

**AMENDED AND RESTATED
LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT (this "Lease") is made and entered into as of July _____, 2019, by and between the City of Irving, Texas, a home rule municipality (the "City" or "Landlord"), and Irving Community Theater, Inc., d/b/a MainStage Irving – Las Colinas ("Tenant") collectively the "Parties". The Parties entered into an agreement on May 2, 2019 (the "Effective Date"), which the City Council approved through Resolution No. 2019-164 ("Original Agreement"). The Parties desired to amend the Original Agreement and enter in this Amended and Restated Lease Agreement.

Section 1. Term.

The Initial Term of this Lease shall begin July 1, 2019, and shall continue for a period of five (5) years. By mutual consent, the Parties may extend the Lease for one (1) renewal term for a period of five (5) years, provided that: (1) the Lease is in full force and effect; and (2) no event of default by Tenant then exists. If Tenant wishes to extend the Lease, Tenant shall deliver written notice (the "Renewal Notice") to City of such request three (3) months prior to the expiration of the Initial Term. If Tenant fails to provide the Renewal Notice three (3) months prior to the expiration of the Initial Term, the Lease shall not renew and shall expire and terminate upon the last day of the Initial Term. In the event Tenant is unable to secure an amendment to the zoning ordinance to allow the uses as described in Section 2, prior to July 1, 2019, this Agreement shall automatically terminate on June 30, 2019, and be of no further force or effect.

Section 2. Premises and Uses.

2.1. Landlord leases to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date. The Premises shall be the property and all improvements now and hereafter located on 222 E. Irving Boulevard, Irving, Texas, also being known as Lots 9 and 10, Block 8, Original Town of Irving, according to the Map filed in Volume 1, Page 214, Map Records of Dallas County Texas.

2.2 Landlord will allow nonexclusive access to the City-owned parking lots at 211-221 E. Irving Boulevard, and 201 E. 2nd Street, (the "Parking Areas") to the extent that the parking lots remain available and open to the public.

2.3 Tenant accepts the Premises and Parking Areas in their present condition "AS IS." Tenant acknowledges that it has fully inspected the Premises and Parking Areas and accepts the Premises and Parking Areas as suitable for the uses provided in this Lease.

2.4. The Premises shall be used and occupied only for the purpose of rehearsal and presentation of theatrical and musical performances, hosting meetings, instructional workshops and conventions of related groups and professional organizations, along with attendant or related uses of office and storage. Subject to the limitations in Section 9 of this Lease Agreement, Tenant may for a fee allow a third party to use the Premises for rehearsals and performances consistent with terms of this Lease Agreement. Tenant is encouraged to allow Irving based musical performers to use the Premises for live performances, as Tenant may reasonably determine does not conflict with its use of the Premise, and if consistent with terms of this Lease Agreement.

2.5 Tenant shall obey (a) all applicable laws relating to the use, condition, and occupancy of

the Premises and Parking Areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises and Parking Areas. Tenant shall not use the Premises and Parking Areas for any use prohibited by applicable laws, or expressly prohibited by the Lease, or in any manner that would render the insurance thereon void.

Section 3. Security Deposit, Rent and performance obligations.

3.1 Due on the Commencement Date, along with the first month's rent, Tenant will pay City a Security Deposit in the amount of Three Thousand and No/100 Dollars (\$3,000). The security Deposit is security that the Tenant will comply with all terms of the Lease. This Security Deposit may not be used to pay the last month's rent without the City's prior written consent. If the Tenant breaks or otherwise violates this Lease prior to the Termination Date, the City may be able to keep all or part of this Security Deposit to cover unpaid rent or damage to the property.

3.1.1 Upon Tenant vacating the Premises, the City will inspect and document the condition of the Premises. Within thirty (30) days of the end of this Lease agreement, if the Tenant has supplied the City with a forwarding address, the City will either (a) return the Security Deposit if the Tenant has complied with all terms of this Agreement and returns the Premises to the City in the same good condition as when Tenant moved into the Premises, or (b) provide the Tenant with a written notice including an itemized list as to why the full Security Deposit amount is not being returned to the Tenant and a check for any remaining Security Deposit owed to the Tenant after the allowed deductions have been made. The City may use as much of the Security Deposit as necessary to pay for damages resulting from the Tenant's move-in, occupancy, or move-out.

