

**FIRST AMENDED AND RESTATED FACILITY USE AGREEMENT
(2535 Valley View Lane)**

THIS FIRST AMENDED AND RESTATED 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**”) (City and Theatre collectively the “**Parties**” or individually as a “**Party**”), acting 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, Theatre has agreed, at its sole cost, 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, the Parties entered into that certain *Facility Use Agreement* effective August 1, 2015, which agreement was amended by that certain *First Amendment to Facility Use Agreement* effective September 12, 2017 (collectively, the “**Original Agreement**”); and

WHEREAS, the Parties desire to agree to certain amendments to the Original Agreement and have entered this Agreement for such purpose; and

WHEREAS, City finds that use of the Property by the Theatre pursuant to this Facility Use Agreement constitutes a public use and serves a public purpose.

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” means: (1) for the first Agreement Year, the period beginning on August 1, 2015, and ending at 11:59:59 p.m. on July 31, 2016, (2) for each subsequent Agreement Year until the Agreement Year ending July 31, 2023, the twelve month period beginning on the August 1st immediately following the last day of the preceding Agreement Year and ending at 11:59:59 p.m. on the immediately subsequent July 31st, (3) for the Agreement Year beginning August 1, 2023, the Agreement Year will end at 11:59:59 p.m. on September 30, 2024, and (4) for each subsequent Agreement Year after the Agreement Year ending September 30, 2024, the twelve month period beginning on October 1st and ending at 11:59:59 p.m. on the immediately following September 30th.

“Board” means Theatre’s board of directors.

“City Council” means City’s elected governing body as defined in City’s City Charter.

“City Manager” means City’s City Manager, or the person appointed by the City Council to perform the responsibilities and duties of City Manager for any interim period pending appointment of a full-time City Manager,

“Effective Date” means the date this Agreement bears the signatures of authorized representatives of the Parties.

“Facilities” collectively means: (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” means (i) 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 Theatre, and (ii) any amounts due and payable by Theatre pursuant to Section 3.5(d), below.

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

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

“Productions” means 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” means 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” collectively means the Initial Term and all Renewal Terms.

Article II Grant of License

2.1 Grant of License. City hereby grants to Theatre a revocable non-exclusive license to possess, occupy, and use the Property and the Facilities 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**”). *Note to City: Please fix the inconsistency between the definitions of “Agreement Year” and the “Initial Term.” If we intend this to be an amended and restated license agreement that includes prior Agreement Years, the Initial Term cannot commence on the Effective Date.*

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 Theatre 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);

(d) in accordance with Section 2.3, above; and

(e) upon one hundred eighty (180) days prior written notice by ~~City~~, regardless of the occurrence of any uncured default by ~~Theatre~~ and whether or not the date of termination coincides with the end of an Agreement Year.

Note to City: We request to include an acknowledgement that Theatre has paid the Facility Use Fee for prior Agreement Years.

2.5 Facility Use Fee. As consideration for Theatre's use of the Facilities for the Permitted Use, Theatre agrees to pay to City a Facility Use Fee in the amount of Ten Dollars (10.00) for each Agreement Year. For each Agreement Year beginning August 1, 2017, through the Agreement Year beginning August 1, 2023, such Facility Use Fee shall be paid not later than September 1st of such Agreement Year. For the Agreement Year beginning October 1, 2024, and each Agreement Year thereafter, such Facility Use Fee shall be paid not later than November 1st of such Agreement Year.

Note to City: Please add language clarifying that the Facility Use Fee will be invoiced in accordance with Section 3.5(c).

2.6 Production Schedule. Theatre shall submit a schedule of Productions for each Agreement Year no later than October 1 of each Agreement Year for review and approval by City which approval shall not be unreasonably denied, delayed or withheld. The Production Schedule shall be deemed approved if City fails to send written notice of disapproval to Theatre on or before the fifteenth (15th) business day after delivery of the Production Schedule to City. The Production Schedule may be updated from time to time by Theatre provided such newly scheduled productions do not conflict with previously scheduled use of the Facilities by City. Theatre shall submit the Production Schedule to City with payment as required by Section 2.5 above.

