

Resolution No. 17-0594  
Approved on April 12, 2017  
Administrative Action No. \_\_\_\_\_  
Contract ID No. \_\_\_\_\_

**CULTURAL FACILITIES PROGRAM  
LOAN AGREEMENT**

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into by and between the City of Dallas, a Texas municipal corporation, of Dallas County, Texas (hereafter “City”), acting by and through its duly authorized officers, and \_\_\_\_\_, (“Grantee”), a Texas \_\_\_\_\_, acting by and through its authorized officers. City and Grantee may be referred to individually as a “Party” and jointly as “the Parties”.

**WITNESSETH:**

**WHEREAS**, on September 21, 2016, by Ordinance No. 30179, the City Council appropriated \$1 million for the purpose of major maintenance and repair of cultural facilities; and

**WHEREAS**, on April 12, 2017, pursuant to Resolution No. 17-0594, attached as **Exhibit A**, City Council designated \$400,000 of the appropriation for improvement and renovation or major repair of cultural facilities owned and operated by not-for-profit cultural organizations with annual operating budgets less than \$5 million through a competitive funding program administered by the Office of Cultural Affairs with the review and advice of the Cultural Affairs Commission; and

**WHEREAS**, the Arts & Economic Prosperity IV study reported that Dallas’ nonprofit arts and culture industry generated \$322 million in annual economic activity, 11,227 full-time equivalent jobs, \$286 million in household income, and \$38 million in local and state government revenues; and

**WHEREAS**, arts and cultural organizations, and services associated with the operation and maintenance of their facilities, add cultural and economic diversity to a city; enhance the lives of the city’s residents and visitors and positively impact the city’s economy by generating jobs and revenue; and

**WHEREAS**, the Cultural Facilities Program, attached as **Exhibit B**, would support existing arts and cultural organizations that are invested in Dallas and support the City’s goals for development and job creation, and encourage the retention of arts and cultural organizations to remain in Dallas and entice new arts organizations to invest in Dallas through recognition of the City’s holistic support of arts and culture on many levels; and

**WHEREAS**, City and Grantee desire to enter into this Agreement in order to provide Grantee with funding for improvements, renovations, and major repairs, in accordance with the Cultural Facilities Program.

**NOW THEREFORE**, the City and Grantee do mutually agree as follows:

[Grantee Name]  
Cultural Facilities Program Loan Agreement

**ARTICLE I**  
**DEFINITION OF TERMS**

In addition to the terms defined in the body of this Agreement, the following terms shall have the definitions indicated below:

**Advance** means a disbursement by City up to 25% of any Funds and/or the Grantee's Deposit.

**Application for Advance** means a written application submitted by Grantee to City in a form approved by City specifying the name, current address, and amount owed to each party to whom Grantee is obligated for labor, materials, or services supplied for the construction of the Improvements and all other expenses incident to the Loan, the Property, and the construction of the Improvements, so long as such expense is permitted under the Funds Budget. The Application for Advance will contain, if requested by City, such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documentation as City may reasonably request.

**Application for Disbursement** means a written application submitted by Grantee to City in a form approved by City specifying the name, current address, and amount paid to each party to whom Grantee is obligated, and a description of the labor, materials, or services supplied by that party for the construction of the Improvements, so long as such expense is permitted under the Funds Budget. The Application for Disbursement shall contain, such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documentation as City may request. The Application for Disbursement will also contain the certification attached as **Exhibit K**, certifying that each expense for which reimbursement is sought is a capital expense of the development.

**Complete or Completion** means final inspection and approval from City.

**Completion Date** means one (1) year from the Effective Date of this Agreement. Grantee shall also comply with the construction timeline in **Exhibit F**.

**Construction Contracts** mean any construction contracts executed by Grantee for the development and construction of the Improvements, including, without limitation, the contract between Grantee and Contractor.

**Contractor** means any general contractor selected by Grantee and approved by City. The Contractor for the Project is \_\_\_\_\_ and City has approved such Contractors.

**Cultural Facility** means a building which shall be used for programming, production, presentation, exhibition of any of the arts and cultural disciplines such as music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, and programs of museums and such activities must comprise at least 85% of facility use.

**Deed Restrictions** means a document in a form approved by City in its sole discretion, executed by Grantee and recorded in the real property records of the county or counties in which all or a portion of the Property is located. The Deed Restrictions will restrict use of the Property for ten (10) years from the date of completion of the Improvements, shall be of an even date with the note and deed of trust, and must be recorded before Grantee can commence construction work on the Property.

**Disbursement** means a disbursement by City of any Funds.

**Effective Date** means the date this Agreement is executed.

**Funds** means up to \$200,000.00 in City funds awarded to Grantee by City. Funds must be spent in accordance with the Funds Budget and within the funding period.

**Funds Budget** means the budget attached hereto as **Exhibit C**, outlining how Grantee may spend the Funds. The Funds Budget may not include Disallowed Expenses.

**Governmental Authority** means, collectively, the United States of America, the State of Texas, the county or counties in which any part of the Property is located, the City of Dallas, and any agency, department, commission, bureau, or instrumentality of any of them.

**Governmental Requirements** mean all laws, ordinances, rules, and regulations of any Governmental Authority applicable to Grantee, the Property, or the Land, as currently in effect or as amended during the performance of this Agreement.

**Grantee's Deposit** means such cash sums as City may deem necessary from time to time, in addition to the Funds, for Completion of the Project. If City determines at any time that the unadvanced portion of the Funds will be insufficient for payment in full of the costs related to the Project, then Grantee shall, upon request of City, deposit an amount sufficient to cover any such anticipated shortfall as determined by City with a state or federally chartered financial institution acceptable to City. The Grantee's Deposit must be exhausted before City incurs any obligation to disburse further Advances of Funds. Grantee shall promptly notify City in writing if and when the Improvement costs exceed, or appears likely to exceed, the total of the unadvanced portions of the Funds and the Grantee's Deposit. The initial amount of the Grantee's Deposit shall be \$0.00.

**Hazardous Materials** include: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as

defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty, filled or partially filled with any substance; (f) any substance the presence of which on the Property is prohibited by any Governmental Requirements; and (g) any other substance which by any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal.

**Hazardous Materials Contamination** means the contamination (whether presently existing or hereafter occurring) of the Improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Property.

**Insurance Policies** means the insurance requirements specified in **Exhibit E** and all other insurance as City may reasonably require.

All Insurance Policies shall be issued on forms and by companies satisfactory to City and shall be delivered to City at the following addresses: (a) The City of Dallas, Attn: Business Operations Manager, Office of Cultural Affairs, 1925 Elm Street #400, Dallas, Texas 75201 and (b) The City of Dallas, Director, Office of Risk Management, 1500 Marilla 6AS, Dallas, Texas 75201.

**Improvements** mean the construction, long-term improvement, renovation or major repairs by Grantee on the Cultural Facility in conformity with the Plans and Specifications and the Project Budget. The Improvements must comply with all Government Requirements and the International Energy Conservation Code.

**Loan** means the loan from City to Grantee of the Funds. The term of the Loan shall mature upon the Completion Date.

**Loan Documents** means the promissory note in the amount of the Loan, the deed of trust securing City's interest in the Property and Improvements, a closing certificate, a grantee's affidavit, financing statements filed with the county at the state, and any other documents reasonably required by City on forms approved by City.

**MWBE** means the City's Minority and Women-Owned Business Enterprises/Good Faith Effort Plan, the requirements of which are attached as **Exhibit K**.

**Plans and Specifications** means the final working Plans and Specifications for the development and construction of the Improvements on the Cultural Facility, approved by City as required herein, and all amendments and modifications thereof approved in writing by City as attached as **Exhibit F**. Grantee shall make all necessary modifications to the Plans and Specifications to ensure compliance with all federal, state, and City of Dallas

requirements. City has no liability or obligation whatsoever in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the rehabilitation of the Improvements contemplated by the Plans and Specifications. City shall have no liability or obligation to Grantee arising out of any inspection of the Improvements. No such inspection nor any failure by City to make objections after any such inspection shall constitute a representation by City that the rehabilitation to the Improvements are in accordance with the Plans and Specifications or constitute a waiver of City's right thereafter to insist that the Improvements be rehabilitated in accordance with the Plans and Specifications. Grantee shall, upon demand of City and at Grantee's sole expense, correct any structural defect in the Improvements or any variance from the Plans and Specifications not approved in writing by City.

**Project Budget** means a budget or cost itemization prepared by Borrower and approved by City specifying the cost by item of (a) all labor, materials, and services necessary for the development and construction of the Improvements in accordance with the Plans and Specifications and all Governmental Requirements, and (b) all other expenses anticipated by Borrower incident to the Loan, the Property, and the development and construction of the Improvements on the Property. The Project Budget is attached as **Exhibit D**.

**Property** means the land on which the Improvements will be constructed, as more particularly described on **Exhibit H**.

**Title Company** means a title company selected by Grantee and acceptable to City.

**Title Policy** means a mortgagee policy issued to City by the Title Company in the amount of the Loan, insuring that the City's deed of trust constitutes a valid first priority lien covering the Property (subject to the provisions of Section 2.01 below). The Title Policy shall be subject only to those exceptions and encumbrances which City may approve.

**Written Notice to Proceed** means written notification from City to Grantee authorizing Grantee to commence the Improvements. Until Grantee receives the Written Order to Proceed, Grantee may not (1) commit or spend any funds, including Grantee's own funds, on Improvement materials or activities without the prior written consent of City, (2) execute any legally binding agreement for property acquisition, financing, or construction, or (3) commence construction or site preparation on the Property, which includes demolition, dredging, filing, excavating, construction, or similar activities. Any such action could result in forfeiture of the Funds and termination of this Agreement.

## **ARTICLE II LOAN DOCUMENTS AND FUNDS**

2.01 **Loan Documents**. To secure City's interest in the Property and Improvements in the event that Grantee is unable for any reason to fully complete its obligations under this Agreement, Grantee shall execute the Loan Documents and record the deed of trust and Deed Restrictions in the real property records of the county in which the Property is located. Grantee will be required  
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to (i) purchase a Title Policy for City; (ii) pay all costs associated with closing the Loan, and (iii) ensure City's lien has first priority and is not subordinate to any other indebtedness. Notwithstanding (iii) above, City agrees to subordinate its lien to other third-party lenders who have issued or may issue debt in connection with the Property and Improvements, so long as the term of such subordination documents are acceptable to City in its sole discretion.

2.02 **Deed Restrictions.** The Deed Restrictions will run with the land and be binding upon the Property and any subsequent owners of the Property for the duration of ten (10) years from the date the Improvements are completed. Grantee shall affirmatively disclose to prospective purchasers the resale requirements of the Deed Restrictions and shall include as a condition in its sales contracts with prospective purchasers that the sale contracts are subject to the Deed Restrictions.

2.03 **Interest.** Interest on the Loan, at the rate or rates specified in the note, shall be computed on the unpaid principal balance which exists from time to time and shall be computed with respect to each Advance of Funds only from the date of such Advance.

2.04 **Disallowed Expenses.** Funds may not be used for:

- (a) land or facility acquisition;
- (b) general operating expenses, including, but not limited to administrative costs, salaries, office supplies, mortgages, rent, operating overhead costs, minor repairs and maintenance including, but not limited to landscaping;
- (c) costs associated with planning and preparation of the Improvements including, but not limited to construct and fabricate exhibits, preliminary and schematic drawings, design development documents, feasibility studies, architectural drawings, shop drawings and field engineering;
- (d) costs incurred outside the funding period of this Agreement;
- (e) costs for lobbying federal, state or local legislation, the judicial branch or any City agency;
- (f) costs associated with prior debts, contingencies, fines, penalties, interests, taxes and other financial costs and obligations;
- (g) costs for travel, private entertainment, food, beverages, plaques, awards or scholarships;
- (h) costs associated with projects, improvements or Cultural Facilities which are restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, creed, national origin, disability, age, marital status, sexual orientation or gender identity and expression;
- (i) re-granting, contributions and donations.

2.05 **Conditions of Advances.** The obligation of City to make any Advance hereunder shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions, each of which is a condition precedent to the approval or payment of any Application for Advance:

- (a) Grantee has secured all financing necessary to construct the Improvements, as evidenced by commitment letters satisfactory to City;

- (b) City has issued a Written Notice to Proceed;
- (c) City has received from Grantee all of the Loan Documents duly executed by Grantee and amendments thereto deemed necessary by City; and the Loan Documents shall remain outstanding and enforceable in accordance with their terms, as required hereunder;
- (d) The deed of trust and Deed Restrictions are recorded in the real property records of the county in which the Property is located;
- (e) Grantee has provided, at Grantee's expense: (i) the Title Policy and (ii) a survey of the Property, which survey shall show all boundaries, encroachments, setbacks and exceptions from the Title Policy, and which will include a certification acceptable to City;
- (f) Grantee has delivered to City all MWBE documentation required by City;
- (g) The representations and warranties made by Grantee within this Agreement and the Loan Documents shall be true and correct as of the date of any Advance; and if requested by City, Grantee shall give a certificate to City to that effect;
- (h) The covenants and agreements of Grantee set forth in this Agreement and in the Loan Documents shall be fully complied with, except as such compliance may be limited by the passage of time;
- (i) The Improvements shall not have been materially injured, damaged, or destroyed by fire or other casualty, nor shall the Improvements or any part of the Property be subject to condemnation proceedings or negotiations for sale in lieu thereof;
- (j) City shall have received from Grantee such other instruments, evidence, certificates, and affidavits as City may reasonably require;
- (k) No Advance shall constitute waiver of any of the conditions of City's obligation to make further Advances, nor, in the event Grantee is unable to satisfy any such condition, shall any such waiver have the effect of precluding City from thereafter declaring such inability to be an Event of Default;
- (l) City shall have no obligation to make any Advance to Grantee after the happening of any Event of Default, but shall have the right and option to do so; provided, however, that if City elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the debt, or any part thereof, or an obligation to make any other Advance; and
- (m) Grantee shall use all Funds received from Advances for payment of expenses specified in the Funds Budget, and for no other purpose.

2.06 **Applications for Advances.** Grantee may request Advances under this Agreement in accordance with the Funds Budget and the Project Budget. Grantee will not request Advances until Funds are actually needed for payment for reimbursements of eligible costs. Grantee may not increase, decrease, or otherwise reallocate line items of the Funds Budget or Project Budget without the prior written consent of City.

- (a) Grantee shall submit Applications for Advances not more frequently than twice per month. Applications for Advances should correspond with construction phases outlined in the Construction Contracts. In no event shall City approve Advances which exceed the value of work in place.