3.1.2 If the City sells the property, the City will then be released of all liability to return the Security Deposit. The new property owner will take over full responsibility for holding and returning the Security Deposit.

3.2 In consideration for the use of the Premises and Parking Areas, Tenant agrees to pay City the amount of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) (the "Rent") in advance on or before the first day of each month. If Rent is not received by City by the fifth of each month, Tenant shall pay a late charge of \$75.00 plus \$25.00 per day until Rent is received in full. Tenant shall pay \$50.00 for each returned check.

3.3 As additional consideration for this Lease, Tenant shall present six live performances (i.e. plays, musicals, dances, comedy shows, or live bands) a year. These performances shall be on at least six different calendar days, and shall be open to the public. At least four of these performance shall be different productions. Performances of the same production occurring within 14-days of the initial performance shall be considered one (1) performance. Tenant shall also maintain regular programming (five (5) productions per year) at the Irving Art Center during the Lease.

Section 4. Utilities.

Tenant is responsible for obtaining and paying for all utilities used in connection with the Premises.

Section 5. Duties and Responsibilities.

5.1 Tenant will:

5.1.1 Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Parking Areas and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises and Parking Areas. Tenant shall

not use the Premises and Parking Areas for any use prohibited by applicable laws, or expressly prohibited by the Lease, or in any manner that would render the insurance thereon void.

5.1.2 Provide and maintain interior furnishing, décor, and equipment.

5.1.3 Notify and review with City's representative any planned alterations or improvements to the Premises. Tenant will not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the exterior of the Premises without prior written consent of City Council. Consent for non-structural interior alterations, additions or improvements shall not be unreasonably withheld by City's representative. Tenant will have the right to install shelves, bins, machinery and trade fixtures to the interior, provided that Tenant complies with all applicable governmental laws, ordinances, and regulations. At the expiration or termination of this Lease, Tenant will have the right to remove such items so installed, provided Tenant is not in default at the time of such removal and provided further that Tenant will, at the time of removal of such items, repair in a good and workmanlike manner any damage caused by installation or removal thereof.

5.1.4 Tenant will pay for all costs incurred or arising out of alterations or improvements in or to the Premises and will not permit a mechanic's or material man's lien to be asserted against the Premises. Upon request by City, Tenant will deliver to City's representative proof of payment reasonably satisfactory to the City of all costs incurred or arising out of any such alterations or improvements. All alterations or improvements in or to the Premises shall become the property of City at the expiration or termination of this Lease; however, City may direct the removal of alterations or improvements by giving written notice to Tenant prior to the expiration or termination of this Lease. Tenant shall then promptly remove all alterations and improvements and any other property placed in or on the Premises by Tenant, and Tenant shall repair in a good and workmanlike manner any damage caused by such removal.

5.1.5 Tenant shall not place or affix any signs or other objects upon or to the roof or exterior walls of the Premises or paint or otherwise deface the exterior walls of the Premises without the prior written consent of City Council. Sign may be installed by Tenant at its own expense, and shall be subject to conformance to applicable laws, ordinances, and deed and other restrictions. Tenant shall remove all signs at the expiration or termination of this Lease and shall repair any damage and close any holes caused or revealed by such removal.

5.1.6 Maintain in good repair and condition at its own expense and risk that part of the building and other improvements and equipment on the premise not required to be maintained by City. At its own expense, Tenant shall provide basic maintenance of the building including but not limited to: painting, floor surfaces, maintenance and repairs (including all necessary replacements) of the doors, windows, portable fire extinguishers, fixtures, minor repairs, maintenance and repair of interior plumbing and systems, and maintenance services for HVAC. Tenant responsibilities with respect to the plumbing system include but are not limited to: unclogging toilets, sinks, or other fixtures, repairing leaking faucets, and maintenance and repair of the plumbing systems on interior of the building. With respect to the electrical system, Tenant responsibilities include: repairing/replacing fixtures, changing light bulbs, and resetting circuit breakers if tripped.

