

**THIRD AMENDMENT
TO
FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATER
AND
THE CITY OF SEATTLE**

This THIRD AMENDMENT TO FACILITY USE AND OCCUPANCY AGREEMENT (this “Amendment”) is effective as of the date of the last signature below (the “Effective Date”) and is entered into by the CITY OF SEATTLE (hereinafter referred to as “City”), a Washington municipal corporation, acting by and through its Seattle Center Department, and the SEATTLE REPERTORY THEATER (hereinafter referred to as “SRT”), a not-for-profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, SRT was founded in 1963 and began operations in the Seattle Center Playhouse before moving to the Bagley Wright Theatre, making it one of the longest standing resident organizations at Seattle Center; and

WHEREAS, the City and SRT are parties to that certain Facility Use and Occupancy Agreement (the “1996 Agreement”), authorized by Ordinance 118109, which governs SRT’s use, occupancy and financial obligations with respect to the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to establish and maintain the SRT Replacement Trust Fund (the “Fund”), to be used exclusively for the replacement, maintenance and repair of the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to make annual contributions to the Fund each year during the term in the amounts set forth in Exhibit 8 to the 1996 Agreement, including contributions of \$170,571 for the 2019 SRT fiscal year and \$174,836 for the 2020 SRT fiscal year; and

WHEREAS, the COVID-19 pandemic has had a dramatic impact on SRT’s financial situation, resulting in a reduction to SRT’s operating budget by two-thirds as of Q3 2020 as well as layoffs, furloughs, and reliance on a federal Paycheck Protection Program (PPP) loan, and has caused uncertainty as to SRT’s ability to bring patrons to the theater before a vaccine becomes available; and

WHEREAS, in light of the COVID-19 pandemic, SRT initiated discussions with Seattle Center in March 2020 seeking temporary relief from certain financial obligations under the 1996 Agreement; and

WHEREAS, Seattle Center and SRT have reached a nonbinding agreement to amend certain terms of the 1996 Agreement and now wish to formalize the terms of that agreement in this Amendment;

NOW, THEREFORE, the parties agree to amend the 1996 Agreement as follows:

AGREEMENT

Notwithstanding Subsection 13.F of the 1996 Agreement, the City and SRT agree to the following exceptions concerning the Fund to allow SRT to respond to the financial stress created by the COVID-19 pandemic:

1. SRT shall not be required to make the following minimum annual deposits to the Fund:
 - A. The contribution for the 2019 SRT fiscal year in the amount of \$170,571; and
 - B. The contribution for the 2020 SRT fiscal year in the amount of \$174,836.

2. In the event SRT requires additional financial relief beyond forbearing from making the above contributions, then from the Effective Date of this Amendment through June 30, 2022, or such later date as may be necessary to provide SRT with financial relief due to the economic impact of COVID-19, which date shall be mutually agreed upon in writing (such period, the “Interim Period”), SRT shall be allowed to draw on funds currently deposited in the Fund in order to finance SRT’s Operating Expenses (the “Permitted Withdrawals”); provided, however, that SRT shall at all times maintain a minimum balance of \$160,000 in the Fund.

“Operating Expenses”, for purposes of this Amendment only, shall be defined as all necessary costs and expenses incurred by SRT in the course of operating and maintaining the Premises for its authorized use as set forth in Section 4 of the 1996 Agreement. Operating Expenses include, but are not limited to, the following:

- A. Costs of producing and presenting live theater, music, and dance rehearsals, productions and performances, film screenings, meetings, classes and other educational programs;
 - B. All regular wages, salaries and other labor costs, including taxes and insurance, and retirement, medical and other employee benefits;
 - C. Training costs, consulting fees, legal fees (other than fees arising from a dispute between the City and SRT), accounting fees, and fees of all other independent contractors engaged by SRT in connection with the ordinary course of business;
 - D. All local and state taxes;
 - E. Costs of maintaining the minimum insurance required under Section 18.A of the 1996 Agreement and any other insurance policy SRT deems advisable or necessary; and
 - F. All expenses reasonably and necessarily incurred in connection with providing ordinary maintenance of the Premises.
3. SRT and the City agree to work toward a collaborative review and re-assessment of the schedule described in Exhibit 8 of the 1996 Agreement, and within twelve (12) months following the end of the Interim Period, to produce a final approved copy of the updated plan for the remainder of the term of the 1996 Agreement.

 4. On or prior to the expiration of the 1996 Agreement, and insofar as the money is

needed for maintenance and repair, SRT shall reimburse the Fund for its Permitted Withdrawals by depositing into the Fund an amount equal to the sum of all Permitted Withdrawals, if any, made by SRT pursuant to this Amendment. If, upon expiration of the 1996 Agreement, SRT is unable to fully reimburse the Fund for its Permitted Withdrawals due to SRT's then-existing financial condition, then SRT shall reimburse the Fund in such lower amount as its financial condition permits, which amount shall be determined in consultation with the Seattle Center Director and mutually agreed upon by the parties. The parties acknowledge and agree that such lower amount may be zero. In the event the parties elect to enter into a new occupancy agreement or other replacement agreement upon expiration of the 1996 Agreement, the parties agree to work in good faith to negotiate an equitable schedule of maintenance contributions to be made by SRT under such agreement, taking into account the then-existing maintenance and repair needs of the Premises, and the total amount, if any, of the Permitted Withdrawals for which SRT was unable to reimburse the Fund.

5. Except to the extent modified by this Amendment, all terms of the 1996 Agreement shall remain in full force and effect.
6. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the 1996 Agreement.
7. While preparing this Amendment, it was discovered that SRT's name was incorrectly stated in the 1996 Agreement as "Seattle Repertory Theatre"; however, pursuant to SRT's Articles of Incorporation which were filed with the Washington Secretary of State on June 14, 1963, the legal name of SRT is "Seattle Repertory Theater". Additionally, SRT has undergone a rebranding effort and is now primarily known by the name "Seattle Rep" or "The Rep". Accordingly, all references to "Seattle Repertory Theatre", "Seattle Repertory Theater", "Seattle Rep" and "The Rep" in the 1996 Agreement and in all amendments to the 1996 Agreement are references to SRT.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by having their authorized representatives affix their signatures in the spaces below.

SEATTLE REPERTORY THEATER

THE CITY OF SEATTLE

By _____

By _____

Jeffrey Herrmann
Managing Director

Robert Nellams, Director
Seattle Center Department

Date _____

Date _____