Article III Property Use and Maintenance

3.1 Use of Property. Upon the Effective Date, City shall make the Facilities available to Theatre for the Permitted Use and public use pursuant to the provisions of this Agreement. City reserves all ownership rights in the Property and Theatre shall return Property to City in substantially the same or better condition as existed on the Effective Date, ordinary wear and tear excepted, at the termination or expiration of this Agreement.

3.2 Alteration of the Facilities. Theatre shall make no alterations or any improvements to the Facilities without the prior written consent of City. Any improvements, additions, alterations, and fixtures (except furniture and fixtures) constructed, placed, or maintained on any part of the Property or Facilities shall be considered part of the Property, shall become the property of City, and shall remain on the Property at the expiration of the Term. If City consents to Theatre making any improvements or alterations to the Facilities, Theatre shall be required to submit plans to City for approval and enter into a separate agreement with City to allow such alterations and/or improvements prior to commencement of construction or installation of any such improvements.

Note to City: We request that a schedule of furniture and fixtures that are not to be considered part of the Property be attached to this Agreement. In particular, the items that were purchased pursuant to the CARES Program Agreement between the Theatre and the Facility should be excluded per the terms of such Agreement (see Section 2.5 of the CARES Program Agreement).

3.3 Property Maintenance and Repair.

(a) City shall provide: (i) maintenance and repair of the heating, ventilation and cooling system for the Facilities; (ii) maintenance of the Property grounds and structures in reasonably good condition and in compliance with applicable laws; and (iii) 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**”).

(b) 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 reasonably possible to Theatre’s 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 Theatre thereafter 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.

(c) Theatre shall: (i) not cause or permit any waste, damages, or injury to the Facilities; (ii) 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; (iii) not store or maintain flammable or hazardous materials on or in the Facilities in violation of the Fire Code or other applicable laws and codes; (iv) during the Term keep and maintain the Facilities in good state of appearance, clean, sanitary order, reasonable wear and tear excepted; (v) clean the Facilities following each performance or other use by Theatre; and (vi) promptly notify City of any necessary repairs or damage to the Facilities.

(d) Theatre, at Theatre’s sole cost, shall be responsible for timely repair, replacement or correction of any damage occurring on the Property or to the Facilities caused by the intentional or negligent acts or omissions or misconduct of Theatre, its contractors, agents, employees, patrons and invitees to City’s reasonable satisfaction. All costs thereof shall be borne by Theatre. The cost of emergency repairs made by City on account of damage caused by the intentional or negligent acts or omissions or misconduct of Theatre, its contractors, agents, employees, patrons and invitees 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.

3.4 Facilities Improvements. City and Theatre shall work together to identify any building upgrades and improvements that will enhance the functionality of the Facilities. Any improvement projects shall be first presented to the City Manager or designee during City’s annual budget process to be considered for approval and funding. City is not obligated to install, construct or fund any such upgrades or improvements unless the City Council approves such items and provides funding for the same.

3.5 Utilities, Janitorial Services, and Pest Control.

(a) City, at Theatre's cost, agrees to arrange for the provision of:

(1) utilities at the Property, including, but not limited to electricity, gas, water, waste disposal and recycling, cable television and other video services, telephone, internet and/or other data services (collectively, the "Utilities"); and

(2) janitorial services at the Facilities.

(b) City, at City's cost, shall be responsible for:

(1) providing any telephone lines to be used only for fire alarm monitoring services, providing for fire alarm monitoring, and required recharge of fire extinguishers; and

(2) providing pest control services for the Facilities.

