

**FACILITY USE AGREEMENT
(2535 Valley View Lane)**

THIS FACILITY USE AGREEMENT (“Agreement”) is entered into as of the Effective Date by and between the **CITY OF FARMERS BRANCH**, a Texas home rule municipality (“City”), and **FARMERS BRANCH COMMUNITY THEATRE, INC.**, d/b/a The Firehouse Theatre, a Texas nonprofit corporation (“Theatre”) (the City and Theatre collectively the “Parties” or individually as a “Party”), acting by and by and through their respective authorized representatives.

RECITALS

WHEREAS, City desires to expand the opportunities available for residents of the City of Farmers Branch to participate in and enjoy the performing arts within the City and, in particular, in facilities located in or within close proximity to the Old Farmers Branch/DART station area; and

WHEREAS, use of City’s property located at 2535 Valley View, Farmers Branch, Texas, and more particularly described below (“the Property”) as a community theatre will provide such additional opportunities for public participation in the performing arts and continued public use of the Property; and

WHEREAS, City desires to provide a revocable nonexclusive license to Theatre to provide theatrical, dramatic, comedic, musical and dance performances and productions (hereinafter defined as the “Productions”) to the public for the promotion of the performing arts within the City; and

WHEREAS, Theatre desires to provide for the Productions in accordance with the terms set forth herein; and

WHEREAS, City Council finds that use of the Property by the Theatre pursuant to this Facility Use Agreement constitutes a public use;

NOW, THEREFORE, City and Theatre, in consideration of the mutual covenants, terms and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged agree as follows:

**Article I
Definitions**

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

“Agreement Year” shall mean: (1) for the first Agreement Year, the twelve month period beginning on the Effective Date and ending at 11:59 p.m. on the day before the

first anniversary of the Effective Date, and (2) for each subsequent Agreement Year, the twelve month period beginning on the anniversary of the Effective Date and ending at 11:59 p.m. on the day before the next subsequent anniversary of the Effective Date.

“City” shall mean the City of Farmers Branch, Texas, acting by and through its City Manager, or designee.

“Effective Date” shall mean the last date of execution of this Agreement.

“Facilities” shall collectively mean: (1) all existing or subsequently constructed structures, improvements, and fixtures located on the Property and used in association with the Permitted Use, including, but not limited to, all buildings, parking lots, driveways, easements, and accessory buildings; and (2) the Property.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Theatre or any property owned by the Theatre.

“Permitted Use” shall mean the use of the Facilities by Theatre for the Productions and for no other use or purpose.

“Production Schedule” shall mean the list of Productions scheduled to be conducted and performed by Theatre during the term of this Agreement and any subsequent amendments to said Agreement.

“Productions” shall mean the performance of one or more theatrical presentations by Theatre or other entity under contract with Theatre to conduct a theatrical performance at the Facilities open to the public in accordance with the Production Schedule.

“Property” shall mean the real property owned by City, being a 0.689 acre tract of land, more or less, out of the Thomas Keenan Survey, Abstract No. 733, Dallas County, Texas, and being more particularly described in that certain warranty deed dated January 7, 1948, recorded in Volume No. 2988, Page 463, Deed Records, Dallas County, Texas, and commonly known as 2535 Valley View Lane and 13210 Goodland, Farmers Branch, Dallas County, Texas.

“Term” shall mean the Initial Term and any Renewal Term.

“Theatre” shall mean Farmers Branch Community Theatre, Inc., d/b/a The Firehouse Theatre, a Texas nonprofit corporation.

Article II

Grant of License

2.1 **Grant of License.** City hereby grants to Theatre a revocable nonexclusive license for the Permitted Use and for no other purpose during the Term of this Agreement subject to the terms and conditions set forth in this Agreement.

2.2 **Term.** The Term of this Agreement shall commence on the Effective Date, and shall terminate on the last date of the Agreement Year, unless sooner terminated as provided herein (the “Initial Term”).

2.3 **Renewal Terms.** The Term of this Agreement shall, upon the expiration of the Initial Term, be automatically renewed for an additional Agreement Year unless either Party provides written notice to the other Party to terminate this Agreement not less than ninety (90) days prior to the end of the Agreement Year. Thereafter, the Term of this Agreement shall automatically renew for successive Agreement Years unless either Party provides written notice to the other Party to terminate this Agreement not less than ninety (90) days prior to the end of the then current Agreement Year (each a “Renewal Term”).