- (b) Upon receipt of an Application for Advance, City will inspect the Improvements or will request an inspection from Contractor, in order to determine that the construction phase related to the Application for Advance is complete. Upon City's satisfaction that such phase is complete City will release the Advance less retainage.
- (c) City will hold ten percent retainage from each Advance. The retainage will be held by City until City is satisfied that the Improvements are Complete. Upon City's inspection and satisfaction that the Improvements are Complete, City shall release the retainage. This retainage requirement supersedes any provision to the contrary in any exhibits attached hereto.
- (d) An Application for Advance may not exceed the aggregate of (a) the costs of labor, materials, and services incorporated into the Improvements in a manner acceptable to City, plus (b) if approved by City, the purchase price of all uninstalled materials to be utilized in the construction of the Improvements stored on the Property or elsewhere with the written consent of, and in a manner acceptable to, City, less (c) retainage, if any, required by City, less (d) all amounts previously Advanced by City.
- (e) Each Application for Advance shall be submitted by Grantee to City at least 30 business days prior to the date on which an Advance is desired by Grantee.
- (f) With each Advance, Grantee must satisfy the following requirements and, if required by City, deliver to City evidence of such satisfaction:
  - i. All conditions described herein have been satisfied;
  - ii. There exists no Event of Default hereunder or under any other Loan Document;
  - iii. The representations and warranties made in this Agreement shall be true and correct on and as of the date of each Advance, with the same effect as if made on that date;
  - iv. Grantee will procure and deliver to City releases or waivers of mechanics' liens and receipted bills showing payment of all parties who have furnished material or services or performed labor of any kind in connection with the construction of any of the Improvements; and
  - v. On request by City, Grantee will procure at its sole cost and deliver to City an updated City's Title Policy showing no additional title exception objectionable to City.
- (g) Submission of the final Advance shall be preceded by final inspection and written acceptance of the work by Grantee and City, correction of defective work, if any, by Grantee, and receipt by City of any affidavits or warranties requested of Grantee, releases of liens, and receipt of affidavits of all bills paid (including an affidavit, which in the judgment of City, meets the requirements of § 53.085 of the Texas Property Code).
- (h) The final Advance, including all retainage, will not be released until City has received the following: (i) a completion certificate from a representative or agent of City and/or Contractor, or other confirmation that the Improvements are Complete, as determined by City, (ii) evidence that all Governmental Requirements have been satisfied, including, but not limited to, delivery to City of certificates of



occupancy permitting the Improvements to be legally occupied, (iii) the reporting requirements specified in **Exhibit I**, attached hereto and made a part hereof, (iv) evidence that no mechanic's or materialman's lien or other encumbrance has been filed and remains in effect against the Property, (v) final lien releases or waivers by Contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the construction of the Improvements, or who otherwise might be entitled to claim a contractual, statutory, or constitutional lien against the Property, and (vi) if available under local rules, the Title Policy shall be endorsed and extended to acknowledge completion of construction of the Improvements without any encroachment and in compliance with all applicable matters of public record and Governmental Requirements, with no additional exception objectionable to City.

- (i) All conditions precedent to the obligation of City to make any Advance are imposed hereby solely for the benefit of City, and no other party may require satisfaction of any such condition precedent or be entitled to assume that City will refuse to make any Advance in the absence of strict compliance with such conditions precedent. All requirements in this Agreement related to Advances may be waived by City, in whole or in part, at any time.
- (j) City shall not Advance any Funds until City receives subordination agreements from Contractor and all other persons furnishing labor, materials, or services for the Improvements. Such subordinations shall be of a form and content satisfactory to City in its sole discretion, and will subordinate to the deed of trust any lien, claim, or charge that any such person or entity may have against Grantee, the Improvements, or the Property.

2.07 **City Use of Advances.** City shall have the right, but not the obligation, to disburse and directly apply Funds or the Grantee's Deposit to the satisfaction of any of Grantee's obligations hereunder or under any of the other Loan Documents. Any Advance of Funds by City for such purpose, even in excess of the amount of the Loan (subject to City Council approval), shall be part of the Loan and shall be secured by the Loan Documents. Grantee hereby authorizes City to hold, use, disburse, and apply the Funds and Grantee's Deposit for payment or performance of any obligation of Grantee hereunder or under any of the other Loan Documents, to preserve the Property or Improvements, to complete construction of the Improvements, and for such related expenses as City deems reasonable. Grantee hereby assigns and pledges the Loan to City for such purposes. City may disburse any portion of any Advance at any time, and from time to time, to persons other than Grantee for the purposes specified herein, and the amount of Advances to which Grantee shall thereafter be entitled shall be correspondingly reduced.

2.08 **Disbursements.** Subject to the conditions of the Loan Documents, the City will make Disbursements to Grantee up to the total Funds amount for items reflected in the Funds Budget. No Disbursements may be requested for Disallowed Expenses. Grantee may not request disbursement of Funds under this Agreement until the Funds are needed for reimbursement of Grantee's payments of eligible costs, and the amount of each request must be limited to the amount actually paid for such eligible cost. Further, Grantee understands and agrees that the City shall make no Disbursements until it has received verification that Grantee has recorded the Deed

Restrictions and Deed of Trust, procured all Insurance Policies, met all the insurance requirements under the Loan Documents, and is not otherwise in default under the Loan Documents.

2.09 **Application for Disbursement.** From time to time, Grantee shall submit an Application for Disbursement to the City requesting a Disbursement for the payment of costs of labor, materials, and services supplied for the construction of the Improvements or for the payment of other costs and expenses specified in the Project Budget and allowable under the Funds Budget. The City may require an inspection of and acceptable report on the Improvements by a representative or agent of the City and/or contractor, as determined by the City, prior to making any Disbursement. Each Disbursement shall be limited to the amounts shown in the same and not exceed the aggregate of (a) the costs of labor, materials, and services incorporated into the Improvements in a manner acceptable to the City, plus (b) if approved by the City, the purchase price of all uninstalled materials to be utilized in the construction of the Improvements stored on the Property or elsewhere with the written consent of, and in a manner acceptable to, the City, less (c) retainage required by the City, and less (d) all prior Disbursements for payment of costs of labor, materials, and services for the construction of the Improvements. Any Application for Disbursement shall be submitted by Grantee to the City not less than 30 days prior to the date on which a Disbursement is desired by Grantee. Disbursements shall be made by the City not more frequently than twice per month upon compliance by Grantee with this Agreement, after actual commencement of construction of the Improvements, for work actually done during the preceding period. In no event shall City approve Disbursements which exceed the value of work in place, less any retainage required by City, nor shall such Disbursements exceed the cumulative percentage completion of any applicable construction contract.

City will hold ten percent retainage from each Disbursement. The retainage will be held by City until Completion. Upon Completion, City shall release the retainage. This retainage requirement supersedes any provision to the contrary in this Agreement or any exhibits attached hereto.

As a condition precedent to any Disbursement, Grantee must satisfy the following requirements and, if required by the City, deliver to the City evidence of such satisfaction: (i) All conditions precedent to the Disbursement shall have been satisfied; (ii) there shall then exist no Default under any Loan Documents; (iii) the representations and warranties made in the Loan Documents shall be true and correct on and as of the date of each Disbursement, with the same effect as if made on that date; and (iv) Grantee will procure and deliver to the City releases or waivers of mechanics' liens and receipted bills showing payment of all parties who have furnished material or services or performed labor of any kind in connection for which Funds are being requested or shall bond over any asserted lien of any parties who have asserted mechanics' liens against the Property or the Improvements.

2.10 **Final Disbursement.** The final Application for Disbursement shall be preceded by final inspection and written acceptance of the work by Grantee and City, correction at Grantee's sole cost of any defective work or work not in conformance with the Plans and Specifications as determined by City, and City's receipt of an affidavit of all bills paid (including an affidavit, which in the judgment of City, meets the requirements of §53.085 of the Texas Property Code) on a form satisfactory to City. The final payment of Funds will not be disbursed if Grantee is in default under the Loan Documents and until City has received the following, all at the sole expense of

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Grantee: (i) a final certificate of appropriateness or equivalent proof of Completion for the Improvements, (ii) an affidavit from Grantee certifying that all Governmental Requirements have been satisfied, (iii) evidence that no mechanic's or materialman's lien or other encumbrance has been filed and remains in effect against the Property or the Improvements, and (iv) lien releases or waivers by contractor(s), and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the construction of the Improvements, or who otherwise might be entitled to claim a contractual, statutory, or constitutional lien against the Property or the Improvements by reason of same.

### **ARTICLE III IMPROVEMENTS AND GRANTEE'S COVENANTS AND COMMITMENTS**

In addition to other conditions set forth in this Agreement, Grantee shall complete the following requirements.

3.01 **Matching Funds**. In accordance with the Cultural Facilities Program, Grantee must match Funds with non-City funds. Prior to the execution of this Agreement, Grantee will provide necessary documentation demonstrating Grantee's compliance and satisfaction of the matching requirement as set forth in **Exhibit B**.

3.02 **Plans and Specifications**. Grantee shall improve, renovate and repair in accordance to the Plans and Specifications set forth in **Exhibit F**. The Plans and Specifications will include an original copy of the architectural floor plan and specifications, a copy of the materials specification, and a copy of the construction cost schedule. Grantee agrees to make all necessary modifications to ensure compliance with all federal regulations and city requirements, as described herein. Grantee will not, without the prior written consent of City, amend, alter or change, pursuant to change order, amendment or otherwise, the Plans and Specifications. In conformity with the Plans and Specifications, the Improvements will be of the size indicated on the Plans and Specifications. Grantee will construct the Improvements according to the Plans and Specifications. City has no liability or obligation whatsoever in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans and Specifications. City shall have no liability or obligation to Grantee arising out of any inspection of the Improvements. No such inspection nor any failure by City to make objections after any such inspection shall constitute a representation by City that the Improvements are in accordance with the Plans and Specifications or constitute a waiver of City's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications. Grantee, will, upon demand of City and at Grantee's sole expense, correct any structural defect in the Improvements or any variance from the Plans and Specifications not approved in writing by City.

3.03 **Certificate of Appropriateness**. If the Property or Cultural Facility is located in a designated landmark district or is a landmark site, Grantee must provide City with a Certificate of Appropriateness from the City's Historic Preservation section prior to construction.

3.04 **Material Dates**. Grantee shall have all Improvements completed not later than one year following the execution of this Agreement ("Completion Date").

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3.05 **Final Report.** Grantee shall submit to Director a Final Report summarizing the activities during this contract period upon Completion of the Improvements. Failure to submit a Final Report in a timely manner or submission of an incomplete report will result in delayed payment of the final payment installment as well as payment on future contracts.

3.06 **Notice to Proceed.** Grantee shall not commence construction on any portion of the Property without a written Notice to Proceed from the Director. To obtain a written Notice to Proceed, Grantee must record the deed of trust and Deed Restrictions for the Property in the official real property records of the county in which the Property is located within seven (7) days of execution of this Agreement, and must receive the written approval by the Director as to:

- (a) the Title Policy;
- (b) all environmental testing and studies commissioned by or on behalf of Grantee;
- (c) Grantee's Contractor and all subcontractors;
- (d) the Construction Contract;
- (e) the Plans and Specifications; and
- (f) the Insurance Policies.

3.07 **Construction.** Grantee shall complete the construction of the Improvements on the Property in accordance with the Plans and Specifications on or before the Completion Date, free and clear of liens or claims for liens for material supplied and for labor services performed. Construction of the Improvements will be performed within the perimeter of the Property and within all applicable building and setback lines. Grantee covenants that there are, and will be, no structural defects in the Improvements. Grantee will furnish City, from time to time upon the reasonable request of City and at Grantee's sole expense, a survey of the Improvements, certified by a registered engineer or surveyor, showing the location of the Improvements to be within the lot lines and any building or setback lines of the Property, not infringing established easements, placed in accordance with the Plans and Specifications and all applicable laws and ordinances and all restrictive covenants affecting the Property, and showing no state of facts objectionable to City. Grantee will, upon demand of City and at Grantee's sole expense, correct any structural defect in the Improvements or any variance from the Plans and Specifications not approved in writing by City.

3.08 **Contractors and Subcontractors.** Grantee shall ensure that Contractor and all subcontractors utilized in the construction of the Improvements be appropriately licensed and not be debarred or suspended from performing work by the City, the State of Texas, or the Federal government. Grantee must confirm that Contractor and all subcontractors are not listed on the Federal Excluded Parties List System, [www.epls.gov](http://www.epls.gov), and must submit printed verification of such searches with the first Application for Advance which includes invoices from such Contractor or subcontractor. In the event that City determines that Contractor or any subcontractor has been debarred, suspended, or is not properly licensed, Grantee shall immediately cause the Contractor or subcontractor to stop work on the Improvements. In the event that Contractor or any subcontractor has been debarred, suspended, or is not properly licensed, Grantee or Grantee's general contractor shall not be paid with Funds for any work performed by such Contractor or subcontractor in connection with the Improvements. However, this Section should not be

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construed to be an assumption of any responsibility or liability by City for the determination of the legitimacy, quality, ability, or good standing of any Contractor or subcontractor.

3.09 **Monitoring.** Grantee understands and agrees that it will be subject to monitoring by City. Grantee will provide reports and access to Improvement files as requested by City during the term of this Agreement and for ten years after the Effective Date. City shall have access at all reasonable hours to the Grantee's offices and records dealing with the use of the Funds that are the basis of this Agreement, and its officers, directors, agents, employees, and contractors for the purpose of such monitoring. This Section shall survive the termination or expiration of this Agreement.

3.10 **Procurement.** Grantee shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. Grantee shall comply with all applicable federal, state and local laws, regulations, and ordinances for making procurements under this Agreement.

3.11 **Inspections.** Grantee shall permit City, any Governmental Authority, and their agents and representatives, to enter upon the Property and any location where materials intended to be utilized in the construction of the Improvements are stored for the purpose of inspection of the Property and such materials at all reasonable times.

3.12 **Reporting and Documentation.** Grantee shall maintain a record-keeping system as part of its performance of this Agreement and shall promptly provide City with copies of any document City deems necessary for the effective fulfillment of City's monitoring responsibilities. A listing and description of some of said records is attached hereto as Exhibit I and made a part hereof. Specifically, Grantee will keep or cause to be kept an accurate record of all actions taken and all Funds spent in connection with the Project, with documentation to support the eligibility and reasonableness of each expenditure. City reserves the right to change the recordkeeping documentation required of Grantee.

3.13 **Terms Applicable to Contractors and Subcontractors.** Grantee understands and agrees that all terms of this Agreement shall apply to any and all contractors and subcontractors of Grantee which are in any way paid with Funds or who perform any work in connection with the Improvements. Grantee shall monitor the services and work performed by its contractors and subcontractors. Grantee is liable for all violations committed by its contractors or subcontractors.

3.14 **Assignment of Construction Contracts.** As additional security for the payment of the Loan, Grantee hereby transfers and assigns to City all of Grantee's rights and interest, but not its obligations, in, under, and to the Construction Contracts, upon the following terms and conditions:

(a) Grantee represents and warrants that the copy of any Construction Contract it has furnished to City is a true and complete copy thereof and that Grantee's interest therein is not subject to any claim, setoff, or encumbrance.

(b) Neither this assignment nor any action by City shall constitute an assumption by City of any obligation under the Construction Contracts, and Grantee shall continue to be liable for all obligations of Grantee thereunder, Grantee hereby agreeing to perform all of its obligations under the Construction Contracts. Grantee indemnifies and holds City harmless against and from

any loss, cost, liability, or expense (including, but not limited to, attorney's fees and expenses) resulting from any failure of Grantee to so perform.

(c) City shall have the right at any time (but shall have no obligation) to take in its name or in the name of Grantee such action as City may at any time determine to be necessary or advisable to cure any default under the Construction Contracts or this Agreement or to protect the rights of Grantee or City thereunder. City shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Grantee agrees to hold City free and harmless against and from any loss, cost, liability or expense (including, but not limited to, attorney's fees and expenses) incurred in connection with any such action.

(d) Grantee hereby irrevocably constitutes and appoints City as Grantee's attorney-in-fact, in Grantee's name or in City's name, to enforce all rights of Grantee under the Construction Contracts or the Loan Agreement.

(e) Prior to an Event of Default, Grantee shall have the right to exercise its rights as owner of the Property under the Construction Contracts, provided that Grantee shall not cancel or amend the Construction Contracts or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of City.

(f) This assignment shall inure to the benefit of City, its successors and assigns, including any purchaser upon foreclosure of the deed of trust, any receiver in possession of the Property, and any corporation formed by or on behalf of City which assumes City's rights and obligations under this Agreement.

3.15 **Other Contracts.** Grantee will deliver to City, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Grantee claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the security interest contained in the deed of trust or any other Loan Documents.