5.1.7 Provide regular janitorial maintenance for the Premises (including timely removal of refuse).

5.1.8 Be responsible for any damages caused by its use. If Tenant fails to maintain the Premises or fix any damage caused by its use of the Premises, upon discovery, City will notify Tenant of such occurrence in writing. If Tenant does not remedy the damage within thirty (30) days from the date of such notice, City will have the right, but not the obligation, to remedy such damage at the sole cost and expense of Tenant. If City exercises its right to remedy Tenant's damage, Tenant agrees to immediately pay to City all costs incurred by City upon demand.

5.1.9 At its own expense, obtain any and all governmental licenses and permits necessary for use of the Premises.

5.1.10 Not discriminate against patrons with regard to race, color, religion, political affiliation, physical disability, age, sex or national origin.

5.2 City will:

5.2.1 Maintain the fire protection sprinkler system, electrical system (except as stated in Section 5.1.6), exterior walls, roof, foundation, and exterior plumbing systems.

5.2.2 At its discretion, be responsible for capital replacements of building systems.

5.2.3 Allow nonexclusive access to the City-owned parking lots at 211-221 E. Irving Boulevard, and 201 E. 2nd Street, to the extent that said parking lots remain available and open to the public.

Section 6. Compliance with Law.

Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of violations or nuisances in or upon, or connected with the Premises, all at Tenant's sole expense.

Section 7. Increasing Premiums or Causing Suspension or Cancellation of City's Insurance Policy.

7.1 If Tenant's use and occupancy of the Premises causes an increase in the premiums for any fire and extended coverage insurance policy carried by City on the date Tenant shall have first gone into possession of the Premises under this lease, Tenant shall pay, as additional maintenance rental, the amount of such increase to City upon demand and presentation of written evidence of the increase by City.

7.2 Tenant shall not permit any operation or activity to be conducted or storage or use of any volatile or any other materials in the Premises that would cause suspension or cancellation of any fire and extended coverage insurance policy carried by City, or increase the premiums therefor, without prior written consent of City.

7.3 Any insurance which may be carried by City against loss or damage to the building and other improvements situated on the Premises shall be for the sole benefit of the City and under its sole control.

Section 8. City's Right of Entry

8.1 City and its authorized agents shall have the right, during normal business hours, to enter

the Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this Lease, (c) to show the Premises to any prospective tenant or purchaser, or (d) for any other reasonable purpose. Before entering the Premises under this paragraph, City shall give Tenant at least twenty-four (24) hours advance notice in writing.

8.2 During the final 90 days of the Initial Term or Renewal Term, as applicable, City and its authorized agents shall have the right to erect and maintain on or about the Premises customary signs advertising the Premises for lease or for sale.

Section 9. Assignment and Subleasing

Tenant shall not, without the prior written consent of City, assign this lease or sublet the Premises or any portion thereof. Any assignment or subletting shall be expressly subject to all terms and provisions of this Lease, including the provisions of section 3 pertaining to the use of the Premises. In the event of any assignment or subletting, Tenant shall remain fully liable for the full performance of all of Tenant's obligations under this lease. Tenant shall not assign his rights hereunder or sublet the Premises without first obtaining a written agreement from assignee or subtenant whereby assignee or subtenant agrees to be bound by the terms of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Premises are assigned or sublet, City, in addition to any other remedies provided herein or by law, may at City's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to City hereunder. No direct collection by City from any such assignee or subtenant shall release Tenant from the performance of its obligations hereunder.

Section 10. Fire and Casualty Damage.

10.1 If the building or other Premises should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to City.

10.2 If the Premises should be substantially or totally destroyed by fire, tornado or other casualty, or so damaged that rebuilding or repairs cannot reasonably be completed within 120 days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall terminate at the option of City and Rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of such written notification. If this Lease is not terminated, the building and other improvements shall be rebuilt or repaired and Rent abated to the extent provided under Section 10.3.