(c) Theatre shall reimburse City for City's cost for the Utilities and janitorial services provided pursuant to Sections 3.5(a). City will deliver to Theatre not more often than monthly an invoice detailing the costs to be reimbursed pursuant to this Section 3.5(c). Theatre shall pay such invoice not later than thirty (30) days after receipt of the invoice by delivering payment to the address set forth on the invoice. ~~If Theatre fails to pay an invoice within said thirty (30) day period, in addition to the amounts due, Theatre shall pay a late payment fee in an amount equal to ten percent (10%) of the amount invoiced.~~ Any amounts not paid by Theatre on or before the thirtieth (30th) day after such amount is due shall bear interest at a rate of 1% per month until paid. Payments made by Theatre pursuant to this Section 3.5(c) shall be applied first to accrued but unpaid interest, then to unpaid late fees, then to the balance of any amounts invoiced. If Theatre continues to fail to pay any amount in accordance with this Section 3.5(c) more than sixty (60) days after such amount is due, City may institute suit to collect such amount, in which case, in addition to any unpaid amounts due, Theatre shall be responsible for all costs of court and reasonable attorneys' fee incurred by City in relation to such collection. The remedies set forth in this Section 3.5(c) shall be in addition to, and not in lieu of, City's right to terminate this Agreement in accordance with Section 2.4(c).

(d) Notwithstanding termination of this Agreement and the reason for such termination, Theatre shall continue after such termination to be obligated to pay City any amounts incurred for Utilities, janitorial services, and pest control provided to the Facilities prior and up to the date of termination, which amounts shall be subject to the late payment fees, interest, and costs of collection set forth Section 3.5(c).

Note to City: Please include the following dispute resolution provision to Section 3.5(c): "In the event Theatre disputes the contents or amounts contained in any such invoices, it shall provide notice to City within thirty (30) days of Theatre's receipt of such invoice, and Theatre's

Article IV

Assurances

payment obligation shall be suspended until such time as the parties resolve such invoice dispute. Upon resolution of such dispute, Theatre shall have the greater of the remainder of the payment term (calculated as of the date Theatre provided notice of such dispute to City) and fifteen (15) days to pay such invoice amount."

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

Note to City: please add "such amounts not to exceed \$13,100 annually (and any such amounts in excess thereof shall be at the City's cost)" as previously agreed to by the parties.

Note to City: The City previously agreed to pay the highlighted. Please move language to Section 3.5(b)(1). Please also add "lawn maintenance" to the list of items to be provided at the City's cost.

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- (a) reasonably 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 the Facilities to the standards comparable to other City-owned or controlled buildings; 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), as amended.

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, 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 users of the Facilities in a safe and fair manner;
- (f) Except for maintenance and repairs that are City's responsibility, promptly undertake any maintenance and repairs necessary to prevent any deterioration or waste to the Facilities;
- (g) Upon the request of City, reasonably cooperate with appropriate City departments and/or schools within the ~~Carrollton-Farmers Branch Independent School District~~ attended by ~~City's residents~~ 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 productions and education of the community in the dramatic arts;
- (h) Beginning in calendar year 2024, and continuing each calendar year thereafter, not later than December 15th of each calendar year, deliver to City a written report regarding the Productions and Theatre's operations and activities for the preceding Agreement Year (each an "**Annual Report**"), which shall include, as a minimum, the following information:

Note to City: please add "engaged in or performed at the Facility" after "activities."

(1) A report on each Production including the title of the Production, the times and dates of each performance of the Production, and the total attendance for the run of the Production;

*Note to City: Please add:
"and held at the Facility"
after "Theatre."*

(2) A summary of activities and events operated by Theatre designed and conducted with the intent of providing a public benefit to City's residents and/or businesses, including the date and location of such events and whether a fee was required to be paid for admission to such event;

(3) A summary of activities and events conducted by Theatre designed to promote the City of Farmers Branch as a destination for special events and entertainment;

(4) The total number of different people (i.e., volunteers involved in more than one production being counted only once) volunteering as cast, stage crew, front of house workers, and others as identified by Theatre for all Productions during the Agreement Year and the number of those volunteers who are City residents; and

(5) A summary of the state of performing arts within the DFW Metroplex generally and the City of Farmers Branch and adjacent cities (including, but not limited to, Addison, Carrollton, and Coppell) with a particular emphasis on the theatrical arts.

