Tenant, acting through its duly authorized official.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO
City Attorney



BY Oruchi Nwaeke (Aug 30, 2021 09:37 CDT)

Assistant City Attorney *O NN*

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



BY Joey Zapata (Aug 23, 2021 14:14 CDT)

Assistant City Manager

RECOMMENDED BY
THE DIRECTOR OF ARTS AND CULTURE:



BY Jennifer Scripps (Aug 23, 2021 13:34 CDT)

DALLAS THEATRE CENTER



BY Jeffrey Woodward (Aug 23, 2021 11:38 CDT)

Managing Director

August 11, 2021

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

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

WHEREAS, the lease agreement was amended by the City and DTC by the First Amendment on November 17, 1982 for the leased premises; and

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

WHEREAS, the City, acting by and through its OAC, subsequently executed the Third Amendment to the Original Lease Agreement to be effective June 12, 2019; and

WHEREAS, on January 13, 2021, City Council authorized the Fourth Amendment to the Lease Agreement to defer the delivery date of the Updated Master Plan by Resolution No. 21-0136; and

WHEREAS, in response to the unforeseen impact of the worldwide COVID-19 pandemic and related government restrictions, it is desirable to amend the Lease to extend the term of the agreement, defer implementation of the Equitable Access Plan and defer the schedule for non-resident rentals by one year.

Now, Therefore,

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

SECTION 1. That the City Manager is hereby authorized to execute a Fifth Amendment to the Lease Agreement with the Dallas Theater Center, approved as to form by the City Attorney, to (1) extend the term of the agreement by one year; (2) defer the implementation of the Equitable Access Plan by one year; and (3) and defer the schedule for non-resident rentals by one year.

SECTION 2. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

