

Attachment 2 - Blackline Third Amendment to the Mercer Arena Ground Lease

**THIRD AMENDMENT TO THE MERCER ARENA GROUND LEASE BETWEEN THE  
CITY OF SEATTLE AND SEATTLE OPERA.**

This Third Amendment to the April 9, 2008, Mercer Arena Ground Lease between The City of Seattle and Seattle Opera is entered into by the parties thereto and is effective the date it is fully executed by a representative of each Party following authorization by ordinance of the Seattle City Council.

WHEREAS, consistent with the expression of support contained in Resolution 31040, adopted by the Seattle City Council on February 19, 2008, and pursuant to Ordinance 112630, approved by the Seattle City Council, on April 9, 2008, The City of Seattle (“City”) and Seattle Opera (“Opera”) entered into a ground lease (the “Ground Lease”) wherein Opera leased the Mercer Arena from City for an initial term of 30 years and giving Opera two one-year options to extend the Rent Commencement Date (“Extension Options”); and

WHEREAS, the lease required Opera to use the property to construct and operate its administrative offices, rehearsal and technical support facilities, and for other incidental purposes related to its principal business as an opera company, with the intent that the property would be developed and used in a manner that actively engages the public, including along the Mercer Street frontage; and

WHEREAS, on October 26, 2010, the Ground Lease was amended to increase the number of Extension Options to five (5) periods of one (1) year each, or to June 30, 2014, with an option fee to be paid for each Extension Option exercised; and

WHEREAS, effective July 1, 2014, Opera began paying Rent under the Ground Lease; and

WHEREAS, on December 15, 2014, the Ground Lease was further amended to address administrative issues related to the parties’ interim shared use of the Mercer Arena prior to construction commencement; and

WHEREAS, since execution of the Ground Lease, Opera has determined that constructing a new, more costly building would enable the addition of spaces supporting an increased focus on community and educational programs, allow for direct access to McCaw Hall at the stage level and provide more public amenities than originally envisioned; and

WHEREAS, Resolution 31628, approved by the Seattle City Council on November 23, 2015, expressed support for Opera’s enhanced project, states that: ...”the Mercer Arena has been

closed since 2003 due to seismic and code compliance deficiencies and currently produces no public benefits, and that although the Arena redevelopment to be undertaken by the Opera under the terms of lease will improve the facility, additional enhancements to the Arena will provide additional benefits to the City’s facility and to the vitality of the Seattle Center”; and

WHEREAS, Opera is constructing a new building with spaces supporting an increased focus on community and educational activities and providing additional public amenities and consistent with Resolution 31628, Opera has agreed to provide certain supplemental benefits over the term of the Ground Lease; and

WHEREAS, Opera has unique opportunities to contribute toward the City’s goals of racial equity and inclusiveness through its educational, outreach and programming efforts; and

WHEREAS, in addition to the new public amenities the building is expected to have a longer useful life and a higher residual asset value at the end of the Opera’s lease term; and

WHEREAS, pursuant to Resolution 31628, \$200,000 was appropriated in the 2016 City budget and \$4,800,000 of the funds will be proposed for inclusion in the City’s Capital Improvement Program in the 2017-2018 biennial budget, with payment contingent upon Opera’s compliance with requirements contained in Section 12 of the Ground Lease and further contingent upon Opera’s applying the City’s funding, together with other additional funds, to construct a building that satisfies the requirement of the Resolution by “exceeding the Opera’s obligations for redevelopment under the terms of the existing lease”;

NOW, THEREFORE, to address the requirements of Resolution 31628 and in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. Article Numbers and Continued Effect of Mercer Arena Ground Lease Terms Not Amended**

All Article and Section references herein are to the Article and Section numbers in the Ground Lease, as amended by the First and Second Amendments. In this Amendment, all references to the “Ground Lease” include the original Ground Lease and all amendments. All provisions of the Ground Lease that have not been modified by this Third Amendment remain in full force and effect.

**2. Amendments to Mercer Arena Ground Lease**

**A. Subsection 1.10 Exhibits.**

Subsection 1.10, Exhibits, is amended as follows:

1.10 Exhibits. The following exhibits are made a part of this Lease:

Exhibit 1.1.1 – Legal Description

Exhibit 1.1.2 – Premises Site Plan  
Exhibit 12.1R – Conceptual Plan for Initial Improvements  
Exhibit 18.1 – Insurance Requirements  
Exhibit 34.1 – Memorandum of Ground Lease

**B. Section 12. Initial Improvements and Subsequent alterations by Opera.**

Section 12, Initial Improvements and Subsequent Alterations by Opera, is amended as follows:

12.1 Opera’s Obligation to Undertake Improvements.

The parties acknowledge and agree that the renovation or replacement of Mercer Arena is a fundamental purpose of this Lease and Opera agrees to use commercially reasonable efforts to complete the Initial Improvements and to obtain a certificate of occupancy for the Permitted Use, subject to delays caused by Seattle Center or *force majeure* by December 31, 2019. Opera’s conceptual plan for the Initial Improvements, contained in Exhibit 12.1R, is anticipated to cost approximately ~~(((\$40))~~\$60 million in hard and soft costs and currently contemplates ~~((is intended to include))~~ construction of an entirely new building ~~((roof and exterior walls))~~. ~~((At the conceptual design stage and p))~~ Prior to Seattle Design Commission design development ~~((initial))~~ review, Opera shall present its proposed plan for Opera’s Improvements to the Parks, ~~((and))~~ Seattle Center, Libraries and Waterfront Committee of the Seattle City Council. The City Council shall endorse Opera’s plan as presented or by resolution transmitted to the Design Commission, may provide comments and suggest modifications thereto. Thereafter, the specific terms and conditions of construction shall be contained in a separate construction agreement, the “Construction Agreement,” that the parties shall negotiate and execute before Opera enters into a construction contract for the work. ~~((If Opera fails to commence the Initial Improvements by July 1, 2011, this Lease shall automatically terminate and, subject to the provisions of Section 9.3, Opera shall restore the Premises as nearly as possible to their condition existing as of the Effective Date, at Opera’s expense, and the parties shall have no further rights or obligations with respect to one another arising out of or in connection with this Lease. If the Initial Improvements result in a change to the building footprint, then))~~ Upon completion of the Initial Improvements, the parties shall amend this Lease by appending hereto a revised Exhibit 1.1.2 that more accurately depicts the location of the building, as improved, on the Premises.

12.2 City Contribution to Initial Improvements.

Subject to City’s appropriation of funds, City shall contribute five million dollars (\$5,000,000) for public amenities that Opera will construct as part of the Initial Improvements, which amenities are identified below and depicted in Exhibit 12.1R. Payment will be made in two phases, with the first phase a

payment of two hundred thousand dollars (\$200,000) due following execution of this Third Amendment to the Ground Lease and upon City's receipt of an invoice therefor from Opera. Provided the parties have executed the Construction Agreement described in Subsection 12.1 and the Opera has fully complied with the prerequisites for commencement of the Initial Improvements described in this Section 12, but in no event before the later of January 1, 2017 or commencement of construction of the Initial Improvements, City will disburse the remaining four million eight hundred thousand dollars (\$4,800,000) as provided in the Construction Agreement required under Section 12 of the Ground Lease.

The public amenities that Opera will construct shall include:

(a) Construction of a new building with total project budget of approximately \$60 million, an increase of \$20 million. The building shall include spaces which support the provision of community and educational activities by the Opera and physical connections with McCaw Hall at the stage level to provide additional operational synergies for Opera and the City.

(b) Design and construction of open space of approximately 6,000 sq. ft. on 4th Ave N/Jenkins Way from Mercer Street to Republican Street, with amenities to include landscaping, irrigation, screening, hardscape, lighting, environmental graphics, and other amenities.

(c) Design of exterior landscaping, irrigation, hardscape, lighting, environmental graphics and other amenities on the Mercer street frontage from Mercer Arena to the Kreielsheimer Promenade.

### 12.3 Conditions for Construction of Improvements.

Before commencing the Initial Improvements, Opera shall demonstrate to the reasonable satisfaction of the City's Finance Director that it has sufficient financial resources to complete the Initial Improvements in accordance with approved design documents and shall thereafter commence construction of such Initial Improvements and diligently prosecute such work to its completion.

Opera shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally prepared plans and specifications for such work and obtaining City's prior written approval thereof. Except as provided in Subsection 12.2 of this Ground Lease, Opera covenants that it will cause all alterations, additions and improvements to the Premises, to be completed at Opera's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with City approved plans and specifications, the Construction Agreement, and any conditions reasonably imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises and/or Marion Oliver McCaw Hall or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Opera shall secure all governmental permits and approvals required for the Initial

Improvements and comply with all other applicable governmental requirements and restrictions applicable to the Initial Improvements. Except as provided in Section 17 with regard to concurrent negligence, Opera shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Opera's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Opera's breach of its obligations under the terms of this Section 12. Upon the expiration or termination of this Lease, all alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Opera's or Subtenants' moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) and cabling and wiring for computers, telephones and other electronic equipment, shall become the property of City without any obligation on its part to pay for any of the same, unless City bond financing has been used in the construction of any improvements, in which case such improvements shall become City's property at the time they are constructed or installed. Opera shall not remove all or any portion of such improvements upon the termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Opera shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Opera. The provisions of this paragraph shall apply to the Initial Improvements and, after the City issues a certificate of occupancy for the Initial Improvements, all subsequent alterations, additions or improvements to the Premises that, in the aggregate over any calendar year, are reasonably likely to result in total construction costs in excess of five hundred thousand dollars (\$500,000.00), as such amount is increased by the percentage increase of the Index (as such term is defined below) published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date. Notwithstanding the foregoing, however, in the case of Minor Alterations, (i) the first sentence and clause (a) of the second sentence of this paragraph shall not apply, (ii) City hereby waives the right to approve Opera's contractor with respect to Minor Alterations, and (iii) Opera will deliver a set of "as-built" plans only if the extent or nature of the Minor Alterations is such that Opera retains the services of an architect to prepare plans and specifications with respect thereto. "Minor Alterations" means alterations, additions or improvements to the Premises (i) made subsequent to the Initial Improvements and (ii) which, when combined with other anticipated projects, is not reasonably likely to result in total construction cost expenditures of more than five hundred thousand dollars (\$500,000.00) in any calendar year, as such amount is increased by the percentage increase of the Index, published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date and (iii) do not involve any shared systems or shared access with the City or any of its buildings in Seattle Center or any

building elements for which the City has major maintenance responsibility such as the roof and exterior walls or any building component or system for which City has major maintenance responsibilities under this Lease, such as the roof and exterior walls. Opera shall not intentionally divide improvement projects into discrete units of work, nor schedule them in such a manner, as to artificially bring them within the definition of Minor Alterations.

As used in this Lease, “Opera’s Improvements” means the Initial Improvements and any improvements to the Premises made subsequent to the date the Initial Improvements have been completed; and “Index” means the Consumer Price Index for All Urban Consumers, U.S. city average for all items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the “Bureau”); provided, however, that (a) if the Bureau publishes a revised version of the Index, then the revised version shall be used, and (b) if the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index and (c) if the Index is discontinued without being supplanted, the parties shall use any comparable general wholesale or retail price index for the United States reasonably selected by City as being the closest to the Index and reasonably approved by Opera.

Notwithstanding any other provisions of this Lease reserving to City portions of the Premises below Opera’s Improvements or more than 85 feet above the finished grade of the sidewalk on Mercer Street, nothing in this Lease is intended to prevent Opera from future expansion of the Initial Improvements from time to time to the extent such expansion would otherwise be allowed under then applicable law and/or zoning and is otherwise in compliance with applicable provisions of this Section 12, provided, however, that any expansion of the Initial Improvements into the ground (except for footings for a replacement building) or into the air rights reserved by Seattle Center would be subject to negotiation with City and may require the payment of additional Base Rent appropriate in view of the nature and use of the expansion improvements.

### **C. Section 38 Public Benefits**

Section 38, Public Benefits, is amended as follows:

38. Public Benefits. City's willingness to enter into this Lease with Opera is predicated, in part, on the nature of Opera’s business and the compatibility of such business with the use of the remainder of Seattle Center and the benefits accruing to the public through Opera’s use of the Premises. The parties agree that, with respect to the Initial Improvements, anticipated benefits include (i) Opera’s capital investment in the Premises, (ii) the sustainable technologies that will be utilized in development of the site, ~~((and))~~(iii) the expected LEED certification for the Premises, and (iv) Opera’s provision of the design and

installation of the landscaping, hardscaping and other improvements identified in Subsection 12.2. Opera shall report to the City regarding implementation of such benefits within 60 days of receipt of the Certificate of Occupancy for the Initial Improvements. In addition, continuously throughout the Lease Term, Opera agrees to provide the following benefits, or an equivalent replacement approved by the Director, and to submit an annual report thereof to the Director as required by ~~((Section))~~ Subsection 5.1: (i) education programs for students, reported by the number and age groups of students served; (ii) education events, activities and outreach efforts provided to the public by Opera including efforts to serve persons who historically have been underrepresented in Opera audiences which may include outreach efforts, and provision of free or discounted tickets, scholarships, and culturally relevant programming, reported by the number, attendance or use and type ~~((and-))~~ of effort, and programming ~~((-event))~~; (iii) Opera employment, reported by number and type of Opera employees, both full and part-time; (iv) if and to the extent and for such periods as Opera has no need for the space itself, collaboration with other groups to make office and rehearsal space available to activate and invigorate the Mercer corridor; and (v) incubation programs designed to encourage and support diversity in the dramatic arts including artistic and back and front of house employment opportunities; reported by the number, attendance and type of program; (vi) artistic and educational efforts designed to address issues of race and social justice reflective of a broad cultural context reported by number and type of efforts; and (vii) when relevant, other collaborative efforts of benefit to the public and Seattle Center.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below:

CITY OF SEATTLE

SEATTLE OPERA

By: \_\_\_\_\_  
Robert Nellams, Director  
Seattle Center Department

By: \_\_\_\_\_  
Aidan Lang, General Director  
Seattle Opera

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF WASHINGTON )

) ss. (Acknowledgement for City)

COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the Seattle Center Department of the **CITY OF SEATTLE**, the entity that executed the foregoing instrument as City; and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and that he was authorized to execute said instrument for said entity.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_.

STATE OF WASHINGTON )

) ss. (Acknowledgement for Opera)

COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned and that she was authorized to execute said instrument for said entity.

WITNESS my hand and official seal the day and year in this certificate above written.

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_.