2.4 **Termination.** This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement or a related agreement and such breach is not cured within thirty (30) days after written notice thereof in accordance with this Agreement;
- (c) upon written notice by the City, if any Impositions owed to the City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Theatre retains the right to timely and properly protest and contest any such Impositions); and
- (d) upon one hundred eighty (180) days prior written notice by City.

2.5 **Facility Use Fee.** As consideration for Permitted Use of the Facilities, Theatre agrees to pay to City a Facility Use Fee in an amount equal to One and No/100ths Dollars (\$1.00) per ticket per Production sold for every Production at the Property during the Term of this Agreement with the exception of those shows produced as children’s theatrical productions, which fee shall be thirty/100ths Dollars (\$0.30) per ticket. For purposes of this Section 2.5, a “ticket sold” means and includes: (a) the number of individual tickets sold for each Production or each Production in any season ticket or similar ticket, whether at full price or at a discounted price; and (b) the number of tickets to which a person or entity is entitled to receive upon

purchasing a season ticket or as a benefit for a sponsorship, membership, or contribution paid to Theatre, regardless of whether or not such ticket rights are ever used.

(b) Theatre shall pay the Facility Use Fee to City not later than the fifteenth (15th) day of each calendar quarter during the Term for each ticket, sponsorship, membership, or season ticket sold during the previous ending calendar quarter. Payment of the Facility Use Fee shall be accompanied by a report setting forth the number of tickets sold for each Production during the applicable quarter and the number of season tickets, memberships, or sponsorships sold during said quarter. Complimentary tickets for which Theatre collects no admission fee shall not exceed ten percent (10.0%) of the seats available for sale for the related performance. There shall be no Facility Use fee due for complementary tickets, as these are used for promotional and advertising purposes to increase awareness of Productions at the public use facility. Theatre shall grant City the right to review and audit Theatre's records relating to the sale of tickets, memberships, and sponsorships during Theatre's regular business hours upon reasonable advance notice to Theatre.

Article III

Property Use and Maintenance

3.1 **Use of Property.** City shall make Property available to Theatre, for Theatre's use and public use under the terms agreed hereto as of the Effective Date of this Agreement. City reserves all ownership rights in Property and Theatre shall return Property to the city, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

3.2 **Property Maintenance and Repair.** The City shall provide:

(a) Maintenance and repair of the heating, ventilation and cooling system for the Property.

(b) Maintenance of the Property grounds and structures in reasonably good condition and in compliance with applicable laws.

(c) Except for any repairs made necessary by the negligence, misuse, or default of Theatre, its employees, agents, customers, volunteers, and invitees, City shall be responsible for making all necessary repairs to the roof, exterior walls, exterior doors, windows, corridors, driveways, and parking areas of the Facilities ("the Building Systems"). City agrees to notify Theatre not later than three (3) business days prior to performing any repairs or alterations to the Building Systems, which are reasonably likely to interrupt or interfere with Theatre's operations. City will try to cause as little disruption as possible to Theatre operations. Notwithstanding the foregoing, City shall be authorized to commence making repairs, improvements or alterations to the Building Systems without prior notice if there is an imminent threat that is reasonably likely to result in injury to person or damage to real or personal property, in which case City shall notify thereafter Theatre as soon as reasonably possible. Theatre shall notify City of the need for repairs or maintenance of the Building Systems as soon as reasonably possible after becoming aware of the need for such repair or maintenance.

(d) Theatre shall not cause or permit any waste, damages, or injury to Property. Theatre shall, at its sole cost and expense, repair any damage or injury caused to the Property by Theatre, its employee's agents, invitees or patrons.

(e) Theatre shall store its personal property in a neat and orderly manner, and its operations of Theatre shall be carried out in accordance with the highest professional standards.

(f) Theatre shall not store or maintain flammable or hazardous materials in the Property in violation of the Fire Code or other applicable laws and codes.

3.4 **Property Improvements.** City and Theatre shall work together to identify any building upgrades and improvements that will enhance the functionality of the Property. Any improvement projects shall be first presented to the City's Facility Management Department during the City's annual budget process to be considered for approval and funding.