10.3 If the Premises should be damaged by fire, tornado or other casualty but not to such an extent that rebuilding or repairs cannot reasonably be completed within 120 days from the date of written notification by Tenant to City of the happening of the damage, this Lease shall not terminate, but City shall, at its sole cost and risk, proceed forthwith and use reasonable diligence to rebuild or repair the exterior walls, roof and foundation of the Premises (not the interior leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) to substantially the condition in which they existed prior to such damage; provided, however, if the casualty occurs during the final 18 months of the lease term, City shall not be required to rebuild or repair such damage unless Tenant exercises its renewal option (if any is contained herein) and City accepts such option within 15 days after the date of receipt by City of the notification of the occurrence of the damage. If Tenant does not elect to exercise its renewal option and City does not accept such option or if there is no renewal option contained herein or previously unexercised at such time, this Lease shall terminate at the option of City and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by City of the written notification of the damage. If the building and other improvements are to be rebuilt or repaired and

are untenantable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenantable shall be adjusted equitably.

Section 11. Indemnity and Public Liability Insurance.

11.1 CITY, ITS OFFICERS AND EMPLOYEES SHALL NOT BE LIABLE TO TENANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, VISITORS, OR TO ANY OTHER PERSON WHOMSOEVER FOR ANY INJURY TO PERSONS OR DAMAGE TO PROPERTY RESULTING FROM ANY CONDITION OF THE PREMISES OR CONDITION OF ANY ADJACENT AREA OWNED BY THE CITY, OR BY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BROKEN GLASS, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING OR FLOWING INTO THE PREMISES, REGARDLESS OF THE SOURCE, OR BY DAMPNES OR BY FIRE, EXPLOSION, FALLING PLASTER OR CEILING. CITY SHALL NOT BE LIABLE TO TENANT FOR ANY LOSS OR DAMAGE THAT MAY BE OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF THIRD PARTIES OR CAUSED BY OPERATIONS IN CONSTRUCTION OF ANY PRIVATE, PUBLIC OR QUASI-PUBLIC WORK, OR OF ANY OTHER PERSONS WHOMSOEVER.

11.2 TENANT, ITS PARENT COMPANIES, AFFILIATES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFYING PARTIES"), SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, TOGETHER WITH THE CITY'S OFFICERS, AGENTS, COUNCIL MEMBERS, EMPLOYEES, ATTORNEYS AND REPRESENTATIVES (COLLECTIVELY, INCLUDING THE CITY, THE "CITY INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL DAMAGES, LIABILITIES, DEMANDS, CAUSES OF ACTION, CLAIMS, JUDGMENTS, SUITS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) MADE BY ANY THIRD-PARTY, TO THE EXTENT ARISING FROM OR RELATED THIS LEASE OR TO THE CONDITION OF THE PREMISES OR ANY ADJACENT AREA OWNED BY THE CITY (COLLECTIVELY, "INDEMNIFIED CLAIMS"), REGARDLESS OF THE LEGAL THEORY ASSERTED BY ANY THIRD PARTIES AND REGARDLESS OF WHETHER THE DAMAGES OR CLAIMS OF THIRD PARTIES ARE KNOWN OR FULLY APPRECIATED AT THIS TIME BY TENANT OR THE CITY. THE INDEMNITIES IN THIS AGREEMENT ARE SPECIFICALLY INTENDED TO OPERATE AND BE APPLICABLE EVEN IF IT IS ALLEGED OR PROVED THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED IN WHOLE OR IN PART BY ANY ACT, ERROR, OMISSION, NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL CONDUCT, BREACH OF CONTRACT, BREACH OF WARRANTY, VIOLATION OF STATUTE OR COMMON LAW, VIOLATIONS OF THE STATE OR FEDERAL CONSTITUTIONS, OR ANY OTHER CONDUCT WHATSOEVER OF THE INDEMNIFIED PARTIES.

11.3 CITY SHALL NOT BE LIABLE TO TENANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, VISITORS, OR TO ANY OTHER PERSON WHOMSOEVER, FOR ANY INJURY TO PERSONS OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES OR ANY ADJACENT AREA OWNED BY THE CITY CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, OR MISCONDUCT OF Tenant, ITS EMPLOYEES, SUBTENTANTS, LICENSEES OR CONCESSIONAIRES OR ANY OTHER PERSON ENTERING THE PREMISES UNDER EXPRESS OR IMPLIED