All Annual Reports

~~The first Annual Report~~ shall be delivered not later than December 15, 2024, and shall include the foregoing information relating to the period beginning August 1, 2023, and ending September 30, 2024;

Note to City: Please add "Each calendar year of the Term,"

(i) Attend a meeting of the City Council as scheduled by the City Manager to present and discuss the Annual Report;

Note to City: Please add "prior calendar year's" before "Annual Report."

(j) Present such additional reports and information to City and make such additional presentations to the City Council within a reasonable time after receipt of written request from the City Manager detailing the information requested by the City Council or City Manager;

Note to City: Please add "(with the exception of confidential and proprietary information)" after "information."

~~(k) Deliver to the City Manager all notices of the meeting of the Board inclusive of the proposed agenda and copies of all documents to be reviewed and considered at such meeting not later than ten (10) days prior to the date of such meeting;~~

~~(l) Allow the City Manager and a member of the City Council appointed by the City Council to serve as a liaison to Theatre (the "Council Liaison") to attend all meetings of the Board, including closed meetings (i.e. "executive sessions") other than closed meetings limited to the discussion of matters relating to the hiring, discipline, and/or dismissal of Theatre's employees and/or closed meetings in which the Board is meeting to discuss matters with Theatre's attorney relating to pending or threatened claims or litigation against Theatre;~~

~~(m) Designate an employee of Theatre~~ ^{and/or} ~~or~~ a member of the Board to serve as Theatre's primary contact person (the "Theatre Liaison") to whom requests for information from City and request for meetings may be directed; and

(n) Require the Theatre Liaison to communicate with the City Manager and/or Council Liaison on an as needed basis to discuss matters relating to the use and condition of the Facilities pursuant to this Agreement, coordination of parking, traffic control, and other issues relating to events occurring within City's Mustang Station area that may impact Theatre and/or use of the Facilities, and/or other matters of mutual interest of the Parties.

4.3 Acceptance of Facilities. Theatre has been using the Facilities pursuant to the Original Agreement and previously accepted the Property and Facilities under the Original Agreement in an "AS IS, WHEREAS CONDITION AND BASIS, WITH ALL FAULTS". Theatre agrees to accept the Property and Facilities in the current "AS IS, WHEREAS CONDITION AND BASIS, WITH ALL FAULTS" pursuant to this Agreement. City warrants that it has good title to the Property and Facilities.

Article V City Access and Use

5.1 City Access. City's 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).

5.2 City Use. City has the right to use the Facilities or permit others to use the Facilities at no cost to City or such other parties, provided such use does not conflict with any scheduled Production (including any rehearsals) set forth in the Production Schedule. City will use best efforts to provide written notification of such use to Theatre. Theatre shall not interfere or disrupt use of the Property and/or the Facilities scheduled by City.

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 that are operated or sponsored by Theatre. 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 Obligations. Theatre shall maintain or cause to be maintained all necessary licenses, permits and authorizations for the Productions held at the Facilities and shall promptly pay all Impositions assessed to City and/or Theatre as a result of the Permitted Use.

5.5 Interruption in Utilities. City shall not be liable for any interruption whatsoever (unless directly caused by the actions of City) in utility services to the Facilities, 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

Note to City: Theatre has made considerable investments in furniture and technical equipment that is put at risk of damage if access is granted to the City. Theatre is willing to agree to such use, but only on the condition that City agrees to be fully liable for any damage caused to the Theatre's personal property during such use, and agrees to employ Theatre employees or Theatre-approved personnel to operate any of Theatre's equipment onsite during such usage. For instance, operating of lighting and sound would cost \$100/hr and require a four-hour minimum.

part, the form of such acknowledgments which 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.