(a) **Repair and Restoration of Facilities.** Theatre shall be responsible for obtaining timely repair, replacement or correction of all damage occurring on the Property or Facilities of City caused by the negligent acts or omissions or misconduct of Theatre, its engineers, architects, contractors and subcontractors, to the City's reasonable satisfaction. All costs thereof shall be borne by Theatre or its contractors, and shall not be a charge against City. The cost of emergency repairs made by City on account of damage caused by the negligent acts or omissions or misconduct of Theatre, its engineers, architects, contractors and subcontractors, shall be reimbursed to City by Theatre. The Parties shall look first to the proceeds of applicable insurance policies, if any, in fulfilling the obligations of this paragraph, regardless of any Party's negligence or responsibility, including the proceeds of All Risks Builders Risk Insurance to be provided by the architect, engineer and/or contractor, and which shall be written in the names of City and Theatre, the architect, contractor, et.al.

(b) **Exemption From Sales and Use Taxes.** The Facility Improvements permanently installed on the Property as part of the Facilities shall belong to City. City qualifies for exemption from state and local sales taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. To the extent permitted by law, Theatre shall not pay any sales or use taxes which would otherwise be payable in connection with the construction of the Facility Improvements. City will cooperate in providing to Theatre and/or its contractors any exemption certificate or document that may be required by state law to secure the exemption from the payment of sales and use taxes.

- (c) **Title to City.** Any improvements, additions, alterations, and fixtures (except furniture and fixtures) constructed, placed, or maintained on any part of the Facilities shall be considered part of the Property, shall be the property of the City, and shall remain on the Property at the expiration of the Term of this Agreement.

3.5 **Utilities.** City shall be responsible for payment of utilities at the Property, including but not limited to electricity, gas, water, waste disposal and recycling, fire alarm monitoring service, and telephone lines required for monitoring, required recharge of fire extinguishers, pest control, and janitorial and cleaning services.

Article IV Assurances

4.1 **Certain Covenants of City.** City agrees that City will:

- (a) cooperate with Theatre in the implementation of this Agreement;
- (b) use all reasonable efforts to maintain public access to the Facilities for Theatre Productions;
- (c) use all reasonable efforts to repair and maintain facility at highest expected standards of comparable public buildings under City's ownership, scope and responsibility; and
- (d) provide facilities for handicapped patrons in compliance with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000).

4.2 **Covenants of Theatre.** During the Term of this Agreement, Theatre shall:

- (a) use the Facilities for the Permitted Use to the highest standards, as a first class non-profit community theatre;
- (b) cooperate with City to use every reasonable effort to encourage and maintain high attendance levels at Productions held at the Facilities;

- (c) provide and set up at its cost for all equipment and lighting and other personal property necessary for all Productions and to maintain such equipment in good working condition at all times;
- (d) maintain facilities for handicapped patrons;
- (e) treat all Facility users safely and fairly;
- (f) except for maintenance and repairs which are the responsibility of City, promptly undertake and accomplish all maintenance and repairs necessary to prevent any deterioration or waste to the Facilities; and
- (g) upon the request of City, reasonably cooperate with appropriate City departments in the development and presentation of educational, training, and/or recreational programs relating to the performing arts, particularly acting, directing, staging, and similar activities generally consistent with Theatre's purpose of producing community theatre production and education of the community in the dramatic arts.

4.3 **Acceptance of Facilities.** Theatre and City acknowledge that no fiduciary relationship exists between Theatre and City, or any of City's officers, employees, agents, or attorneys. Notwithstanding anything to the contrary to the above, City warrants that it has good title to the Property and the Facilities.

Article V

City Access and Use

5.1 **City Access.** City authorized representatives shall have the right to enter and inspect the Facilities during normal business hours, provided that City shall not unreasonably interfere with the Permitted Use of the Facilities (unless such interference is necessary to preserve the health and safety of the public or made pursuant to its police powers). Notwithstanding the preceding sentence, and with reasonable written notice to Theatre with a reasonable opportunity to cure, City reserves the right to enter the Facilities to maintain or repair the Facilities when such activities are not being performed by Theatre as herein required, and all costs so incurred by the Party responsible for making such repairs pursuant to this Agreement.

5.2 **City Use.** City has the right to use the Facilities or permit others to use the Facilities, upon agreement between City and Theatre as to a time convenient to the Parties provided such use does not conflict with any scheduled Production (including any rehearsals).

5.3 **Security and Traffic Control.** Theatre shall provide all security and traffic control within the Facilities and such other traffic control off site as is reasonably necessary to direct traffic to and from events at the Facilities. The Parties shall cooperate in good faith to develop a traffic management plan to facilitate the ingress and egress of traffic to and from events at the Facilities.