3.16 **Assignment of Plans and Specifications.** As additional security for the payment of the Loan, Grantee hereby transfers and assigns to City all of Grantee's right, title, and interest in and to the Plans and Specifications, and hereby represents and warrants to and agrees with City as follows:

(a) The schedule of the Plans and Specifications delivered to City are a complete and accurate description of the Plans and Specifications.

(b) The Plans and Specifications are complete and adequate for the construction of the Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior written consent of City.

(c) City may use the Plans and Specifications for any purpose, including but not limited to inspections of construction and the completion of the Improvements.

(d) City's acceptance of this assignment shall not constitute approval of the Plans and Specifications by City. City has no liability or obligation whatsoever in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans and Specifications. Furthermore, City is not responsible for enforcement of any of the terms and provisions of the Construction Contracts. City has no duty to inspect the Improvements, and if City should inspect the Improvements, City shall have no liability or obligation to Grantee arising out of such inspection. No such inspection nor any failure by City to make objections after any such inspection shall constitute a representation by City that

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the Improvements are in accordance with the Plans and Specifications or constitute a waiver of City's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications.

(e) This assignment shall inure to the benefit of City, its successors and assigns, including any purchaser upon foreclosure of the deed of trust, any receiver in possession of the Property, and any corporation formed by or on behalf of City which assumes City's rights and obligations under this Agreement.

3.17 **City Signage.** Grantee agrees that, during the term of the Loan, City may erect and maintain on the Property one or more advertising signs indicating that the project financing for the Property has been provided by City.

3.18 **Hazardous Materials.** Grantee agrees to (i) give notice to City immediately upon Grantee's acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination with a full description thereof; (ii) promptly, at Grantee's sole cost and expense, comply with any Governmental Requirements requiring the removal, treatment, or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide City with satisfactory evidence of such compliance; and (iii) provide City, within thirty (30) days after demand by City, with a bond, letter of credit, or similar financial assurance evidencing to City's satisfaction that the necessary funds are available to pay the cost of removing, treating, and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof.

Grantee shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Material in or about the Property, including any state, federal or local so-called "Superfund" lien relating to such matters.

Grantee shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of Hazardous Materials on the Property. Regardless of whether any Event of Default shall have occurred and be continuing or any remedies in respect of the Property are exercised by City, Grantee shall defend, indemnify, and hold harmless City from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, attorney's fees and expenses, and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated by this Agreement) be incurred or suffered by City by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Grantee contained or referred to in the Loan Documents, this Agreement and/or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission, or release from the Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirements relating to Hazardous Materials,

**WHETHER OR NOT OCCASIONED WHOLLY OR IN PART BY ANY CONDITION, ACCIDENT, OR EVENT CAUSED BY ANY ACT OR OMISSION OF CITY.**

Such Liabilities shall include, without limitation: (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of the Improvements, repair or remediation and the preparation of any activity required by any Governmental Authority; (iv) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Material on, from or under the Property; and (v) the imposition of any lien on the Property arising from the activity of Borrower or Borrower's predecessors in interest on the Property or from the existence of Hazardous Materials or Hazardous Materials Contamination upon the Property. The covenants and agreements contained in this Section shall survive the consummation of the transactions contemplated by this Agreement.

3.19 **Estoppel Certificates.** Grantee will deliver to City, promptly after reasonable request, estoppel certificates or written statements, duly acknowledged, stating the amount advanced to Grantee under this Agreement and the amount due on the note and whether any offsets or defenses exist hereunder or against the note.

3.20 **Transfer of Property.** Grantee will not, without the prior written consent of City, transfer, convey or otherwise dispose of the Property, the Improvements, or any part thereof to any individual, partnership, joint venture, trust, association, corporation or other legal entity, however organized, so long as any part of the indebtedness borrowed hereunder is outstanding.

3.21 **Brokers.** Grantee will indemnify City from claims of brokers arising by reason of the execution hereof and/or the consummation of the transactions contemplated hereby.

3.22 **Deed Restrictions.** Grantee will comply with the Deed Restrictions and all restrictive covenants, if any, affecting the Property.

3.23 **Insurance.** Grantee will maintain or cause to be maintained the Insurance Policies described in **Exhibit E** in full force and effect and do all acts and things, at Grantee's expense, as may be necessary or appropriate, in the judgment of City, to enable City to receive all insurance proceeds up to the amount of the Loan then outstanding. At the time of execution, Grantee will provide to City a copy of the Insurance Policy. If City receives any insurance proceeds, City may, at its option, either (a) apply them to the Loan in such order and manner as it may elect, or (b) advance such amounts as City may elect to pay Grantee's costs of repairing and restoring the Improvements to their condition immediately prior to the damage or destruction for which such proceeds were payable. If City elects the latter, then advances will be made in the same manner and upon the same conditions precedent for other Advances as stated in this Agreement. City shall have no obligation to pay interest on any insurance proceeds held by it.

3.24 **Other Encumbrances.** Grantee will not encumber the Property and/or the Improvements or any part thereof with any restrictions, easements, warrants, liens, encumbrances, or conditions without the prior written consent of City.



3.25 **Taxes.** Grantee remains responsible for and shall timely make the payment of ad valorem property taxes and assessments accruing on the Property or any part thereof while it is owned by Grantee.

3.26 **Offset.** City may, at its option, offset any amounts due and payable under this Loan Agreement against any debt (including, but not limited to taxes) lawfully due to City from Grantee, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

3.27 **FINDINGS. GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS CITY FROM ANY LIABILITY ARISING OUT OF FINDINGS FROM ANY FEDERAL, STATE, OR CITY AUDITS OR MONITORING VISITS AND WILL PAY CITY THE AMOUNT OF ANY FINDINGS OR OTHER DISALLOWED COSTS AS DETERMINED BY ANY FEDERAL, STATE OR CITY AUDITS OR MONITORING VISITS CONNECTED WITH THIS PROJECT. GRANTEE ACKNOWLEDGES THAT ALL FUNDS ARE SUBJECT TO REPAYMENT IN THE EVENT THE IMPROVEMENTS DO NOT MEET THE REQUIREMENTS SET OUT IN THIS AGREEMENT OR IN THE LOAN DOCUMENTS. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT AND/OR THE FULFILLMENT OF ALL OF GRANTEE'S OBLIGATIONS UNDER THIS AGREEMENT AND THE LOAN DOCUMENTS.**

3.28 **Audit.** All non-federal entities that expend \$500,000 or more in federal funds within one year, regardless of the source of the federal award, must submit to City an annual audit prepared in accordance with specific reference to OMB Circular A-133, as amended. The audit shall cover the Grantee's fiscal years during which this Agreement is in force. The audit must be prepared by an independent certified public accountant, be completed within 6 months following the end of the period being audited and be submitted to City within 30 days of its completion. Entities that expend less than \$500,000 a year in federal funds are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, City, and General Accounting Office.

3.29 **Warranty.** Grantee warrants that construction of the Improvements will conform to the Plans and Specifications and shall be free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor. This warranty shall continue for a period of 1 year from the Completion Date. Grantee shall remedy at Grantee's sole expense any failure to conform or any defect. Grantee will likewise warrant with respect to repairs or replacements under this Section 3.28 for 1 year from the date of the repair or replacement. City may notify Grantee of the discovery of any failure, defect, or damage. This Section 3.28 survives termination of this Agreement.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

Grantee hereby represents and warrants to City that:

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4.01 No violation of any Governmental Requirements exists or will exist; the use of the Property and the Improvements complies and will comply with all applicable zoning ordinances, regulations, and restrictive covenants affecting the Property; and all Governmental Requirements have been or will be satisfied.

4.02 The financial statements and information regarding Grantee heretofore delivered to City are true and correct in all respects, having been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period covered thereby, and fairly present the financial condition of Grantee as of the date thereof; no adverse change has occurred in the financial condition of Grantee from that which is reflected therein since the date thereof; and no additional borrowings have been made or committed to by Grantee since the date thereof other than the borrowing contemplated hereby.

4.03 There are no actions, suits, or proceedings pending or, to the knowledge of Grantee, threatened against or affecting Grantee, the Improvements, or the Property or involving the validity or enforceability of the Loan Documents or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority. If any such action, suit, or proceeding arises after the Effective Date of this Agreement, Grantee will notify City of the same within five days of the date that Grantee becomes aware of such actual or threatened action, suit, or proceeding.

4.04 Grantee is not in default with respect to any order, writ, injunction, decree, or demand of any court or any Governmental Authority.

4.05 All utility service necessary for the construction of the Improvements and the operation thereof for their intended purposes is available at the property line of the Property for connection to the Improvements, including water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities.

4.06 All roads necessary for the full utilization of the Improvements for their intended purpose have either been completed or the necessary rights-of-way therefor have either been acquired by the appropriate Governmental Authority or have been dedicated to the public use and accepted by such Governmental Authority; and all necessary steps have been taken by Grantee and such Governmental Authority to assure the complete construction thereof.

4.07 No Event of Default under this Agreement or the Loan Documents has occurred and is continuing, and no event has occurred and is continuing which with notice or the passage of time or both would constitute an Event of Default hereunder or under the Loan Documents which has not been cured to the satisfaction of City.

4.08 Grantee has full power and authority to own the Property; to erect, lease and operate the Improvements; and to enter into and perform Grantee's obligations under the Loan Documents. The Loan Documents, when executed, will have been and shall continue to be as long as the Loan is outstanding, duly authorized, executed, and delivered by Grantee and will constitute Grantee's valid and binding obligations, enforceable against Grantee in accordance with their terms, not subject to any defense based upon usury, capacity of Grantee, or otherwise.

4.09 The consummation of the transactions contemplated by, and the performance of this Agreement and the Loan Documents will not violate or contravene any provision of any instrument creating or governing the business operations of Grantee and will not result in a breach of, or constitute a default under, any mortgage, deed of trust, lease, sublease, bank loan, credit agreement, or other instrument to which Grantee is a party or by which Grantee, the Improvements, or the Property may be bound or affected.

4.10 No consent of any other party and no consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority is required in connection with the execution, delivery, performance, validity, or enforceability of the transactions contemplated by this Agreement or the Loan Documents which have not previously been obtained.

4.11 Grantee will use the Funds solely for construction of the Improvements as authorized in the Funds Budget and Project Budget. No Funds may be expended for personal, family, household, or agricultural use.

4.12 Grantee holds full legal and equitable title to the Property, subject only to title exceptions set forth in the Title Policy.

4.13 Prior to the recordation of the deed of trust, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining, or fencing of the Property) shall have commenced or shall have been performed on the Property, no equipment or material shall have been delivered to or upon the Property for any purpose whatsoever, and no mechanic's lien or contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements shall have been recorded in the county or counties where the Property is located.

4.14 There is no fact that Grantee has not disclosed to City in writing that could adversely affect the property, business, or financial condition of Grantee, the Improvements, or the Property.

4.15 Grantee acknowledges that City has no responsibility or obligation to provide any additional funds to the Improvements.

4.16 No Hazardous Materials are located on the Property or have been released into the environment, or deposited, discharged, placed, or disposed of, at, on, under, or near the Property. No portion of the Property is being used or, to the knowledge of Grantee, has been used at any previous time for the disposal, storage, treatment, processing, or other handling of Hazardous Materials nor is the Property affected by any Hazardous Materials Contamination. To the best of Grantee's knowledge, no Hazardous Materials are located in the vicinity of the Property, no property adjoining the Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing, or other handling of Hazardous Materials, nor is any property adjoining the Property affected by Hazardous Materials Contamination. No polychlorinated biphenyls are located on or in the Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form. No investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated,

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or in existence with respect to the Property. The Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantee has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Property is not currently on and, to Grantee's knowledge after diligent investigation and inquiry, has never been on any federal or state "Superfund" or "Superlien" list.

4.17 Grantee will defend and indemnify City, its officers, employees, agents, attorneys, consultants, contractors, and its successors and assigns, from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions and other costs and expenses (including, but not limited to, attorneys' fees and expenses incurred by City in enforcing this indemnity), arising directly or indirectly, in whole or in part, out of the current or future existence of Hazardous Materials on the Property. The parties expressly agree that all costs related to the remediation, removal, relocation, elimination, or other treatment of such Hazardous Materials, including any cost to bring the Property into compliance with all Governmental Requirements related to Hazardous Materials, are the sole responsibility of Grantee. This Section 4.17 will survive the expiration or termination of this Agreement.

4.18 Grantee certifies that it meets all requirements for certification as a not-for-profit, tax-exempt Texas corporation. Grantee acknowledged that it has a continuing, ongoing duty to maintain and provide City with any documentation or information in regard to its status as a not-for-profit, tax-exempt Texas corporation. Grantee shall provide City with any information and documentation regarding any change in its status as a 501(c)(3) or 501(c)(4) tax exempt entity within ten business day of said change. The failure of Grantee to maintain its status as a not-for-profit, tax-exempt Texas corporation shall be considered an Event of Default as defined in Section 5.01 below.

4.19 Grantee certifies that it is the legal owner of the Property and continue to maintain legal ownership of the Property throughout the term of this Agreement. Grantee agrees to provide, upon City's request, legal proof of unrestricted ownership of Property and Cultural Facility. Unrestricted means unqualified ownership and power of disposition.

4.20 Grantee certifies that it currently and will continue to have administrative offices permanently located in the City of Dallas.

4.21 All representations and warranties contained in this Section 4 shall survive the termination of this Agreement. The representations and warranties contained in this Agreement and the Loan Documents are made by Grantee as an inducement to City to make the Loan and Grantee understands that City is relying on such representations and warranties and that such representations and warranties shall survive any (a) bankruptcy proceedings involving Grantee, the Improvements, or the Property, (b) foreclosure of the deed of trust or (c) conveyance of title to the Property in lieu of foreclosure of the deed of trust. Acceptance of each Advance constitutes

reaffirmation, as of the date of such acceptance, of the representations and warranties of Grantee in this Agreement and the Loan Documents, on which City shall rely in making such Advance.

## **ARTICLE V EVENTS OF DEFAULT**

5.01 The following shall constitute “Events of Default” hereunder and under the Loan Documents:

- (a) If Grantee shall fail to comply with any of the covenants, duties, requirements, or obligations of Grantee in this Agreement or in the Loan Documents;
- (b) If a default shall occur under any of the Loan Documents or under any of the documents between Grantee and any senior construction lender;
- (c) If at any time any representation or warranty made by Grantee herein or in any of the Loan Documents shall be incorrect;
- (d) If Grantee is unable to satisfy any condition to receive Advances hereunder for a period in excess of thirty (30) days after City’s refusal to make such Advances;
- (e) If Grantee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated as bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy or file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding, or any action shall be taken by Grantee for the purpose of effecting any of the foregoing;
- (f) If an order, judgment or decree shall be entered, without the application, approval or consent of Grantee by any court of competent jurisdiction, appointing a receiver, trustee, or liquidator of Grantee or of all or a substantial part of the assets of Grantee, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) consecutive days;
- (g) If Grantee executes any chattel mortgage, deed of trust, security agreement or other security instrument covering Grantee’s interest in the Property, the Improvements, or the appurtenances thereto or covering articles of personal property placed in the Improvements, or files a financing statement publishing notice of such security agreement;
- (h) If any levy, attachment, or garnishment be issued, or if any lien for the performance of work or the supply of materials be filed, against any part of the Property and remain unsatisfied or unbonded for a period of seven days after the date of filing thereof;
- (i) If Grantee fails to comply with any requirement of any Governmental Authority pertaining to Grantee, the Property and/or the Improvements;
- (j) If the work on the Improvements be at any time discontinued due to acts or matters within Grantee’s control for a period of ten (10) or more consecutive days or not carried on with reasonable dispatch or not completed by the Completion Date;
- (k) If any of the work of the Improvements or materials, articles, or fixtures used in connection therewith be not in accordance with the Plans and Specifications;
- (l) If the Plans and Specifications are amended or modified without the prior written consent of City;

(m) If Grantee sells or transfers any of the Improvements or Property, without the prior approval of City or during any period of time in which any indebtedness on the Loan remains outstanding;

(n) If Grantee defaults on any documents evidencing any other loan made to Grantee by any person or entity, including, but not limited to, City.