(b) ***Alcoholic Beverage Liability.*** If 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 5.7(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 5.7 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 has 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.*** If any insurance required by this Section 5.7 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 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, shall indemnify and defend City from and against same, and shall immediately take such action as necessary to obtain a release of such mortgage or lien upon receipt of written demand from City.

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 City elects to repair and replace damage caused by such casualty, in which case this Agreement shall remain in effect.

(b) If the 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 Facilities, Theatre shall cause the same to be removed not later than 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 UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT, NOTWITHSTANDING THE REQUIREMENT FOR THEATRE TO PRODUCE AND PERFORM PRODUCTIONS PURSUANT TO THIS AGREEMENT, CITY HAS NO ROLE, RESPONSIBILITY, OR CONTROL OVER THE SELECTION OR PRODUCTION OF THE PRODUCTIONS, NOR DOES CITY HAVE ANY FINANCIAL OBLIGATION RELATING ANY PRODUCTION. 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, 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 Governing 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 lay 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:

David M. Berman
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
Farmers Branch, Texas 75234-6430

With Copy to:

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

Ehren Hartz
Winstead PC
2728 N. Harwood St.
Dallas, TX 75201

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 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, epidemic, pandemic or other reason, matter or condition beyond the control of either Party (Force Majeure), but only for the duration of the event causing such 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 a non-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 City's Consideration for this Agreement. Theatre understands, acknowledges, and agrees that, notwithstanding Theatre's requirement to pay the Facility Use Fee in accordance with Section 2.5, the primary exchange of consideration between the Parties in this Agreement consists of:

(a) City's agreement to:

(1) Authorize Theatre to use the Facilities for the Permitted Use without the requirement to pay the fair market rental value for the Property (which, as of April 1, 2024, without taking into consideration the existing deed restrictions on the Property, is estimated to be within a range of \$61,000 to \$73,200 per year); and

(2) Perform certain obligations relating to the repair, maintenance, and operation of the Facilities pursuant to this Agreement in exchange for;

(b) Theatre using the Property and the Facilities in accordance with this Agreement for the public purposes of:

(1) Providing an opportunity for City's residents to be involved in the Productions and engaged in the expansion of performing arts education within City; and

(2) Producing and performing the Productions attended by patrons who are both City residents and non-residents who patronize nearby restaurants and other entertainment facilities before and after performances of the Productions, thereby generating additional local sales and use taxes for City, supporting the retention and/or expansion of businesses located within City's corporate limits, including, but not limited to, City's Mustang Station development, and supporting the expansion of employment opportunities within City.

Note to City: Please add to the end of Section 6.14(b)(2) above the following: "Based on Federal Government data from Arts & Economic Prosperity 6-published by Americans for the Arts, the typical attendee that attends a cultural event spends \$38.46 per person per event, in addition to the cost of event admission, (which, as of April 1, 2024 is estimated to be within a range of \$500,000 to \$538,000 per year generated in economic activity which supports local restaurants and businesses)."

Theatre further understands, acknowledges, and agrees that Theatre's obligations pursuant to Sections 4.2(g) through (n), inclusive, are designed to ensure Theatre's performance of the provisions of this Agreement continue to satisfy the public purpose that is served by Theatre's use of the Property and the Facilities.

6.15 Substitute for Original Agreement. Upon the Effective Date this Agreement, it amends in its entirety and replaces the Original Agreement.

Signatures on Following Page

SIGNED AND AGREED this _____ day of _____ 2024.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Benjamin W. Williamson, City Manager

ATTEST:

By: _____
Stacy Henderson, City Secretary

APPROVED AS TO FORM:

By: _____
David M. Berman, City Attorney

SIGNED AND AGREED this _____ day of _____, 2024.

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

By: _____

Name: _____

Title: _____