5.4 **Theatre Production and Maintenance Obligations.** Theatre shall be solely responsible for doing all things and taking all actions necessary for the maintenance of the Facilities for the Permitted Use in accordance with this Agreement. Without limiting the generality of the foregoing, Theatre shall:

- (a) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Facilities;
- (b) pay all Impositions;
- (c) promptly notify City of any necessary repairs, damage or broken equipment; and
- (d) promptly furnish to City such reports and other information concerning the Facilities and the maintenance, and use thereof as may be reasonably requested from time to time by the City Manager.

5.5 **Interruption in Utilities.** City is not, and during the Term shall not be liable for any interruption whatsoever (unless directly caused by the actions of City) in utility services to the Property, and in no event shall any payments required under this Agreement be modified, adjusted, reduced or abated as a result of the interruption of utility services.

5.6 **Acknowledgments in Printed Materials.** Theatre agrees to acknowledge City for its support in all appropriate printed materials. City reserves the right to approve, in whole or in part, the form of such acknowledgments which the Theatre proposes to include in any printed materials.

5.7 **Insurance.**

- (a) ***Theatre's Minimum Insurance Amounts.*** Theatre shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Theatre's sole expense, with a carrier or carriers licensed to do business in the State of Texas and satisfactory to City, Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Facilities, or any other portion of the Facilities, in at least the amount of \$1,000,000.00 combined single limit per occurrence. In the event that the Texas Torts Claims Act, as amended (Tex. Civ. Prac. & Rem. Code ' 101.001, et seq.) or its successor statute, is amended to increase the amount of liability of municipalities for acts described in said Act above the levels set forth in this Section 5.7.a. Theatre agrees to increase the amount of insurance

coverage to an amount sufficient to provide coverage to the level of potential liability per occurrence under said Act.

- (b) ***Alcoholic Beverage Liability.*** In the event Theatre decides to sell or serve, or authorize the sale or service, of alcoholic beverages for on-premise consumption at the Facilities, Theatre shall purchase and have in effect alcoholic beverage liability coverage in the same amounts as the general liability policy required by Section 5.8.a., above. Said alcoholic beverage liability policy, whether it is a separate policy or added as a rider to Theatre's general liability policy, shall name City as an additional insured.
- (c) ***Theatre's Coverage Primary.*** All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which Theatre may carry. Insurance provided pursuant to this Section 5.8 shall name City as an additional insured or loss payee as the case may be. Theatre's insurance policies as required by this Agreement shall apply separately to City as if separate policies had been issued to Theatre and City.
- (d) ***Cancellation; Certificates of Insurance.*** Theatre's insurance as required by this Agreement shall not be subject to cancellation or material alteration unless written notice of cancellation or non-renewal provided to Theatre is also been provided to City. Theatre shall furnish to City, annually, Certificates of Insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met.
- (e) ***City's Right to Purchase Insurance.*** In the event such insurance as required by this Section 5.8 shall lapse, City reserves the right to obtain such insurance at Theatre's expense. Upon demand from City, Theatre shall reimburse City for the full amount of the premium paid on Theatre's behalf.

5.8 Indemnity. THEATRE AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY THEATRE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THEATRE, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR

FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE THEATRE AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. NEITHER CITY NOR THEATRE WAIVE ANY LEGAL CONTENTIONS, DEFENSES, OR IMMUNITIES, INCLUDING, BUT NOT LIMITED TO GOVERNMENTAL (I.E. SOVEREIGN) IMMUNITY, CHARITABLE IMMUNITY, AND THE LIMITED RECOVERY AGAINST CHARITABLE ORGANIZATIONS, THEIR PERSONNEL, AND THEIR VOLUNTEERS PURSUANT TO THE CHARITABLE IMMUNITY AND LIABILITY ACT OF 1987 (TEX. CIV. PRAC. AND REM. CODE, CH. 84, AS AMENDED).

5.9 **Security Interests.** Theatre shall not mortgage its rights and interests under this Agreement to secure financing, except with the approval of City. Theatre shall not suffer or permit mortgages or liens against the Facilities, and shall indemnify and defend City from and against same.

Article VI General Provisions

6.1 **Assignment by Theatre.** Theatre shall not assign this Agreement or any obligations set forth herein without the prior written consent of City, which shall not be unreasonably withheld.