INVITATION OF TENANT, OR ARISING OUT OF THE USE OF THE PREMISES, INCLUDING ANY DEFECTS THEREON, BY TENANT AND THE CONDUCT OF ITS BUSINESS THEREON, OR ARISING OUT OF ANY BREACH OR DEFAULT BY TENANT IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. FURTHER, TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES COMPLETELY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, SUITS, CLAIMS, JUDGMENTS, FINES, OR DEMANDS ARISING BY REASON OF INJURY OR DEATH OF ANY PERSON, DAMAGE TO ANY PROPERTY, OR DAMAGE TO INTANGIBLES (DAMAGE TO BUSINESS, DEFAMATION, ETC.), INCLUDING ALL REASONABLE COSTS FOR INVESTIGATION AND DEFENSE THEREOF (INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES, COURT COSTS, AND EXPERT FEES), OF ANY NATURE WHATSOEVER ARISING OUT OF OR INCIDENT TO THIS AGREEMENT, WHICH ARE CAUSED BY OR RESULT FROM AN ACT OF NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, AND/OR FAILURE TO PAY A CONTRACTOR OR SUPPLIER AND/OR ARISING OUT OF THE USE OF THE PREMISES, INCLUDING ANY DEFECTS THEREON, BY TENANT, ITS EMPLOYEES, AGENTS, CONTRACTORS, VISITORS, OR ANY PERSON ENTERING THE PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT. TENANT SHALL GIVE TO THE CITY REASONABLE NOTICE OF ANY SUCH CLAIMS OR ACTIONS. Tenant SHALL USE LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE CITY IN CARRYING OUT ITS OBLIGATIONS HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

11.4 Immunity retained. The City and Tenant hereby acknowledge and agree that City is entering this Lease pursuant to its governmental function and that nothing contained in this Lease shall be construed as constituting a waiver of the City's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.

11.5 Limited Waiver of Immunity. Notwithstanding anything to the contrary herein, the City and Tenant hereby acknowledge and agree that to the extent this Lease is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE.

Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the City and Tenant hereby acknowledge and agree that in a suit against the City for breach of this Lease:

- (a) the total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Lease;
- (b) the recovery of damages against City may not include consequential damages or exemplary damages;
- (c) Tenant may not recover attorney's fees; and
- (d) Tenant is not entitled to specific performance or injunctive relief against the City.

11.6 Tenant's Insurance. Tenant shall maintain the insurance policies in accordance with Exhibit A attached hereto, covering its operations on the Premises, and maintain all such insurance policies for the Parking Areas, as applicable, which indemnifies and insures the City and adds City

thereto as an additional insured. Said policies shall provide thirty (30) days written notice to City before said policies may be canceled.

Section 12. Condemnation.

12.1 If, during the term of this Lease or any extension or renewal thereof, all or a substantial part of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the Rent shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Premises by the condemning authority.

12.2 If less than a substantial part of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, City, at its option, may by written notice terminate this Lease or shall forthwith at its sole expense restore and reconstruct the buildings and improvements (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) situated on the Premises in order to make the same reasonably tenantable and suitable for the uses for which the Premises are leased as defined in section 2. The Rent payable hereunder during the unexpired portion of this Lease shall be abated.

12.3 City and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. The termination of this Lease shall not affect the rights of the respective parties to such awards.

Section 13. Holdover.

Should Tenant, or any of its successors in interest fail to surrender the Premises, or any part thereof, on the expiration of the Term of this Lease, such holding over shall constitute a tenancy from month to month, at a monthly rental equal to Four Thousand Two Hundred and No/100 Dollars unless otherwise agreed in writing.

Section 14. Default by Tenant.

14.1 The following events shall be deemed to be events of default under this Lease:

14.1.1 Failure of Tenant to pay any installment of the Rent or other sum payable to City hereunder on the date that same is due and such failure shall continue for a period of 10 days or failure to perform services.

14.1.2 Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of Rent or other sum of money, and such failure shall not be cured within 30 days after written notice thereof to Tenant.

14.1.3 Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligation.

14.1.4 Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

14.1.5 Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder.

14.1.6 Abandonment by Tenant of any substantial portion of the Premises or cessation of use of the Premises for the purpose leased.

Section 15. Remedies of City.