## **ARTICLE VI RIGHTS AND REMEDIES OF CITY**

6.01 Upon the occurrence of an Event of Default, City shall have the right, in addition to any other right or remedy of City, but not the obligation, in its own name or in the name of Grantee, to enter into possession of the Property; to perform all work necessary to complete the Project including construction of the Improvements substantially in accordance with the Plans and Specifications; and to employ watchmen and other safeguards to protect the Property. Grantee hereby appoints City as the attorney-in-fact of Grantee, with full power of substitution, and in the name of Grantee, if City elects to do so, upon the occurrence of an Event of Default, to (a) use such sums as are necessary, including Funds and the Grantee's Deposit, to make such changes or corrections in the Plans and Specifications, and employ such architects, engineers, and contractors as may be required for the purpose of completing the construction of the Improvements substantially in accordance with the Plans and Specifications and the Governmental Requirements, (b) execute all applications and certificates in the name of Grantee which may be required for completion of construction of the Improvements, (c) endorse the name of Grantee on any checks or drafts representing proceeds of the Insurance Policies or other checks or instruments payable to Grantee with respect to the Property, (d) do every act with respect to the construction of the Improvements which Grantee may do, and (e) prosecute or defend any action or proceeding incident to the Property or the Improvements. The power of attorney granted hereby is a power coupled with an interest and irrevocable. City shall have no obligation to undertake any of the foregoing actions, and, if City should do so, it shall have no liability to Grantee for the sufficiency or adequacy of any such actions taken by City.

6.02 Upon the occurrence of an Event of Default, City may, at its option, declare the Loan immediately due and payable without notice of any kind (unless notice is required by applicable law or the Loan Documents). In addition thereto, City may exercise any and all other rights and remedies provided under the Loan Documents as well as any and all other rights and remedies provided at law or in equity.

6.03 Upon the occurrence of an Event of Default, the obligation of City to disburse the Funds and the Grantee's Deposit and all other obligations of City hereunder shall, at City's option, immediately terminate.

6.04 Any funds of City used for any purpose referred to in this Article VI shall constitute Advances secured by the Loan Documents and shall bear interest at the rate specified in the note to be applicable after default thereunder.

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6.05 No waiver by City of any of its rights or remedies hereunder, in the other Loan Documents, or otherwise, shall be considered a waiver of any other or subsequent right or remedy of City; no delay or omission in the exercise or enforcement by City of any rights or remedies shall ever be construed as a waiver of any right or remedy of City; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of City.

## **ARTICLE VII TERMINATION**

City may, at City's option, terminate further work under this Agreement in whole or in part for the convenience of City by giving at least ten (10) days prior written notice thereof to Grantee, with the understanding that all work being terminated shall cease upon the date specified in such notice. City shall pay to or on behalf of Grantee Funds in accordance with the terms of this Agreement for only the work properly performed prior to the date specified in such notice, following proper documentation, inspection, and acceptance of same by the City. Grantee shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate. Termination for convenience is without prejudice to any other remedy City may be entitled to at law, in equity or elsewhere under this Agreement. Grantee understands that if Funds become unavailable, City has no obligation to perform under this Agreement.

## **ARTICLE VIII INDEMNIFICATION AND RELEASE**

**GRANTEE COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THE LOAN DOCUMENTS AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES OF THE PROJECT DESCRIBED HEREIN; AND GRANTEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY AND ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KINDS OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THE EXECUTION, PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THIS AGREEMENT AND AGREEMENT AND/OR THE OPERATIONS, ACTIVITIES, AND SERVICES OF THE PROJECT DESCRIBED HEREIN.**

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**GRANTEE LIKEWISE COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS CITY FROM AND AGAINST ANY AND ALL INJURY, DAMAGE, OR DESTRUCTION OF PROPERTY OF CITY, ARISING OUT OF OR IN CONNECTION WITH ALL ACTS OR OMISSIONS OF GRANTEE OR ITS OFFICERS, MEMBERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, AND PROJECT PARTICIPANTS.**

**GRANTEE AGREES TO AND SHALL RELEASE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.**

**GRANTEE SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO INCLUDE IN THEIR AGREEMENTS AND SUBAGREEMENTS A RELEASE AND INDEMNITY IN FAVOR OF CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.**

**THE INDEMNITY PROVIDED FOR ABOVE 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 CITY AND GRANTEE, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED 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 SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. GRANTEE AND CITY ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE TERM OF THIS AGREEMENT.**

## **ARTICLE IX MISCELLANEOUS**

9.01 The term of this Agreement commences upon execution of the Agreement and terminates upon satisfaction of the Loan Documents and full release of the deed of trust and Deed Restrictions or termination pursuant to Article VIII of this Agreement or upon occurrence of an event of default pursuant to Article V of this Agreement, whichever occurs first. Notwithstanding the foregoing, Grantee's obligations and the provisions of this Agreement with respect to warranties and representations, indemnification, recordkeeping, audit findings, and repayment shall survive termination and shall continue in full force after completion of the Improvements. Grantee's obligation with respect to the one year warranty of the construction of any Improvements described

[Grantee Name]  
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in Section 4.24 also survives termination. Upon expiration or termination of this Agreement, Grantee must transfer to City any Funds in Grantee's possession and any accounts receivable attributable to the use of the Funds.

9.02 This Agreement shall be binding upon, and shall inure to the benefit of, Grantee and City, and their respective heirs, legal representatives, successors and assigns, provided that Grantee may not assign any rights or obligations under this Agreement without the prior written consent of City, at City's sole discretion.

9.03 This Agreement and the other Loan Documents embody the entire agreement and understanding between Grantee and City with respect to the matters covered hereby and supersede all prior proposals, agreements, and understandings relating to the subject matter hereof. Grantee certifies that it is not relying on any representation, warranty, covenant, or agreement of City except for those set forth herein and in the Loan Documents. No change or amendment to this Agreement shall be valid unless it is made in writing and executed by the parties hereto. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other terms of this Agreement. City retains the right to waive requirements of this Agreement, in whole or in part, at any time.

9.04 **Conflict of Interest.** Grantee and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Director of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in Grantee's performance of all of the services under this Contract. Such disclosures must be made no later than ten (10) days following the event giving rise to the potential or actual conflict of interest for the duration of the Contract term. A potential or actual conflict of interest exists when commitments and obligations to the City or widely recognized professional norms are likely to be compromised in Grantee's performance of its duties under this Contract by the existence of Grantee's other professional relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the City's immediate termination of this Agreement by the City's City Manager.

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Agreement, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

[Grantee Name]  
Cultural Facilities Program Loan Agreement

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code.”

9.05 **Gift to Public Servant.** City may terminate this Agreement immediately if Grantee has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, City may require Grantee to remove any employee of Grantee from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

9.06 **This Agreement and all other Loan Documents shall be governed and construed in accordance with the laws of the United States of America and the State of Texas.** This Agreement, the other Loan Documents and this Loan are entirely performable in Dallas County, Texas, and all parties hereby waive their right to be sued elsewhere.

9.07 All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed served and given upon deposit in the United States mail, postage prepaid, registered or certified with return receipt requested, or upon delivery in person to the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change such party’s address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days’ notice to all other parties in the manner set forth hereinabove:

Grantee:

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City:

City of Dallas  
Office of Cultural Affairs  
ATTN: Director of Cultural Affairs  
1925 Elm Street #400  
Dallas, TX 75201

with a copy to:

City of Dallas  
Dallas City Attorney's Office  
1500 Marilla Street #7DN  
Dallas, TX 75201

9.08 City has advised Grantee that City is not responsible for enforcement of any of the terms and provisions of any contracts for construction or revitalization of the Property or the Improvements executed by and between Grantee and the Contractor, including any warranty or provisions thereof, all such enforcement or risk of default to be borne solely by Grantee.

9.09 City is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

9.10 Time is of the essence in this Agreement.

9.11 **Equal Employment Opportunity/Nondiscrimination.**

- (a) Grantee shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of

[Grantee Name]  
Cultural Facilities Program Loan Agreement

training, including apprenticeship. Grantee shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Grantee agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

- (b) Grantee shall, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.
- (c) Grantee shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and personnel records which pertain to current professional services contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.
- (d) Grantee shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of Grantee, and must be in the form that the City Manager or his designee prescribes.
- (e) If Grantee fails to comply with the equal employment opportunity provisions of this Agreement, it is agreed that City at its option may do either or both of the following:
  - a. Cancel, terminate or suspend this Agreement in whole or in part;
  - b. Declare Grantee ineligible for further City contracts until it is determined to be in compliance.

9.12 Pursuant to Section 2270.002, Texas Government Code, the Grantee hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2270.001, Texas Government Code.

9.13 Grantee hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code.

9.14 None of the rights and remedies conferred upon or reserved to City under this Agreement is intended to be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by City.

**[Grantee Name]**

**Cultural Facilities Program Loan Agreement**

9.15 Nothing contained in this Agreement shall make either party hereto a joint venture or partner of the other party hereto, or render either party liable for any debts, obligations, acts, omissions, representations, or contracts of the other party.

9.16 Any term or condition hereof to the contrary notwithstanding, City will not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct, or operation of the business and affairs of Grantee; and any term or condition hereof, permitting City to disburse funds or to take or refrain from taking any action with respect to Grantee or the Improvements will be deemed solely to permit City to complete the construction of the Improvements and may not be relied upon by any other person. Further, City will not have, has not assumed, and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Grantee; and no term or condition hereof will be construed otherwise.

9.17 The invalidity or unenforceability of any provision of this Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

9.18 In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Loan Documents the terms and conditions of this Agreement shall control.

9.19 Each person signing this Agreement on behalf of a party hereto represents that he or she has full power and authority to sign and deliver this Agreement on its behalf.

9.20 Grantee represents and warrants to City that no part of the Property constitutes Grantee's homestead, either personal or business, and that the Property shall be used solely for business purposes.

9.21 Whenever the context hereof requires, references herein to the singular number shall include the plural, and likewise the plural shall include the singular; words denoting gender shall be construed to include the masculine, feminine and neuter, where appropriate; and specific enumeration shall not exclude the general, but shall be considered as cumulative.

9.22 Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly. Any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

9.23 The paragraph headings contained herein are for convenience in reference to this Agreement and are not intended to define or to limit the scope of any provision of this Agreement.

9.24 If Grantee, as a charitable or nonprofit organization, has or claims an immunity or exemption (statutory or otherwise) from and against liability for damages or injury, including death, to persons or property, Grantee hereby expressly waives its rights to plead defensively such

**[Grantee Name]**

**Cultural Facilities Program Loan Agreement**

immunity or exemption as against City. This section shall not be construed to affect a governmental entity's immunities under constitutional, statutory, or common law. This section shall survive termination or expiration of the Agreement.

9.25 Grantee understands that if the Funds become unavailable, that City has no obligation to perform under this Agreement. City's obligations under this Agreement are contingent upon the availability of appropriated funds from which Advances can be made. No legal liability on the part of the City for any payment may arise until Funds are made available to City. In the event of any governmental shutdown or work stoppage, or any other event that causes funding to be unavailable to City, City shall be under no obligation to make Advances under this Agreement.

9.26 All exhibits to this Agreement are incorporated herein by reference for all purposes.

9.27 This Agreement and the Loan Documents are subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement and the Loan Documents as if written word for word therein. Borrower shall comply with the requirements of Section 2-86 as a precondition of any claim relating to this Agreement or the Loan Documents, in addition to all other requirements in this Agreement or in the Loan Documents related to claims and notice of claims. This Section 9.27 shall survive termination or expiration of the Agreement.

9.28 THE WRITTEN AGREEMENT AND LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, this Agreement is executed on \_\_\_\_\_, 2018, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 17-0594, approved by the City Council on April 12, 2017, and by Administrative Action No. \_\_\_\_\_ approved on \_\_\_\_\_ and by Grantee, acting through its duly authorized officials.

**CITY:**

CITY OF DALLAS  
T.C. Broadnax  
City Manager

APPROVED AS TO FORM:  
Larry E. Casto  
City Attorney

By \_\_\_\_\_  
Assistant City Manager

By \_\_\_\_\_  
Assistant City Attorney

RECOMMENDED BY DIRECTOR:

**BORROWER:**

By \_\_\_\_\_  
Jennifer H. Scripps  
Office of Cultural Affairs

\_\_\_\_\_,  
a Texas nonprofit corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBITS**

- A - Council Resolution
- B - Cultural Facilities Program Guidelines
- C - Funds Budget
- D - Project Budget
- E - Insurance Policies and Indemnity Requirements
- F - Plans & Specifications and Construction Timeline
- G - Notice to Proceed and Payment of Draw
- H - Property Description
- I - Project Reporting and Recordkeeping Requirements
- J - MWBE Provisions
- K - Grantee’s Affidavit for Application for Disbursement

Exhibit A  
Council Resolution

[To be attached]



Exhibit B  
Cultural Facilities Program Guidelines

[To be attached]

Exhibit C  
Funds Budget

[To be attached]

Exhibit D  
Project Budget

[To be attached]

Exhibit E  
Insurance Requirements

[Insert Insurance Requirements]

Exhibit F  
Plans and Specifications and Construction Timeline

[To be attached]

Exhibit G  
Notice to Proceed

[To be attached]

Exhibit H  
Property Description

[Insert Property Description]

Exhibit I  
Project Reporting and Recordkeeping Requirements

[To be attached]



Exhibit J  
MWBE Provisions

[To be attached]

Exhibit K

**GRANTEE'S AFFIDAVIT**

WHEREAS, THE CITY OF DALLAS (hereinafter referred to as the "City") has provided or will be providing funds in the amount of \$200,000.00 (the "Funds") to \_\_\_\_\_, a Texas \_\_\_\_\_ ("Grantee") pursuant to a certain Cultural Facilities Program Loan Agreement ("Agreement") between City and Grantee dated \_\_\_\_\_, 2017; and,

WHEREAS, Grantee understands and agrees that the Funds can only be used to reimburse Grantee for capitalized expenses of the improvements and not for Disallowed Expenses as set forth in the Agreement;

NOW, THEREFORE, for the express purpose of inducing City to make a Disbursement of Funds to Grantee and with full and complete knowledge that if it were not for the truth and accuracy of the statements and agreements set forth herein, such Disbursement would not be so granted, after diligent inquiry calculated to ascertain the truth and accuracy of each of such statements and agreements, the undersigned hereby warrants, certifies, and represents to City as follows (all capitalized terms not defined herein shall have the same meaning as set forth in the Agreement):

1. The undersigned is the \_\_\_\_\_ of Grantee, and is duly authorized to make this Grantee's Affidavit for the above purposes.

2. Each of the costs and/or expenses listed in the Application for Disbursement dated \_\_\_\_\_ and attached hereto are capitalized costs of the improvement. None of the costs and/or expenses listed in the Application for Disbursement are Disallowed Expenses.

3. Grantee understands and agrees that if any cost or expense paid by City is found to be a Disallowed Expense, then Grantee must reimburse City the amount of such Disallowed Expense. Furthermore, if any Disallowed Expense(s) paid to Grantee by City lead to fines, fees, sanctions, penalties, settlements, taxation, or other payment by City to the Internal Revenue Service or any other party, Grantee understands and agrees that it must reimburse City for all such amounts.

4. The undersigned hereby states that the foregoing statements are true and correct to the best of the undersigned's personal knowledge after investigation.

