

**CONTINUATION AND FIRST AMENDMENT  
TO  
EQUIPMENT ASSISTANCE AGREEMENT**

This CONTINUATION AND FIRST AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF SAN JOSE, a municipal corporation ("City"), and SAN JOSE STAGE COMPANY, a California nonprofit public benefit company ("Stage").

**RECITALS**

**WHEREAS**, on September 25, 2018, City and Stage entered into an agreement entitled "Equipment Assistance Agreement" ("Agreement") that provided City financial assistance to Stage for the acquisition of certain theater equipment for use in the Theater Space located at 490 South First Street, upon satisfaction of the conditions described in the Agreement; and

**WHEREAS**, City and Stage desire to amend the Agreement to continue and extend the Agreement;

**NOW, THEREFORE**, the Parties agree to continue and amend the Agreement as follows:

**SECTION 1.** Section 1, "Conditions to Effectiveness of Agreement," is amended to read as follows:

"1. Conditions to Effectiveness of Agreement. This Agreement shall not be effective and neither party shall have any rights and/or obligations hereunder unless the following conditions have been satisfied:

A. Recordation of Covenant. At the close of escrow for the acquisition of the Property by the Stage, or other entity on behalf of the Stage, a covenant is recorded against the Property in the form attached hereto as **Exhibit B**, which requires that any future development of the Property, including the Development, contain, among other things, a ground floor facility for a community theater or other cultural facility ("Covenant"). The Covenant shall provide that, upon any future mixed use development of the Property, the Stage shall maintain ownership of a Theater Condominium Unit containing at least six thousand seven hundred (6700) square feet of Theater Space. The Covenant shall not be subordinate to any acquisition or other financing necessary to acquire the Property. Upon issuance of a permit for construction of a mixed use project, which includes the Theater Space, and recordation of a condominium map designating the Theater

Condominium Unit, the restrictions contained in the Covenant shall apply only to the Theater Condominium Unit and not the Property as a whole.

B. Building Permit. On or before the fourth (4<sup>th</sup>) anniversary of the Effective Date of this Agreement, in connection with the Development described above, Stage shall have applied for a building permit for tenant improvements from the City for improvements to the Theater Space ("Building Permit"). City reserves the right, at its sole discretion, to extend this date for one additional year."

**SECTION 2.** All of the terms and conditions of the original Agreement not specifically modified by this First Amendment shall remain in full force and effect.

**SECTION 3.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

The Parties whose signatures are affixed below are fully authorized to have executed this First Amendment:

**CITY OF SAN JOSE**, a municipal corporation

**SAN JOSE STAGE COMPANY**, a California nonprofit public benefit company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Cameron Day  
Title: Deputy City Attorney  
Date: \_\_\_\_\_