Upon the occurrence of any of the events of default listed in Section 14, City will have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

15.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to City. If Tenant fails to so surrender the Premises, City may, without prejudice to any other remedy which it may have for possession of the Premises or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to City on demand the amount of all loss and damage which City may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

15.2 Enter upon and take possession of the Premises, by force if necessary, without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof. City may relet the Premises and receive the rent therefor. Tenant agrees to pay to City monthly or on demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, the brokerage commission, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting.

15.3 Enter upon the Premises, by force, if necessary, without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay City on demand for expenses, which City may incur in thus effecting compliance with Tenant's obligations under this lease, together with interest thereon at the rate of 10% per annum from the date expended until paid. City shall not be liable for any damages resulting to the Tenant from such action, whether caused by negligence of City or otherwise.

15.4 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to City hereunder or of any damages accruing to City by reason of the violation of any of the terms, conditions, and covenants herein contained.

15.5 If, on account of any breach or default by Tenant of its respective obligations under this Lease, it shall become necessary for City to use or employ an attorney to enforce or defend any of its rights or remedies hereunder, and should City prevail, it shall be entitled to any reasonable attorneys' fees incurred in such connection.

Section 16. City's Lien.

In addition to the statutory Landlord's lien, Tenant hereby grants to City a security interest to secure payment of all rent and other sums of money becoming due hereunder from Tenant upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated in or upon the

Premises, together with the proceeds from the sale or lease thereof. Such property shall not be removed without the consent of City until all arrearages in rent and other sums of money then due to City hereunder shall first have been paid and discharged. Upon the occurrence of an event of default, City may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures furniture and other personal property of Tenant situated on the Premises without liability for trespass, or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Unless otherwise required by law, notice to Tenant of such sale shall be deemed sufficient if given in the manner prescribed in this Lease at least 10 days before the time of the sale. Any public sale made under this paragraph shall be deemed to have been conducted in a commercially reasonable manner if held in the Premises or where the property is located after the time, place, and method of sale, and a general description of the types of property to be sold have been advertised in a daily newspaper published in Dallas County, Texas, 45 consecutive days before the date of the sale. City or its assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition dealt with in this paragraph, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses shall be applied as a credit against the indebtedness), secured by the security interest granted herein. Any surplus shall be paid to Tenant or as otherwise required by law. Tenant shall pay any deficiencies forthwith. Upon request by City, Tenant agrees to execute and deliver to City a financing statement in form sufficient to perfect the security interest of City in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Texas. The statutory lien for rent is expressly reserved; the security interest herein granted is in addition and supplementary thereto.

Section 17. Limitation of Warranties.

THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

Section 18. Quiet Enjoyment.

City agrees that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the rent and performing the covenants herein contained, shall peaceably and quietly have, hold, and enjoy the Premises during the full term of this Lease and any extension or renewal hereof; provided however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the Premises. City is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien hereafter placed on the Premises, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as City may request, provided such further subordination shall be upon the express condition that this Lease shall be recognized by the mortgagee and that the rights of Tenant shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants of this Lease.

Section 19. Waiver of Default.

No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be waiver or any subsequent default or breach of the same or any other term, condition or covenant contained herein.

Section 20. Exhibits.

All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as it copied at full length herein.

Section 21. Use of Language.

Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

Section 22. Captions.

The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

Section 23. Successors.

The terms, conditions, and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of City under this Lease, including, but not limited to, any notices required or permitted to be delivered by City to Tenant hereunder may, at City's option, be exercised or performed by City's agent or attorney.

Section 24. Severability.

If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

Section 25. Notices.

Any notice or document required or permitted to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses as follows:

If to the City

Address:
825 W. Irving Blvd.
Irving, Texas 75060
Contact: Chris Hillman, City Manager

If to the Tenant

Address:
3333 N. MacArthur Blvd. Suite 300
Irving, TX 75062 Contact:
Treasurer

or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

Section 26. Environmental Compliance.

26.1 Tenant may not use, or permit using, the Premises in any manner that results in waste of the Premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the Premises, including Hazardous Materials Laws.

26.2 Tenant, at its sole cost, must comply with all Hazardous Materials Laws in connection with Tenant's use of the Premises. Tenant represents and warrants to City that Tenant will not store Hazardous Materials on or under the Premises in connection with Tenant's normal operation of its business, and if so brought on by Tenant, its officers, employees, agents, or invitees, the same shall be immediately removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Hazardous Materials Laws.

26.3 "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Texas, or the federal government, including, but not limited to, any material or substance that is (1) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq., or listed pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317, (2) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., (3) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (4) petroleum, (5) asbestos, and (6) polychlorinated biphenyls.

26.4 "Hazardous Materials Laws" means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, the contamination of the environment, or any removal of such contamination, including, without limitation, those statutes referred to in Section 26.3.

Section 27. Governing Law and Venue.

This Lease shall be governed by the laws of the State of Texas. The venue for any litigation arising out this Lease shall be Dallas County, Texas.

Section 28. Availability of Funds.

The parties agree that the City's performance of its obligations under this Lease shall at all times be subject to the availability of currently appropriated funds for that purpose. Should funds not be appropriated to perform City's obligations for any reason whatsoever, the failure to appropriate said funds shall operate as an automatic termination of this Lease, and City and Tenant shall be relieved of any further obligation to the other.

Section 29. Prior Agreements Superseded.

This agreement constitutes the sole and only agreement of the parties to this Lease and supersedes any prior understandings or written or oral agreements between the parties, respecting the subject matter of this Lease.

Section 30. Amendment.

No amendment, modification, or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof, and duly executed by the parties.

EXECUTED the ____ day of _____, 2019.

City of Irving, Texas

Irving Community Theater, Inc., d/b/a
MainStage Irving – Las Colinas

By: _____
Richard H. Stopfer, Mayor

By: _____
Clayton Cunningham, Board President

ATTEST:

ATTEST:

Shanae Jennings, City Secretary

APPROVED AS TO FORM:

Kuruvilla Oommen, City Attorney

ACKNOWLEDGMENT

CORPORATE ACKNOWLEDGMENT

THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared:

_____ (Print Name) _____ (Print Title)

of the corporation known as _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said corporation, that he or she was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that she or he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2_____.

Notary Public In and For

County, _____

My Commission expires: _____

PARTNERSHIP ACKNOWLEDGMENT

THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day appeared:

_____ (Print Name) _____ (Print Title)

of _____ a partnership, known to me to be the person and partner whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said partnership, and that she or he was duly authorized as a partner of such partnership to perform same for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2_____.

Notary Public In and For

County, _____

My Commission expires: _____

SINGLE ACKNOWLEDGMENT

THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2_____.

Notary Public In and For

County, _____

My Commission expires: _____

EXHIBIT A
TENANT INSURANCE REQUIREMENTS FOR BUILDING LEASE
(rev. 09/25/13)

At its expense, Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the tenancy by the Tenant, its agents, representatives, employees, visitors or subcontractors. Said insurance shall be in the type(s) and minimum(s) listed below.

Workers' Compensation

Workers' Compensation Insurance with statutory limits as required by the Labor Code of the State of Texas and Employers' Liability Insurance with minimum limits of \$100,000 per each accident, \$500,000 disease policy limit, and \$100,000 occupational disease per employee. Workers' Compensation coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meet the statutory requirements of the Texas Labor Code and shall apply to all employees of the lessee providing services under the proposed contract. Sole Proprietors may request a waiver of this requirement if they have no employees. If services under this contract do not extend to building services at the City property as defined by the Texas Labor Code, the lessee may submit a written request for exemption from this requirement.

Commercial General Liability

Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Aggregate Policy minimum limit of \$1,000,000 will include coverage for, but is not limited to, Premises-Operations, Broad Form Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, and Independent Contractors and Contractual Liability. Coverage under this policy shall be on an "occurrence" basis.

Business Automobile Liability Insurance

Automobile Liability Insurance with a minimum is of \$500,000- Combined Single Limit. Coverage shall include all owned, hired, and non-owned vehicles used in performance of the proposed contract. The combined coverage limits of this insurance shall include bodily injury (including death) and property damage. If the performance of services under this contract will not require the use of vehicle(s) lessee may request, in writing, exemption from this requirement.

Commercial Property Insurance

Property insurance (renter's coverage) will be provided by Tenant for Tenant's contents.

Liquor Liability Coverage

Liquor liability coverage shall be required for activities involving the sale and consumption of alcoholic beverages. Said coverage shall provide a coverage limit of no less than \$1,000,000 per occurrence.

Other Coverages

None.

Tenant agrees to the following general provisions.

General Provisions

1. SCOPE – These provisions apply to all contracted vendors unless specifically exempted in the proposed contract. Coverage shall state that the Tenant’s insurance shall apply separately to each insured against whose claim is made, or suit is brought, except to the limits of the insured’s liability.

2. COVERAGE APPLICATION – Tenant’s insurance must be primary as respect to the City, its officers, employees, elected officials, appointees and volunteers and noncontributory with any other insurance, including self-insurance, maintained by the City for its benefit. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City.

3. DEDUCTIBLES AND SELF-INSURED RETENTIONS – Subject to Tenant’s right to maintain reasonable deductibles, any deductibles or self-insured retentions must be disclosed to and approved by the City. The City reserves the right to review the insurance obtained by the Tenant in comparison to the requirements specified in this section.

4. ADDITIONAL INSURED – The City of Irving, including its officers, officials, employees, Boards and Commissions and volunteers shall be named as an additional insured by endorsement to the coverage listed herein, excluding Workers’ Compensation and Employers’ Liability (for which a waiver of subrogation is required to be issued in favor of the City), with regard to the insured’s activities as required by written contract. The coverage shall contain no special limitations on the scope of protection afforded to the City, and all premiums arising from the coverage herein shall be the responsibility of the insured.

5. COVERAGE CONTINUATION AND CANCELLATION – In the event any insurance policy shown on the certificate(s) of insurance has an expiration date prior to the completion of the Lease, the Tenant shall furnish the City proof of identical continued coverage no later than thirty days prior to the expiration date shown on the certificate. Failure to maintain continuous coverage during the term of the Lease, or failure to provide proof of coverage at any time during the term of the Lease, may result in termination of the Lease. Coverage shall not be canceled, non-renewed or materially altered except after thirty days prior written notice by certified mail (return receipt requested) to City Manager, 825 W. Irving Blvd., Irving, TX 75060.

6. SUBROGATION – Tenant must waive all rights of subrogation against the City of Irving for bodily injury (including death), property damage or any other loss arising from work performed by the Tenant for the City.

7. RESPONSIBILITY – **Approval, disapproval or failure to act by the City regarding any insurance supplied by the Tenant or its subcontractors shall not relieve the Tenant of full responsibility or liability for damages and accidents as set forth in the lease.**

8. ACCEPTABILITY – The City retains the right to approve the acceptability of insurers. As a general rule, the City will accept insurers authorized to transact business in the State of Texas with an A. M. Best rating of “A- VI” or better.

9. PAYMENT OF PREMIUMS – Companies issuing insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are the sole responsibility and liability of the Tenant.

Proof of Insurance

1. Upon Council approval of the Lease, Tenant must submit to the City, within fifteen business days, proof of all insurance coverages required by this Lease. Proof of insurance shall be furnished to the City on the ACORD certificate form, provided the appropriate endorsements for Additional Insured and Amendment of Cancellation with 30-day notice are

included.

- 2.** The Tenant must provide copy of the Declaration Page of the policy with all relevant policy endorsements, including endorsement showing City of Irving as Additional Insured, within fifteen days of request. Copy must be signed by the Tenant and notarized.
- 3.** Required proof of insurance must be provided by Tenant before Tenant may take possession of the Premises, and no later than July 1, 2019.
- 4.** The City reserves the right to request a complete copy of all insurance policies at anytime.

EXHIBIT B

Landlord Insurance Requirements

Commercial Property Insurance

City shall maintain casualty property insurance, insuring against loss or damage customarily included under a special form policy, including fire, lightning, windstorm/hail, vandalism, malicious mischief, boiler and machinery. The policy shall be in an amount equal to 100% of the replacement cost of structure. Coverage under this policy shall be for the sole benefit of the City and under its sole control. Coverage under this policy will not extend to tenants contents. Coverage for Tenants contents should be secured as outlined in Exhibit A.