[Signatures on Next Page]

EXECUTED on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NAME

**State of Texas**       §

§

**County of Dallas**   §

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

**DEED OF TRUST AND SECURITY AGREEMENT**

**STATE OF TEXAS**           §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
**COUNTY OF DALLAS**    §

THIS DEED OF TRUST AND SECURITY AGREEMENT is made as of \_\_\_\_\_, 2018 by \_\_\_\_\_, a Texas \_\_\_\_\_ (the "Grantor"), whose address is \_\_\_\_\_, to Jennifer H. Scripps, Trustee, for the benefit of the CITY OF DALLAS, whose address is 1925 Elm Street, Suite #400, Dallas, Texas 75201 Attn: Office of Cultural Affairs (the "City of Dallas" and sometimes referred to herein as "the Beneficiary"). "Grantor" includes grantor's successors, representatives, and assigns;

FOR THE PURPOSE of securing the payment of the indebtedness (the "Indebtedness") described in paragraphs 1, 2, 3, and 4 below and the performance of the obligations (the "Obligations") described in paragraph 5 below as follows:

1. A certain promissory note (the "Note") executed by Grantor and payable to the order of the Beneficiary, dated of even date herewith, in the original principal amount of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00), with a maturity date as therein stated, and any and all renewals, modifications, or extensions thereof, the provisions of the Note being incorporated herein by this reference;
2. Any sums advanced by the City of Dallas pursuant to any of the provisions of this Deed of Trust and Security Agreement (this "Deed of Trust");
3. Any further loans which may be made or have already been made by the City of Dallas to Grantor or any Obligated Party (hereinafter defined), together with all other direct, indirect, contingent, primary, or secondary indebtedness of any character now or hereafter owing or to be owing by Grantor or any Obligated Party to the City of Dallas regardless of how evidenced or incurred, it being contemplated that Grantor or any Obligated Party may become further indebted to the City of Dallas in the future, and that the City of Dallas may make advances to Grantor or any Obligated Party that will be secured by this Deed of Trust;
4. All other sums recoverable by the Trustee and/or the City of Dallas and all other obligations of the Grantor under the provisions of the Note, this Deed of Trust, the Loan Agreement (hereinafter defined), Deed Restrictions (hereinafter defined), and/or any other instrument securing or governing the disbursement of the Indebtedness evidenced by the Note whether presently existing or hereinafter entered into (collectively, the "Loan Documents"); and

5. Any and all of the covenants, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by the Grantor under the Loan Documents (the “Obligations”).

TO SECURE the full and timely payment of the Indebtedness and the performance of the Obligations, Grantor has GRANTED, BARGAINED, ASSIGNED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, ASSIGN, SELL and CONVEY unto the Trustee the following described property (individually and collectively, the “Property”) in trust, for the use and benefit of the City of Dallas:

1. The lot(s), tract(s) and parcel(s) of land described in **Exhibit A** attached hereto and made a part hereof for all purposes, together with all easements, rights of way, privileges, liberties, hereditaments, strips and gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances thereunto belonging or appertaining, and all of the estate, right, title, interest, claim, or demand whatsoever of Grantor therein and in the streets and ways adjacent thereto, either in law or in equity (collectively, the “Land”);

2. The structures or buildings, and all additions and improvements thereto, now or hereafter erected upon the Land, including all building materials and Fixtures (hereinafter defined) now or hereafter forming a part of said structures or buildings, or delivered to the Land and intended to be installed in such structures or buildings (collectively, the “Improvements”);

3. All systems, devices, machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature whatsoever located on the Land or the Improvements, including, but not limited to, all electrical, anti-pollution, heating, lighting, laundry, incinerating, power, air-conditioning, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, communication, garage and cooking systems, devices, machinery, apparatus, equipment, fittings, appliances and fixtures, and all engines, pipes, pumps, tanks, motors, conduits, ducts, compressors and switch boards, and all storm doors and windows, dishwashers, attached cabinets and partitions not included in the Improvements, but excluding any such systems, devices, machinery, apparatus, equipment, fittings, appliances and fixtures belonging to any tenant of the Land or Improvements unless they are necessary to the operation of the Improvements (collectively, the “Fixtures”);

4. All articles of personal property of every kind and nature whatsoever, including, but not limited to, all shades, awnings, beds, screens, furniture, and carpets, now or hereafter affixed to, attached to, placed upon, used, or usable in any way in connection with the use, enjoyment, occupancy, or operation (including the planning, development, and financing) of the Land or Improvements, but excluding any such articles of personal property belonging to any tenant of the Land or Improvements unless it is necessary to the operation of the Improvements (collectively, the “Personal Property”);

5. All leases of the Land, Improvements, and Personal Property, or any part thereof, now or hereafter entered into, and all right, title and interest of Grantor thereunder, including cash or

securities deposited thereunder to secure performance by the tenants of their obligations, and, including further, the right to receive and collect the rents thereunder (collectively, the “Leases”);

6. All revenues, income, rents, issues, and profits of any of the Land, Improvements, Personal Property or Leases (collectively, the “Rents”);

7. All proceeds from the conversion, whether voluntary or involuntary, of any part of the Land, Improvements, or Personal Property into cash or liquidated claims, including insurance proceeds, insurance premium refunds, and condemnation awards;

8. All contracts and subcontracts relating to the Land or Improvements, all plans and specifications relating to the Land or Improvements, and all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Land or Improvements (collectively, the “Contracts”); and

9. All funds, accounts, contract rights, instruments, documents, general intangibles (including fictitious, trade and other names, trademarks, and symbols used in connection with the Land or Improvements, whether registered or not), and notes and chattel paper arising from or by virtue of any transaction relating to the Land or Improvements (collectively, the “Intangibles”).

TO HAVE AND TO HOLD the Property unto the Trustee and the Trustee’s successors and assigns forever and Grantor does hereby bind itself, its successors, heirs, executors, representatives, and assigns to warrant and forever defend the Property unto the Trustee, his substitutes, successors, and assigns forever, against the claim or claims of all persons claiming or to claim the same or any part thereof.

## **I. WARRANTIES, REPRESENTATIONS, COVENANTS AND OTHER AGREEMENTS**

Grantor unconditionally warrants, represents, covenants, and agrees that:

1. The Obligations contained in the Loan Documents are legal, valid, and binding on Grantor and any guarantor, surety, endorser, partner of Grantor (if a partnership or joint venture), or other party (other than Grantor) directly or indirectly obligated, primarily or secondarily, for any portion of the Indebtedness or for the performance of any of the Obligations (collectively the “Obligated Party”) in accordance with their terms, and the execution and delivery of, and performance under, the Loan Documents: (a) are within the Grantor’s powers and have been duly authorized by all requisite action (corporate, partnership, trust, or otherwise); (b) have received all requisite approval by any and all governmental or quasi-governmental entities of any nature whatsoever, whether federal, state, county, district, city or otherwise, and whether now or hereafter in existence (collectively, the “Governmental Authority”); and (c) will not violate, conflict with, breach, or constitute a default under any Legal Requirement (hereinafter defined) or result in the imposition of any lien, charge, or encumbrance of any nature upon any of the Grantor’s assets, except as contemplated in the Loan Documents. As used herein, the term “Legal Requirement” shall mean any and all of the following that may now or hereafter be applicable to the Grantor or the Property: (i) judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority; (ii) the Grantor’s Bylaws and Articles of

Incorporation, Agreement of Partnership, Limited Partnership or Joint Venture, Trust Declarations or other agreements pertaining to any other form of the Grantor's business entity; (iii) the Leases; (iv) the Contracts; (v) restrictions of record; (vi) other written or oral agreements or promises of any nature; and (vii) all statutes, codes, ordinances, regulations and program guidelines affecting the Property.

2. Grantor has good and indefeasible title to the Land, Improvements, Fixtures, and Personal Property, free and clear of any liens, encumbrances, security interests, or adverse claims other than those items shown on **Exhibit B** attached hereto and made a part hereof for all purposes. This Deed of Trust shall constitute a valid and subsisting superior lien on the Land, Improvements, and Fixtures and said Deed of Trust shall be a valid, subsisting, perfected and prior security interest in and to the Personal Property, Fixtures, Leases, Contracts, and Intangibles, subject only to those items shown on **Exhibit B**, all in accordance with the terms of this Deed of Trust. Grantor agrees to defend title to the Property, subject to the other exceptions to conveyance and warranty, and preserve the lien priority as it is established in this Deed of Trust.

3. The Property forms no part of any property owned, used, or claimed by Grantor as a residential or business homestead and is not exempt from forced sale under the laws of the State of Texas. Grantor hereby disclaims and renounces each and every claim to the Property as a homestead.

4. Grantor and any Obligated Party are now solvent and no bankruptcy or insolvency proceedings are pending or contemplated by or against any of them. All reports, statements, cost estimates, and other data furnished by or on behalf of any of them to the City of Dallas are true and correct.

5. Grantor will promptly and fully comply with all present and future Legal Requirements, including but not limited to, the City of Dallas codes and regulations. All Improvements included or to be included in the Property comply or will comply with all Legal Requirements.

6. Grantor (if an entity) is duly and validly formed and organized; in good standing under the laws of the state of its formation; and is duly qualified and has the right to do business in the State of Texas.

7. Grantor and all Obligated Parties, as their interests appear and as the case may be, will duly and punctually: (a) pay the Indebtedness as and when called for in the Loan Documents; (b) perform all of the Obligations, in full, on or before the dates they are to be performed; and (c) cause each of the Impositions (hereinafter defined) to be paid and discharged not later than the due dates thereof and furnish the City of Dallas with evidence of such payment. As used herein, the term "Imposition" shall mean all rates and charges (including deposits), for insurance, taxes (for both real and personal property), water, gas, sewer, electricity, telephone and other utilities, any easement, license, or agreement maintained for the benefit of the Property and all other charges, and any interest, costs, or penalties with respect thereto of any nature whatsoever which may now or hereafter be assessed, levied, or imposed upon the Property or the ownership, use, occupancy, or enjoyment thereof.

8. Grantor will cause the Property to be maintained and operated in an order and condition to meet the City of Dallas city code and building construction codes and will make all interior and exterior repairs, replacements, additions, improvements and alterations, both structural and non-structural, in compliance with the City of Dallas city code and building construction codes.

9. Grantor will keep the Property insured against personal injury, death, fire, tornado, flood (if the Property is located in an identified "flood hazard area" in which flood insurance has been made available pursuant to the National Flood Insurance Act of 1968), hail, explosion, windstorm, and such other risks, and will purchase comprehensive general public liability insurance, in such amounts and with such companies as may be acceptable to the City of Dallas and in no event in an amount less than one hundred percent (100%) of the insurable value of the Property to be determined from time to time by the City of Dallas. All such policies shall have all losses made payable to the City of Dallas by mortgagee clauses of standard form and shall contain written undertakings from such insurance companies to provide the City of Dallas with at least thirty (30) days' written notice prior to cancellation of any such policy. Such policies of insurance shall be delivered to the City of Dallas promptly as issued. All renewal and substitute policies of insurance shall be delivered to the office of the City of Dallas, with evidence of premiums paid, at least fifteen (15) days before the termination date of any existing policies. In case of loss, the City of Dallas shall be entitled to receive and retain the proceeds of the insurance policies, applying the same, at its option, upon the Indebtedness or to apply such proceeds to the repair or restoration of the Improvements. If any loss shall occur at any time when Grantor shall be in default as to the performance of this covenant, the City of Dallas shall nonetheless be entitled to the benefit of all insurance held by or for Grantor to the same extent as if it had been made payable to the City of Dallas.

10. Upon request from time to time and at any time, Grantor will deposit with the City of Dallas each month in advance a monetary sum estimated by the City of Dallas to equal on a monthly basis all or such portion of the Impositions as the City of Dallas may require. At least thirty (30) days' prior to the date on which any tax or insurance premium must be paid to prevent delinquency, Grantor will deliver to the City of Dallas such statement or statements showing the amount of tax or premium required to be paid and the concern or authority to which same is payable and will, at the same time, deposit with the City of Dallas such amount as will, when added to the amount of such deposits previously made and then remaining available for such purpose, be sufficient to pay such insurance or tax obligations. The City of Dallas shall have the right (but not the obligation) to apply any or all of the foregoing deposits in payment of any of the Impositions.

11. Grantor will (a) duly and punctually perform and comply with all representations, warranties, covenants, and agreements binding upon it under the Leases; (b) not voluntarily terminate or waive its rights under any of the Leases; (c) use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof; and (d) appear in and defend any action or proceeding in any manner connected with any of the Leases.

12. Grantor will permit the Trustee, the City of Dallas and their agents, attorneys, representatives and employees, to enter upon and inspect the Property at all reasonable times and intervals.



13. Grantor will defend and hold the City of Dallas harmless from any action, proceeding, or claim affecting the Property or the Loan Documents or the lien or security interests created thereby. Further, Grantor will notify the City of Dallas, in writing, promptly of the commencement of any legal proceedings affecting the Property, or any part thereof, and will take such action as necessary to preserve the City of Dallas's rights affected thereby, and the City of Dallas may, at its election, take such action in behalf of and in the name of Grantor, and at Grantor's expense.

14. Grantor will promptly pay all debts and liabilities of any character, including, without limitation, all debts and liabilities for labor, material, and equipment incurred in the construction, operation, or development of the Property, and will construct and repair all Improvements in a good and workmanlike manner.

15. Grantor will keep separate and proper books of record and account pertaining to the Property in accordance with sound accounting practices consistently applied and set aside from its earnings for each fiscal year, and cause to be reflected in its books reserves for depreciation, depletion, obsolescence, and amortization of the Property, as well as for the Impositions and other appropriate reserves, during such fiscal year determined in accordance with sound accounting practices consistently applied. The City of Dallas shall have the right to examine the books of account of Grantor and to discuss the affairs, finances, and accounts of Grantor with Grantor or any other party, all at such reasonable times and intervals as the City of Dallas may desire. Upon request from time to time and at any time, Grantor will deliver to the City of Dallas such certified financial statements and other financial reports as the City of Dallas may require, including, without limitation, financial statements of Grantor, the Property, or any Obligated Party.

16. Upon request from time to time and at any time, Grantor will promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or the Loan Documents, and will execute and deliver any and all additional instruments as may be requested by the City of Dallas to correct such defect, error, or omission or to identify any additional properties which are or are to become subject to this Deed of Trust.

17. Grantor will give immediate written notice to the City of Dallas of any condemnation proceeding or casualty loss affecting the Property, and in each such instance afford the City of Dallas an opportunity to participate in any such proceeding or in the settlement of any awards thereunder. Grantor assigns to the City of Dallas all amounts payable to or received by Borrower or Grantor from condemnation of all or part of the Property by any condemnor other than the City of Dallas, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, the City of Dallas will either release any remaining amounts to Grantor or apply such amounts to reduce the Note. The City of Dallas will not be liable for failure to collect or to exercise diligence in collecting any such amounts.

18. Grantor will promptly pay and hold the City of Dallas harmless from all appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, reasonable attorneys' fees and all other costs of every character incurred by Grantor or the City of Dallas in connection with the closing of the loan evidenced by the Loan Documents, or the performance of the covenants of this Deed of Trust, or otherwise attributable or chargeable to Grantor as owner of the Property.

19. Grantor will not use or occupy, or permit any use or occupancy of the Property in any manner which: (a) violates any Legal Requirement; (b) may be dangerous; (c) constitutes a public or private nuisance; or (d) makes void or voidable any of the Leases, the Contracts, or any insurance on the Property.

20. Grantor will not permit (a) any waste or deterioration of any part of the Property; (b) any alterations or additions to the Property of a material nature, except as contemplated in the Loan Documents; or (c) any of the Fixtures or Personal Property to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of at least equal suitability and value and owned by Grantor free and clear of any other lien or security interest.