6.2 **Casualty or Condemnation.** (a) In the event of loss by fire, storm, or other casualty to the Facilities, this Agreement shall terminate unless the City elects to repair and replace damage caused by such casualty, in which case this Agreement shall remain in effect.

(b) If Facilities or any portion thereof is taken under power of eminent domain (which shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Agreement shall terminate as of the date of taking of possession by the condemning authority. All sums awarded or agreed upon between City and the condemning authority for the taking of the interest of City or Theatre whether as damages or as compensation, will be the property of City.

6.3 **Mechanic's Liens.** Theatre shall not suffer or permit any mechanics' liens or other liens to be filed against the Facilities. If any such mechanics' liens or materialmen's' liens shall be recorded against the Leased Facilities, Theatre shall cause the same to be removed within thirty (30) days after notice thereof. Theatre shall indemnify and save City harmless from

all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.

6.4 **No Termination on Bankruptcy.** If Theatre is not otherwise in default under the provisions of this Agreement, neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver shall affect this Agreement so long as all covenants of Theatre continue to be performed by Theatre, its successors, or legal representatives.

6.5 **Copyright Indemnification.** THEATRE AGREES TO ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FEDERAL COPYRIGHT LAW OF 1978 (17 U.S.C. 101, ET SEQ.) AND ANY REGULATIONS PROMULGATED THEREUNDER IN CONNECTION WITH ACTIVITIES IN THE FACILITIES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE ASSUMPTION OF ANY AND ALL RESPONSIBILITIES FOR PAYING ROYALTIES WHICH MAY BE DUE TO THE COPYRIGHT OWNER, OR REPRESENTATIVE OF THE COPYRIGHT OWNER, FOR THE USE OF COPYRIGHTED WORKS IN THE FACILITIES. THEATRE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FOR ANY AGAINST CLAIMS OR DAMAGES INCLUDING REASONABLE ATTORNEY FEES ARISING FROM ANY INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS OR FEDERAL COPYRIGHT LAW AND ANY REGULATIONS PROMULGATED THEREUNDER BY THEATRE.

6.6 **Texas Law.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. Venue for any legal actions arising out of this Agreement shall lie exclusively in a state court of competent jurisdiction in Dallas County, Texas, the personal and subject matter jurisdictions to which the Parties agree to submit.

6.7 **Notices.** Notices provided for in this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to City:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With Copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If to Theatre:

Farmers Branch Community Theatre, Inc.
Attn: President
2535 Valley View Lane
Farmer's Branch, Texas 75234-6430

With Copy to:

Harry D. Jones
Littler Mendelson, PC
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, Texas 75201-2931

Each Party may change the representative or address for delivery of notices from time to time by sending written notices to the other Party. All notices shall be in writing and (i) if hand delivered, effective upon actual receipt, or (ii) if mailed, effective upon the earlier of actual receipt or three days after mailing as determined by the postmark affixed to the notice by the United States Postal Service.

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

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

6.10 **Force Majeure.** Theatre and City shall be relieved of their obligation to perform any term or condition of this Agreement, if the performance is prevented by fire, earthquake, flood, acts of God, riot or civil commotions, acts of a superior governmental authority, utility interruptions, or other reason, matter or condition beyond the control of either party (Force Majeure), but only for the duration of the Force Majeure.

6.11 **Entire Agreement.** This Agreement embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties that relate to the subject of this Agreement. This Agreement cannot be modified without written agreement of City and Theatre.

6.12 **Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

6.13 **No Conveyance of Property Interest.** The Parties acknowledge and agree that this Agreement and the rights granted to Theatre herein do not constitute the conveyance of a leasehold or other interest in real property to Theatre, it being the intent to grant only an exclusive license to Theatre to use the Facilities for the Permitted Use in accordance with and subject to the provisions of this Agreement.

6.14 **Termination of Management Agreement.** Upon the Effective Date, that certain *Community Theatre Development and Management Agreement* between City and Theatre, Inc. dated November 21, 2011, is terminated and no longer effective and enforceable between the Parties.

Signatures on Following Page

SIGNED AND AGREED this _____ day of _____, 2015.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Gary D. Greer, City Manager

ATTEST:

By: _____
Angela Kelly, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

SIGNED AND AGREED this _____ day of _____, 2015.

**FARMERS BRANCH COMMUNITY THEATRE, INC.,
d/b/a THE FIREHOUSE THEATRE**

By: _____

Name: _____

Title: _____