21. Grantor will not, without the prior written consent of the City of Dallas: (a) create, place, or permit to be created or placed, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens and security interests of the Loan Documents, with respect to the Property or any parts thereof; or (b) sell, exchange, assign, convey, transfer possession of, or otherwise dispose of all or any portion of the Property, or any interest therein. In the event ownership of the Property or any part thereof or interest therein becomes vested in any person or entity other than Grantor, the City of Dallas or any other holder of the Indebtedness may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and the Indebtedness in the same manner as with Grantor, without in any way discharging Grantor or any Obligated Party from the Indebtedness or the Obligations. Without limiting the right of the City of Dallas to withhold its consent or to make other requirements prior to granting its consent, the City of Dallas: (i) may require evidence satisfactory to the City of Dallas that the transferee is creditworthy and has such management ability as the City of Dallas shall deem in its sole discretion to be necessary; and (ii) may require such transferee to execute such written modification and assumption agreements with regard to the Loan Documents as the City of Dallas shall deem necessary or desirable, including, but not limited to, provisions increasing the interest rate on the Note. No transfer of the Property, no forbearance by the City of Dallas and no extension of the time for the payment of the Indebtedness or the performance of the Obligations granted by the City of Dallas shall release, discharge, or affect in any way Grantor's or any Obligated Party's liability hereunder.

22. There has not occurred any work nor have any materials been supplied with respect to the Property that could result in a claim of mechanic's and material man's lien(s) that would be superior to this Deed of Trust. Grantor will take any and all actions and pay such amounts as might be necessary or appropriate for the elimination of any such lien claim.

23. Grantor will comply with the Loan Agreement, Note, and Deed Restrictions, which are incorporated herein by reference and made a part hereof for all purposes.

## II. EVENTS OF DEFAULT

As used in this Deed of Trust, the term “Event of Default” shall mean the occurrence of any one or more of the following at any time and from time to time:

1. Subject to any applicable notice provisions contained within the Loan Agreement, if any portion of the Indebtedness shall not be paid as and when the same shall become due and payable.

2. If any of the Obligations shall not be discharged fully and timely.

3. If any representation, warranty, or other information, including, without limitation, financial statements, marketing studies, or cost estimates supplied to the City of Dallas shall be false, misleading, or erroneous in any material respect.

4. If Grantor or any Obligated Party shall (a) voluntarily be adjudicated as bankrupt or insolvent; (b) seek, consent to, or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) file a petition seeking relief under bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or any other competent jurisdiction; (d) make a general assignment for the benefit of its creditors; or (e) admit in writing its inability to pay its debts as they mature.

5. If (a) a petition is filed against Grantor or any Obligated Party seeking relief under bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or other competent jurisdiction and such petition is not discharged and shall continue in effect for a period of 60 days; or (b) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver or trustee for any part of Grantor’s or an Obligated Party’s property.

6. If (where applicable to Grantor) Grantor shall dissolve or liquidate, merge with or be consolidated into any other entity, or transfer any portion of or interest in the Property, or shall attempt to do any of the same, or if Grantor shall die or become mentally incompetent.

7. If the Property is abandoned, substantially damaged, or threatened with substantial damage so that, in the City of Dallas’ reasonable judgment, it cannot promptly be restored with available funds to a profitable condition.

8. If default is made under any instrument evidencing, securing, or relating to the Note, or upon the occurrence of any default under the Deed Restrictions, the Deed of Trust, or any of the Loan Documents (the terms and conditions of said instruments being incorporated herein by reference for all purposes as if set out at length), or if a default shall occur under any notes secured by any superior liens on the Property.

9. In the event mechanic’s and materialman’s liens are sought to be enforced, that Grantor has not provided the City of Dallas with any cash, bond, or other security to protect the Property, which is satisfactory to the City of Dallas in its sole discretion.

10. If the City of Dallas, in its sole judgment, determines that the ability of Grantor or any Obligated Party to pay the Indebtedness, or any part thereof, or to perform the Obligations, or any part thereof, has deteriorated or been significantly impaired, or the Property is insufficient as security for the Indebtedness.

11. If any condemnation proceeding is instituted or threatened which would, in the City of Dallas's reasonable judgment, impair the use or enjoyment of the Property for its intended purposes.

12. If Grantor is a corporation, partnership, or entity other than an individual and, without the prior written consent of the City of Dallas there is: (a) a change in the legal or beneficial ownership of such corporation, partnership, or entity, (b) a conveyance or other transfer of any of the capital stock of such corporation including the grant of a security interest therein, or (c) a conveyance or other transfer of any interest in such entity, including the grant of a security interest therein.

13. Subject to all applicable notice provisions, if default shall occur in the performance of any of the covenants or agreements of Grantor contained within this Deed of Trust.

14. If Grantor, any Obligated Party, or the Property shall otherwise be in default under any of the Loan Documents.

15. The sale or transfer of any portion of Grantor's interest in the Property without the prior written consent of the City of Dallas.

### **III. DEFAULT AND FORECLOSURE**

To the fullest extent permitted in equity or at law, by statute, or otherwise:

1. If an Event of Default shall occur, the City of Dallas may, at the City of Dallas's sole election and by or through Trustee or otherwise, exercise any or all of the following:

(a) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable, without further notice, presentment, protest, demand, or action of any nature whatsoever (each of which is hereby expressly waived by Grantor), whereupon the same shall become immediately due and payable;

(b) Enter upon the Property and take exclusive possession thereof and of all books, records, and accounts relating thereto, and, if necessary to obtain such possession, the City of Dallas may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and writ of restitution;

(c) Hold, lease, manage, operate, or otherwise use or permit the use of the Property, either by itself or by other persons, firms, or entities, in such manner, for such time and upon such other terms as the City of Dallas may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action from time to time as

the City of Dallas shall deem necessary or desirable), and apply all Rents collected in connection therewith in accordance with the provisions of Paragraph 7 of this Section III;

(d) Sell or offer for sale the Property in such portions, order, and parcels as the City of Dallas may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made in the area at the courthouse which is designated by the Commissioner's Court of the county where the Land is situated (or if the Land is situated in more than one county, then the Property shall be sold in the area at the courthouse which is designated by the Commissioner's Court of any of such counties as designated in the notices of sale provided for herein) on the first Tuesday of any month between 10:00 A.M. and 4:00 P.M. but not later than three (3) hours after the time stated in the notice as the earliest time at which the sale will occur after giving adequate legal notice of the time, place, and terms of sale, by posting or causing to be posted written or printed notices thereof for at least twenty-one (21) consecutive days preceding the date of said sale at the courthouse door of the foregoing county, and at the County Clerk's office, and if the Land is situated in more than one county, one notice shall be posted at the courthouse door of each county in which the Land is situated, and by the City of Dallas serving written notice of such proposed sale on each debtor obligated to pay the Indebtedness at least twenty-one (21) days preceding the date of said sale by certified mail at the most recent address for such parties in the records of the City of Dallas, or by accomplishing all or any of the aforesaid in such manner as permitted or required by Section 51.002, Texas Property Code as then amended (successor to Article 3810 of the Revised Civil Statutes of the State of Texas) relating to the sale of real estate and/or by Chapter 9 of the Texas and Business and Commerce Code (the "Code") relating to the sale of collateral after default by a debtor, or by any other present or subsequent laws. At any such sale: (i) Trustee shall not be required to have physical or constructive possession of the Property (Grantor hereby covenanting and agreeing to deliver to Trustee any portion of the Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to the purchaser at such sale; (ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title binding upon Grantor, subject to the other exceptions to conveyance and warranty, without representations or warranties, express or implied, selling and conveying all or part of the Property "AS IS"; (iii) each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and by appointment of any successor Trustee hereunder; (iv) any and all prerequisites to the validity of such sale shall be conclusively presumed to have been performed; (v) the receipt of the Trustee or of such other party making the sale shall be a sufficient discharge to the purchaser for his purchase money and no such purchaser, or his assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication, or nonapplication thereof; (vi) Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, and demand whatsoever, either at law or in equity, in and to all or any part of the Property sold, and such sale shall be a perpetual bar both at law and in equity against Grantor and against any and all other persons claiming or to claim the Property sold or any part thereof; and (vii) the City of Dallas may be a purchaser at any such sale by offering the highest bid and then having the bid credited on the Note;

(e) Upon or at any time after commencement of foreclosure of the lien and security interest provided for herein, or any legal proceedings hereunder, the City of Dallas may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Grantor or regard to the adequacy of the Property for the repayment of the Indebtedness, for the appointment of a receiver of the Property, and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases; and

(f) Exercise any and all other rights, remedies, and recourses granted under the Loan Documents or as may be now or hereafter existing in equity or at law, by virtue of statute, or otherwise.

2. Should the Property be sold in one or more parcels as permitted by paragraph 1(d) of this Section III, the right of sale arising out of any Event of Default shall not be exhausted by any one or more such sales, but other sales may be made until all of the Property has been sold or until the Indebtedness has been fully satisfied.

3. All rights, remedies, and recourses of the City of Dallas granted in the Loan Documents, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor or any Obligated Party, or against the Property, or against any one or more of them, at the sole discretion of the City of Dallas; (iii) may be exercised as often as the occasion therefore shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any right, remedy, or recourse; and (iv) shall be nonexclusive.

4. The City of Dallas may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by the Loan Documents or affecting the obligations of Grantor or any Obligated Party to pay or perform, as their interests may appear, the Indebtedness or Obligations. The City of Dallas may resort to any of the security for payment of the Indebtedness in such order and manner as the City of Dallas may elect. No security heretofore, herewith, or subsequently taken by the City of Dallas shall in any manner impair or affect the security given by the Loan Documents and all security shall be taken, considered, and held as cumulative.

5. Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Property from attachment, levy, or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of the City of Dallas's exercise of any right, remedy, or recourse provided for under the Loan Documents; (iii) any right to a marshalling of assets or a sale in inverse order of alienation; and (iv) to the full extent allowed by law, any right to an offset against any deficiency judgment which may be brought against Grantor wherein any holder of this Deed of Trust has sought recovery and Grantor has sought by motion to request that the court in which the action is pending determine the fair market value of the real property as of the date of the foreclosure sale, pursuant to §51.003 of the Texas Property Code.

6. In case the City of Dallas shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, the City of Dallas shall have the unqualified right to do so and, in such event, Grantor and the City of Dallas shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, and the Property, and the rights, remedies, recourses, and powers of the City of Dallas shall continue as if same had never been invoked.

7. Any proceeds of any sale of, and any Rents or other amounts generated by the holding, leasing, operation, or other use of the Property shall be applied in the following order of priority: (i) first, to the payment of all costs and expenses of taking possession of the Property and of holding, leasing, operating, using, repairing, improving, and selling the same, including, without limitation, fees of the Trustee and attorneys retained by the City of Dallas or Trustee; fees of any receiver or accountants; recording and filing fees; court costs; costs of advertisement; the payment of any and all Impositions, liens, security interests, or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Property has been sold subject to and without in any way implying the City of Dallas's consent to the creation thereof); (ii) second, to the payment of all accrued and unpaid interest due on the Note; (iii) third, to the payment of the unpaid principal balance of the Note; (iv) fourth, to the payment of all amounts, other than unpaid principal and accrued interest on the Note, which may be due to the City of Dallas under the Loan Documents, together with interest thereon as provided therein; and, (v) fifth, to the payment of unpaid Indebtedness.

8. In addition to the remedies set forth in this Section III, upon the occurrence of an Event of Default, the City of Dallas and Trustee shall, in addition, have available to them the remedies set forth in Sections IV herein, as well as all other remedies available to them at law or in equity.

9. Notwithstanding Note terms to the contrary, and unless applicable law prohibits, all payments received by the City of Dallas from Grantor under the Note or this deed of trust may, at the City of Dallas' discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to the City of Dallas under the Note, to be applied to late charges, principal, or interest in the order the City of Dallas in its discretion determines.

#### **IV. SECURITY AGREEMENT**

Grantor hereby grants to the City of Dallas a security interest in and to the Personal Property, Fixtures, Leases, Contracts and Intangibles (collectively, the "Collateral") as follows:

1. This Deed of Trust shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute a first and prior security interest under Chapter 9 of the Code with respect to the Collateral. To this end, Grantor **DOES HEREBY GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER AND SET OVER** unto Trustee, for the benefit of the City of Dallas as a secured party a first and prior security interest in all of Grantor's right, title and interest in, to and under the Collateral, in trust, to secure the full and timely payment of the Indebtedness and performance of the Obligations.

2. Grantor agrees to execute and deliver to the City of Dallas, in form and substance satisfactory to the City of Dallas, such financing statements and such further assurances as the City of Dallas may from time to time consider necessary to create, perfect, and preserve the security interest herein granted. The City of Dallas may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest.

3. The City of Dallas, as well as Trustee on the City of Dallas's behalf, shall have all the rights, remedies, and recourses with respect to the Collateral afforded a "Secured Party" by Chapter 9 of the Code, in addition to, and not in limitation of, the other rights, remedies, and recourses afforded the City of Dallas and/or Trustee by the Loan Documents.

4. The security interest herein granted shall not be deemed or construed to constitute Trustee or the City of Dallas as a party in possession of the Collateral, to obligate Trustee or the City of Dallas to lease the Property or to take any action, incur any expenses, or perform any obligation whatsoever under any of the Leases or otherwise.

5. Upon the occurrence of an Event of Default as provided in Section III of this Deed of Trust, and at any time thereafter:

(a) Trustee or the City of Dallas shall have, with regard to the Collateral, the remedies provided in this Deed of Trust and in the Code (no such remedy granted by the Code being excepted, modified, or waived herein). Trustee or the City of Dallas may use its discretion in exercising the rights and electing the remedies; provided, however, all acts shall be in compliance with the standards of the Code, where applicable and required. For purposes of the notice requirements of the Code and this Section IV, it is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates is reasonable notice;

(b) Trustee or the City of Dallas shall be entitled, acting in their sole discretion, to apply the proceeds of any disposition of the Collateral in the order set forth in Chapter 9 of the Code, or, if allowed by the Code, in the order set forth in Paragraph 7 of Section III hereof; and

(c) Notwithstanding anything herein to the contrary, the Trustee or the City of Dallas may, at their option, dispose of the Collateral in lieu of proceeding under the Code.

6. The City of Dallas may require Grantor to assemble and make the Collateral available to the City of Dallas or Trustee at a place to be designated by the City of Dallas that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing, or otherwise using or disposing of the Collateral and the like which are incurred or paid by the City of Dallas as authorized or permitted hereunder, including all attorneys' fees, legal expenses, and costs, shall be added to the Indebtedness and Grantor shall be liable therefor.

7. This Deed of Trust shall be effective as a financing statement to the Collateral when filed for record in the Deed of Trust Records of any county in which any portion of the Property



is located. The record owner of the Property is Grantor, whose mailing address for purposes of such financing statement is set forth in the first page of this Deed of Trust. Information concerning the security interest created by this instrument may be obtained from the City of Dallas at its address on the first page of this Deed of Trust.

## **V. THE TRUSTEE**

The following provisions shall govern with respect to the Trustee:

1. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable to Grantor under any circumstances whatsoever, nor shall Trustee be personally liable, in case of entry by him or her or anyone entering by virtue of the powers herein granted upon the Property, for debts contracted or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him or her in the performance of his or her duties hereunder and to compensation for such of his or her services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him or her harmless from and against, any and all liability and expenses which may be incurred by him or her in the performance of his or her duties.

2. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law). Trustee shall be under no liability for interest on any money received by him or her hereunder.

3. Trustee may resign at any time with or without notice. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by the City of Dallas to do so, or if, for any reason, the City of Dallas shall prefer to appoint a substitute trustee to act instead of the aforementioned Trustee, the City of Dallas shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estates, rights, powers, and duties of the aforementioned Trustee.

4. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the City of Dallas or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer, and deliver any of the property and money held by such Trustee to the successor Trustee so appointed in his or her place.

## VI. MISCELLANEOUS

The following provisions shall also apply to and govern this Deed of Trust and the interpretation hereof:

1. All judgments, decrees, or awards now or hereafter made for injury or damage to the Property, or awards, settlements, or other compensation now or hereafter made by any Governmental Authority, including those for any variation of, or change of grade in, any streets affecting the Land or the Improvements, are hereby assigned in their entirety to the City of Dallas, who may apply the same to the Indebtedness secured hereby in such manner as the City of Dallas may elect; and the City of Dallas is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment, or decree.

2. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

3. Grantor, upon the request of Trustee or the City of Dallas, will execute, acknowledge, deliver, and record and/or file such further instruments and do such further acts as may be necessary, desirable, or proper to carry out more effectively the purposes of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property. Grantor will pay all such recording, filing, re-recording, and re-filing taxes, fees, and other charges, including those for security interest searches.

4. All notices or other communications required or permitted to be given under this Deed of Trust (except for notices of a foreclosure sale which shall be given in the manner set forth in Paragraph I(d) of Section III hereof) shall be in writing and shall be deemed served and given upon deposit in the United States mail, postage prepaid, registered or certified with return receipt requested, or upon delivery in person to the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on the first page of this Deed of Trust, provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

5. Any failure by Trustee or the City of Dallas to insist, or any election by Trustee or the City of Dallas not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other term, provision, or condition thereof, and Trustee and the City of Dallas shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions, and conditions.

6. If Grantor shall fail, refuse, or neglect to make any payment or perform any act required by the Loan Documents, then at anytime thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy, or recourse the City of Dallas may have,

the City of Dallas may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Property as it may deem necessary or appropriate. The City of Dallas may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default. Grantor shall indemnify the City of Dallas for all losses, expenses, damages, claims, and causes of action, including attorneys' fees, incurred or accruing by reason of any acts performed by the City of Dallas pursuant to this Paragraph 6 of this Section VI, and all such sums expended by the City of Dallas to which it shall be entitled to be indemnified, together with interest thereon at the maximum rate allowed by law from the date of such payment or expenditure until paid, shall constitute additions to the Indebtedness, shall be secured by the Loan Documents and shall be paid by Grantor to the City of Dallas upon demand.

7. All Obligations are intended by the parties to be, and shall be construed as, covenants running with the Property.

8. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their respective successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

9. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances, nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. Notwithstanding anything to the contrary contained in any of the Loan Documents, whether now existing or hereafter arising and whether written or oral, it is agreed that the aggregate of all interest and any other charges constituting interest, or adjudicated as constituting interest, and contracted for, chargeable, or receivable under the Note or otherwise in connection with this loan transaction, shall under no circumstances exceed the total amount of interest which would have been earned at the Maximum Rate (hereinafter defined). As used herein, the term "Maximum Rate" means the maximum nonusurious interest rate that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the indebtedness evidenced by the Loan Documents under the laws of the United States of America or the State of Texas which are presently in effect, or which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than that which is now allowed. In the event the maturity of the Loan Documents is accelerated by the City of Dallas as a result of a default under the Loan Documents, this Deed of Trust, or any of the other Loan Documents, or by voluntary prepayment of the Loan Documents by the Grantor, or otherwise, then the total amount of earned interest may never exceed the total amount of interest which would have been earned at the Maximum Rate, computed from the dates each advance of the loan proceeds is made until payment. If, from any circumstance, the City of Dallas shall ever receive interest, or any other charges constituting interest, or adjudicated as constituting interest, in excess of the total amount of interest which would have been earned at the Maximum Rate, the amount of such excess interest shall be applied to the reduction of the principal amount owing on the Note or an account of any

other principal indebtedness of the Grantor to the City of Dallas, and not to the payment of interest; or if the amount of such excess interest exceeds the unpaid principal balance of the Loan Documents and such other indebtedness, the amount of such excess interest that exceeds the unpaid principal balance of the Loan Documents and such other indebtedness shall be refunded to Grantor. All sums paid or agreed to be paid to the City of Dallas for the use, forbearance, or detention of the indebtedness of the Grantor to the City of Dallas shall be amortized, prorated, allocated, and spread throughout the full term of the Note until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term of the Loan Documents.

10. In the event of the passage after the date of this Deed of Trust of any applicable law changing in any way the laws for the taxation of deeds of trust and/or the debts secured thereby so as to affect this Deed of Trust, the City of Dallas shall have the right, at the City of Dallas's option, to declare the Indebtedness immediately due and payable.

11. The Loan Documents contain the entire agreement between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may be amended, revised, waived, discharged, released, or terminated only by a written instrument or instruments, executed by the party against which enforcement of the amendment, revision, waiver, discharge, release, or termination is asserted. Any alleged amendment, revision, waiver, discharge, release, or termination which is not in accordance with this Section shall not be effective as to any party.

12. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

13. If any or all of the proceeds of the Loan Documents have been used to extinguish, extend, or renew any indebtedness heretofore existing against the Property, then, to the extent of such funds so used, the Indebtedness and this Deed of Trust shall be subrogated to all of the rights, claims, liens, titles, and interests heretofore existing against the Property to secure the indebtedness so extinguished, extended, or renewed and the former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of the City of Dallas and are merged with the lien and security interests created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

**14. This Deed of Trust and the other Loan Documents are fully performable in Dallas County, Texas and shall be governed by and construed according to the laws of the State of Texas and the applicable laws of the United States of America.**

15. Whenever the context hereof requires, references herein to the singular number shall include the plural, and likewise the plural shall include the singular; words denoting gender shall be construed to include the masculine, feminine and neuter, where appropriate; and specific enumeration shall not exclude the general, but shall be considered as cumulative.

16. If the Grantor consists of more than one party, the obligations of each party constituting the Grantor to pay the Indebtedness and perform the Obligations shall be joint and several; and if

the Obligated Party consists of more than one party, the obligations of each party constituting the Obligated Party to pay the Indebtedness and perform the Obligations shall be joint and several.

17. Notwithstanding anything herein contained to the contrary, it is understood and agreed to by Grantor that Grantor shall indemnify and hold harmless the City of Dallas from and against any and all liability and claims for death of or injury to any person or property, including damage to persons or property, loss of use of property, expenses and attorney's fees related thereto arising or alleged to arise out of or in any way related to the Indebtedness, whether such liability or claim is based on negligence or any other liability theory against the City of Dallas.

18. In no event may this deed of trust secure payment of any debt subject to chapters 342, 343, 345, or 346 of the Texas Finance Code or create a lien otherwise prohibited by law.

19. If Grantor and Borrower are not the same person, the term "Grantor" includes Borrower.

## **VII. HAZARDOUS MATERIALS**

1. Definitions. For the purposes of this Deed of Trust, Grantor, the City of Dallas and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) "Governmental Authority" shall mean the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Grantor or the Property.

(b) "Governmental Requirements" shall mean all laws, ordinances, rules and regulations of any Governmental Authority applicable to Grantor or the Property.

(c) "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated byphenyls; (v) underground storage tanks, whether empty, filled or partially filled with any substance, (vi) any substance the presence of which on the Property is prohibited by any Governmental Requirements; and (vii) any other substance which by any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal.

(d) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Property.

2. Grantor's Warranties. Grantor hereby represents and warrants that:

(a) No Hazardous Materials are now located on the Property, and neither Grantor nor, to Grantor's knowledge, any other person has ever caused or permitted any Hazardous Materials to be placed, held, located, or disposed of on, under or at the Property or any part thereof;

(b) No part of the Property is being used or, to the knowledge of Grantor, has been used at any previous time for the disposal, storage, treatment, processing, or other handling of Hazardous Materials, nor is any part of the Property affected by the Hazardous Materials contamination;

(c) No property adjoining the Property is being used, or has ever been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials nor is any other property adjoining the Property affected by Hazardous Materials Contamination;

(d) No investigation, administrative order, consent order and agreement, litigation, or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated, or in existence with respect to the Property. The Property is not currently on, and to Grantor's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list;

(e) Neither Grantor nor, to the best of Grantor's knowledge and belief, any tenant of any portion of the Property has received any notice from any Governmental Authority with respect to any violation of any Governmental Requirements;

(f) The use which Grantor makes and intends to make of the Property will not result in the disposal or release of any Hazardous Materials on, in, or to the Property;

(g) Grantor shall not cause any violation of any Governmental Requirements, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.

3. Grantor's Covenants. Grantor shall conduct and complete all investigations, studies, sampling, and testing and all remediation, removal, and other actions necessary to cleanup and remove Hazardous Materials on, in, from, or affecting any portion of the Property (a) in accordance with all Governmental Requirements, (b) to the satisfaction of the City of Dallas, and (c) in accordance with the orders and directives of all Governmental Authorities. Grantor agrees to (a) give notice to the City of Dallas immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Governmental Requirements requiring the removal, treatment, or disposal of such Hazardous Materials or Hazardous Material Contamination and provide the City of Dallas with satisfactory evidence of such compliance; and (c) provide the City of Dallas, within thirty (30) days after demand by the City of Dallas, with a bond, letter of credit, or similar financial assurance evidencing to the City of Dallas's satisfaction that the necessary funds are available to pay the cost of removing, treating, and disposing of such

Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof.

4. Site Assessments. The City of Dallas (by its officers, employees, and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could reasonably be expected to result in any liability, cost, or expense to the owner, occupier, or operator of such Property arising under any state, federal, or local law, rule, or regulation relating to Hazardous materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, the City of Dallas shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Grantor upon demand of the City of Dallas. Any costs and expenses paid or incurred by the City of Dallas in connection with the Site Assessments shall be Indebtedness secured by this Deed of Trust and shall be payable by Grantor upon demand.

5. Indemnification. Regardless of whether any Site Assessments are conducted hereunder, Grantor shall defend, indemnify, and hold harmless the City of Dallas and Trustee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs, or expenses (including, without limitation, attorneys' fees and expenses, and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Deed of Trust) be paid, incurred, or suffered by or asserted against the City of Dallas or Trustee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from the Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirements relating to Hazardous Materials (including, without limitation, CERCLA or any federal, state or local so-called "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Grantor, the City of Dallas, or Trustee. The representations, covenants, warranties, and indemnifications contained in this Article shall survive the release of this Deed of Trust.

6. Beneficiary's Right to Remove Hazardous Materials. The City of Dallas shall have the right but not the obligation, prior or subsequent to an Event of Default, without in any way limiting

the City of Dallas's other rights and remedies under this Deed of Trust, to enter onto the Property or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous materials Contamination pertaining to the Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Property, or other action and/or which, in the City of Dallas's sole opinion, could jeopardize the City of Dallas's security under this Deed of Trust. All costs and expenses paid or incurred by the City of Dallas in the exercise of any such rights shall be Indebtedness secured by this Deed of Trust and shall be payable by Grantor upon demand.

EXECUTED as of the date first written above.

**GRANTOR:**

\_\_\_\_\_,  
a Texas \_\_\_\_\_

BY \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**STATE OF TEXAS**       §  
  §  
**COUNTY OF DALLAS**   §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by \_\_\_\_\_ of \_\_\_\_\_, a Texas \_\_\_\_\_, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:  
City of Dallas Office of Cultural Affairs  
1925 Elm Street, Suite #400, Dallas, Texas 75201



**EXHIBIT A**

**Property – Legal Description**

## **EXHIBIT B**

### **Permitted Encumbrances**

1. Those certain Deed Restrictions on the Property executed by Grantor of even date herewith and recorded in the official real property records of the county in which the Property is located.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

**DEED RESTRICTIONS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF DALLAS**       §

THESE DEED RESTRICTIONS (as amended from time to time, the “Deed Restrictions”) are impressed upon the property described below by \_\_\_\_\_ (“Grantee”), a Texas \_\_\_\_\_, the owner of said real property situated in Dallas County, Texas, more particularly described in **Exhibit A**, attached hereto and made a part hereof for all purposes (the “Property”).

RECITALS

**WHEREAS**, on September 21, 2016, by Ordinance No. 30179, the City Council appropriated \$1 million for the purpose of major maintenance and repair of cultural facilities; and

**WHEREAS**, on April 12, 2017, pursuant to Resolution No. 17-0594, City Council designated \$400,000 of the appropriation for improvement and renovation or major repair of cultural facilities owned and operated by not-for-profit cultural organizations with annual operating budgets less than \$5 million through a competitive funding program administered by the Office of Cultural Affairs with the review and advice of the Cultural Affairs Commission; and

**WHEREAS**, the Cultural Facilities Program would support existing arts and cultural organizations that are invested in Dallas and support the City’s goals for development and job creation, and encourage the retention of arts and cultural organizations to remain in Dallas and entice new arts organizations to invest in Dallas through recognition of the City’s holistic support of arts and culture on many levels; and

**WHEREAS**, Grantee executed that certain Loan Agreement with the City (“Agreement”) whereby the City agreed to provide funding of \$200,000.00 to Grantee for improvements, renovations and major repairs to the cultural facilities, Grantee agreed to develop the Property in accordance with the covenants and requirements in the Agreement; and

**WHEREAS**, Grantee’s obligations under the Agreement are secured by a Deed of Trust; and

**WHEREAS**, it is a condition of the Agreement that Grantee execute and impress these Deed Restrictions upon the Property and Grantee's execution of the Deed Restrictions with all of the covenants, restrictions, conditions, and other provisions set forth herein is a material inducement to the City to award Grantee the Loan; and

**WHEREAS**, the Deed Restrictions are entitled to run with the land because: (i) the Deed Restrictions touch and concern the land by, among other things, benefiting and controlling the use of the Property, (ii) privity of estate exists by reason of Grantee holding legal and equitable title to the land subject to the Deed Restrictions, (iii) notice is given of the Deed Restrictions contained herein when this instrument is filed in the Official Real Property Records of the county in which the Property is located, and (iv) the Deed Restrictions are reasonable in light of their public purpose of making available affordable housing; and

**WHEREAS**, Grantee intends that the Deed Restrictions shall run with the land and shall be binding upon Grantee and its representatives, successors and assigns, and that any person, by acceptance of title, legal or equitable, to the Property or any improvements thereon shall abide by and perform the Deed Restrictions and all of the covenants, restrictions, conditions, and other provisions set forth herein regardless of whether or not the Deed Restrictions are included in or otherwise referenced in the sales contract, deed, or other instruments of conveyance;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee hereby establishes the following Deed Restrictions.

#### A. USE AND TRANSFER RESTRICTIONS

1. The Property, improvements and building shall be used for programming, production, presentation, exhibition of any of the arts and cultural disciplines such as music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, and programs of museums and such activities must comprise at least 85% of facility use.
2. If the Property or improvements are sold or otherwise made available for purchase during the term of the Deed Restrictions, then the record title holder shall affirmatively disclose to potential purchasers the existence and nature of the Deed Restrictions.
3. Before the Property or improvements may be sold, transferred, or conveyed to another owner, the Grantee, its successor or assigns, must obtain written consent of the Director (defined below), of the sale, transfer, or conveyance and any attempted sale without said prior written consent is void.

#### B. COMPLIANCE PERIOD

All of the covenants, restrictions, conditions, and other provisions set forth in these Deed Restrictions shall be covenants running with the land and binding upon the Property and Grantee and its successors and assigns for the duration of the compliance period. For these Deed Restrictions, the term of the compliance period is 10 years beginning on the date of completion

of the Improvements. The restrictions, covenants, conditions and other provisions contained in these Deed Restrictions shall terminate and no longer touch and concern the Property, improvements and building located thereon following expiration of all compliance periods.

#### C. INDEMNIFICATION

**GRANTEE AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES 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 GRANTEE'S BREACH OF ANY OF THE COVENANTS, RESTRICTIONS, CONDITIONS, AND OTHER PROVISIONS SET FORTH IN THESE DEED RESTRICTIONS, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF GRANTEE IN THE PERFORMANCE, ATTEMPTED PERFORMANCE, OR NONPERFORMANCE OF THE DEED RESTRICTIONS; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF GRANTEE AND THE 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO, INCLUDING GRANTEE'S SUCCESSORS, HEIRS, AND ASSIGNS, AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

#### D. ENFORCEMENT

1. All of the covenants, restrictions, conditions, and other provisions set forth in these Deed Restrictions shall be binding upon Grantee and its successors, heirs and assigns, and all parties claiming by, through, or under Grantee. By accepting any deed or other instrument of conveyance after the execution and recording hereof, a party is conclusively deemed to have accepted and agreed to be bound by and assumed the covenants, restrictions, conditions and other provisions set forth in these Deed Restrictions as to the portion of the Property, improvements or building conveyed and acquired.

2. In the event any provision of these Deed Restrictions is violated by Grantee or its successors and assigns, the City, after having first given to Grantee or their successors and assigns written notice of violation and ninety (90) days opportunity to cure same, shall have the right to every remedy either public or private, available in law or equity against the Grantee and its successor and assigns. The terms and provisions of these Deed Restrictions shall be

specifically enforceable against Grantee, and its successors and assigns. All remedies provided under these Deed Restrictions including those at law or in equity shall be cumulative and not exclusive. No failure on the part of the City to enforce the terms and provisions of these Deed Restrictions shall be deemed a waiver of the operation or enforcement of such provisions or any other provision of these Deed Restrictions. The right of the City to enforce the Deed Restrictions may not be waived, expressly or otherwise, and the City's forbearance or failure to pursue any violation or breach of these Deed Restrictions shall in no event waive or preclude the City from enforcing said violation or breach in the future or any new violation or breach. The City shall not be liable for failure to enforce these Deed Restrictions. The City may enforce this instrument and the covenants, restrictions, conditions, and other provisions set forth herein by proceedings at law or in equity against Grantee or any person violating or attempting to violate any term or provision hereof. Said proceedings may include but shall not be limited to temporary restraining orders, temporary and permanent injunctive relief and/or suit for damages as may be appropriate.

3. If the City substantially prevails in a legal or equitable proceeding to enforce the Deed Restrictions, the City shall be entitled to recover damages, reasonable attorney's fees, and court costs from the offending party.

#### E. MISCELLANEOUS

1. The Deed Restrictions are not intended to restrict the right of the Dallas City Council to exercise its legislative or governmental duties and powers, including but not limited to zoning of any part of the Property or the exercise of the City's right of eminent domain regarding any part of the Property.

2. **This instrument shall be subject to and governed by the laws of the State of Texas.** Grantee hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Dallas County.

3. In case any one or more of the provisions contained in this instrument shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this instrument shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4. Whenever required by the context, as used in this instrument, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa.

6. The Section headings appearing in this instrument are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Section.

7. The provisions of the Deed Restrictions inure to the benefit of the City.

8. These Deed Restrictions may be amended only by written instrument signed by Grantee and City, and recorded in the Official Real Property Records of the county in which the Property is located. Grantee covenants and agrees to execute such other instruments and take such further

actions as the City may deem reasonably necessary or convenient to implement and effectuate the covenants, restrictions, conditions, and other provisions herein contemplated.

EXECUTED on \_\_\_\_\_, 2018.

**GRANTEE:**

\_\_\_\_\_,  
a Texas \_\_\_\_\_

BY \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**STATE OF TEXAS** §

§

**COUNTY OF DALLAS** §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by  
\_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, a Texas \_\_\_\_\_, on  
behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:  
City of Dallas Office of Cultural Affairs  
1925 Elm Street, Suite #400, Dallas, Texas 75201

**Exhibit A – Property Description**



**PROMISSORY NOTE**

\$200,000.00

\_\_\_\_\_, 2018

FOR VALUE RECEIVED, \_\_\_\_\_, a Texas \_\_\_\_\_ (“Borrower”), hereby unconditionally promises to pay to the order of the CITY OF DALLAS (“Lender”), the sum of Two Hundred Thousand and NO/100 Dollars (\$200,000.00), or such greater or lesser amount as may be advanced or outstanding hereunder (the “Principal Amount”), in lawful money of the United States of America and immediately available funds. This note (“Note”) is payable at the City of Dallas, Office of Cultural Affairs, 1925 Elm Street, Suite 400, Dallas, Dallas County, Texas 75201 and according to the terms of payment stated herein.

The outstanding Principal Amount is due and payable on \_\_\_\_\_ (the “Maturity Date”). However, the Principal Amount may be forgiven as follows: Upon Completion of the Improvements, Lender shall forgive payment of one-tenth (1/10) of the principal amount on each anniversary of the date of this Note through and including, but not beyond, the tenth (10<sup>th</sup>) anniversary of the date of this Note; provided, however, as conditions precedent to the possible forgiveness of a portion of the principal amount on each anniversary of the date of this Note as provided, (i) Borrower must not have allowed the occurrence of any default under this Note or the Subordinate Security Instrument; (ii) Borrower must not allowed the occurrence of any default under any Superior Deed of Trust, including the First Deed of Trust; (iii) Borrower must not have allowed the occurrence of any default in the payment of any indebtedness secured by a Superior Deed of Trust, including the First Deed of Trust; (iv) Borrower must not be in violation of the Deed Restrictions that runs with the land and Property.

Prior to the Maturity Date no interest shall be accrued or payable on the Principal Amount. On the Maturity Date, Borrower promises to pay the Principal Amount. If Borrower fails to pay the entire Principal Amount on the Maturity Date, unpaid amounts will accrue interest at the maximum rate of interest permitted by applicable law.

The payment of this Note is secured by a Deed of Trust and Security Agreement to Jennifer H. Scripps, Trustee, and the provisions of the certain Loan Agreement and Deed Restrictions, all of which are executed of even date herewith by Borrower for the benefit of Lender covering certain real and personal property situated in Dallas County, Texas, as more particularly described therein (the “Property”). The Deed of Trust and Deed Restrictions are recorded in the official real property records of Dallas County, Texas.

Subject to all applicable notice provisions contained in the Loan Agreement, if default is made in the payment of this Note or under any instrument evidencing, securing, collateral to, or relating to the Note, including without limitation, the Deed of Trust, Deed Restrictions and other Loan Documents (as such terms are defined in the Loan Agreement, the terms and conditions of said instruments being incorporated herein by reference for all purposes as if set out at length), or if default is made in the payment or performance required by any City of Dallas loans to Borrower, then in any such event the Lender may, at its option, declare the entire unpaid principal balance and any other amounts owed on this Note to be immediately due and payable and pursue any and

all remedies to which Lender may be entitled, at law or in equity, all at the option of the Lender. Failure of the Lender to exercise any such option shall not constitute a waiver of Lender's right to exercise the same in the event of any subsequent default, or otherwise.

Borrower and any and all sureties, guarantors, and endorsers of this Note jointly and severally waive, to the extent permitted by law, demand for payment, presentation for payment, notice of nonpayment or dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, diligence in collection, grace, protest, notice of protest, and consent to all extensions without notice for any period or periods of time and partial payments, before or after maturity, without prejudice to the Lender. The Lender shall similarly have the right to deal in any way, at any time, with one or more of the foregoing parties without notice to any other party, and to grant any such party any extensions of time for payment of any of said indebtedness, or to grant any other indulgences or forbearances whatsoever, without notice to any other party and without in any way affecting the personal liability of any party hereunder.

In the event default is made in the prompt payment of this Note when due or declared due, and the same is placed in the hands of an attorney for collection, or suit is brought on same, or the same is collected through probate, bankruptcy, or other judicial proceedings, then the Borrower agrees and promises to pay reasonable attorney's fees, court costs, and related expenses in addition to all amounts owing hereunder. These expenses will become part of the debt evidenced by this Note and will be secured by any security for payment.

Notwithstanding anything to the contrary contained in this Note, in any of the Loan Documents, or any other agreement entered into in connection with or securing the indebtedness evidenced by this Note, whether now existing or hereafter arising, and whether written or oral, it is agreed that the aggregate of all interest and any other charges constituting interest, or adjudicated as constituting interest, and contracted for, chargeable or receivable under this Note or otherwise in connection with this loan transaction, shall under no circumstances exceed the total amount of interest which would have been earned at the Maximum Rate (hereinafter defined). As used herein, the term "Maximum Rate" means the maximum nonusurious interest rate that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Loan Documents under the laws of the United States of America or the State of Texas which are presently in effect, or which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than that which is now allowed. In the event the maturity of the Loan Documents is accelerated by the Lender as a result of a default under the Loan Documents or by voluntary prepayment of the Note by the Borrower, or otherwise, then the total amount of earned interest may never exceed the total amount of interest which would have been earned at the Maximum Rate, computed from the dates each advance of the loan proceeds is made until payment. If, from any circumstance, the Lender shall ever receive interest, or any other charges constituting interest, or adjudicated as constituting interest, in excess of the total amount of interest which would have been earned at the Maximum Rate, the amount of such excess interest shall be applied to the reduction of the principal amount owing on the Note or an account of any other principal indebtedness of the Borrower to the Lender, and not to the payment of interest; or if the amount of such excess interest exceeds the unpaid principal balance of the Loan Documents and such other indebtedness, the amount of such excess interest that exceeds the unpaid principal balance of the Loan Documents and such other indebtedness shall be refunded to Borrower. All

sums paid or agreed to be paid to the Lender for the use, forbearance or detention of the indebtedness of the Borrower to the Lender shall be amortized, prorated, allocated, and spread throughout the full term of the Note until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term of the Loan Documents. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

Loan funds provided to Borrower from the Note shall be used strictly for costs as outlined in the Loan Agreement, and not for personal, family, household, other business or agricultural use. Furthermore, Borrower shall disburse all funds received pursuant to this Note solely for expenses that are specified in the Funds Budget and the Project Budget; as such terms are defined in the Loan Agreement, and for no other purpose.

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed served and given upon deposit in the United States mail, postage prepaid, registered or certified with return receipt requested, or upon delivery in person to the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change such party's address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to all other parties in the manner set forth hereinabove:

If to Lender:

City of Dallas  
Office of Cultural Affairs  
Attn: Director of Office of Cultural Affairs  
1925 Elm Street #400  
Dallas, TX 75201

with a copy to:

City of Dallas  
Dallas City Attorney's Office  
1500 Marilla Street #7DN  
Dallas, TX 75201

If to Borrower:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This Note shall be construed in accordance with the laws of the State of Texas and the laws of the United States applicable to transactions in Texas.** This Note is fully performable in Dallas County, Texas. Venue for any legal action on this Note shall be exclusively in Dallas County, Texas.

“Borrower” and “Lender,” whenever used in this Note shall include the respective distributees, personal representatives, successors and assigns of Borrower and Lender. If Borrower sells or transfers any of the Improvements or Property without the prior written approval of Lender during any period of time in which any indebtedness on the Note remains outstanding, Lender may accelerate the Note and declare it immediately due and payable without notice of any kind.

EXECUTED as of the date first above written.

**BORROWER:**

\_\_\_\_\_,  
a Texas \_\_\_\_\_

BY \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## CLOSING AFFIDAVIT

WHEREAS, THE CITY OF DALLAS (hereinafter referred to as the “the City”) has provided and/or will be providing a loan (the “Loan”) in an amount of up to \$200,000.00 pursuant to a Loan Agreement of even date herewith (the “Agreement”) executed by \_\_\_\_\_, a Texas \_\_\_\_\_ (“Grantee”), and the City for the improvements, renovations and major repairs of and being secured by certain real and personal property and all improvements thereon as therein described and defined (collectively referred to herein as the “Property”); and

WHEREAS, the City requires certain representations, warranties, and assurances from Grantee as a condition to the making and funding of the Loan;

NOW, THEREFORE, for the express purpose of inducing the City to make the Loan to Grantee and with full and complete knowledge that if it were not for the truth and accuracy of the statements and agreements set forth herein, such Loan would not be so made, after diligent inquiry calculated to ascertain the truth and accuracy of each of such statements and agreements, the undersigned affiants hereby warrant, certify and represent to the City as follows:

1. The undersigned is the \_\_\_\_\_ of Grantee and is duly authorized to make this Affidavit for the above purposes.

2. The execution and delivery by the Grantee of the Agreement and the other Loan Documents as defined therein will not violate any indenture, agreement, or other instrument to which Grantee is a party or by which the Property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Grantee, except as contemplated by the provisions of the Agreement and no action or approval with respect thereto by any governmental agency or third person is required.

3. No consent or approval of any regulatory body to the execution, delivery, and performance of the Loan Documents is required by law, except as may be specifically referred to therein.

3. To the best of undersigned’s knowledge and belief, there are no suits, proceedings, or investigation pending or threatened against or affecting the Grantee or the Property, at law or in equity, or before or by any governmental or administrative agency or instrumentality.

4. No judgment, decree, or order of any court or governmental or administrative agency or instrumentality has been issued against the Grantee or which has or may have any adverse effect on the business or condition of the Grantee or the Property.

5. The execution and delivery of the Loan Documents does not contravene any law, order, decree, rule, or regulation to which the Grantee is subject.

6. The Grantee is solvent, not bankrupt, and has no outstanding liens, suits, garnishments, bankruptcies, or court actions which could render the Grantee insolvent or bankrupt, and the books and records of Grantee and, if applicable, the Property, have been maintained in the regular course of business in accordance with generally accepted accounting principles.

7. All warranties, representations, and certifications made and all information and material submitted or caused to be submitted to the City in connection with the Loan are true and correct, and there have been no adverse changes in or conditions affecting any of such warranties, representations, certifications, materials, or information prior to the date hereof.

8. The execution and delivery of all documents executed or delivered by or on behalf of the Grantee and pertaining to the Loan, including but not limited to the Loan Documents, have been duly authorized and approved by the Grantee and constitute the valid and binding obligations of the obligors thereon, enforceable in accordance with their respective terms and the payment and performance thereof will be subject to no offsets, claims, or defenses.

9. This Affidavit is made by the undersigned for the purpose of inducing the City to make the Loan to Grantee.

10. There are no mechanics' or materialman's liens, lienable bills, or other claims constituting or that may constitute a lien on the Property, or any part thereof.

11. To the best knowledge of the undersigned, the Property and the use thereof contemplated by Grantee comply with all applicable restrictive covenants, zoning ordinances, and building codes, all applicable health and environmental laws and regulations, and all other applicable laws, rules, and regulations. The sanitary water supply, storm and sanitary sewers, water line, and other necessary utility facilities are available to the Property and, to Grantee's knowledge, sufficient to meet the reasonable needs of the Property and its intended use, at or within the boundary lines of the Property.

12. Grantee is not acting as a trustee for any officer, director, or stockholder of the City or any service corporation affiliate of the City and no officer, director, or stockholder of the City or any service corporation affiliate of the City is affiliated with Grantee. The City has the right to declare an event of default under the Loan in the event the City determines that Grantee has offered, or agreed to offer any benefit upon an employee or official of the City that the employee or official of the City is prohibited by law from accepting. For purposes of this paragraph "benefit" means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with the law. Notwithstanding any other legal remedy, the City may require Grantee to remove any employee of the Grantee from the property securing the Loan who has violated the restrictions of this paragraph or any similar state or federal law, and in addition obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to an employee or official of The City.

13. The undersigned hereby state that the foregoing statements are true and correct to the best of each of the undersigned's personal knowledge after a reasonable investigation.

EXECUTED on \_\_\_\_\_, 2018.

**AFFIANT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**JURAT**

**STATE OF TEXAS** §

§

**COUNTY OF DALLAS** §

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas