

**SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF
GAINESVILLE AND THE HIPPODROME STATE THEATRE**

THIS AMENDMENT is entered into this 10th day of February, 2017 by THE CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY"), and THE HIPPODROME STATE THEATRE, INC. (hereinafter referred to as "LESSOR").

WHEREAS, the CITY and LESSOR have previously entered into a Lease Agreement dated September 27, 1999, and First Extension dated September 9, 2002 for the "leased premises" known as the "Old Post Office Building" and located at 25 S.E. 2nd Place, Gainesville, Florida 32601; and

WHEREAS, the CITY and LESSOR desire to extend the Lease Agreement through July 1, 2027.

NOW, THEREFORE, the parties agree as follows:

1. The Lease Agreement is hereby extended through July 1, 2027, subject to the same terms and conditions.
2. This Second Amendment together with the original Lease Agreement dated September 27, 1999, and First Extension dated September 9, 2002, constitutes the entire agreement between the parties.

WITNESS:

Jamica Huron
Title: Managing Director

WITNESS:

Helen Harris
Title: Office Coordinator

HIPPODROME STATE THEATRE, INC.

Charith Myron
Title: Chairman, Board of Directors

CITY OF GAINESVILLE

Anthony R. Lyons
Anthony R. Lyons, City Manager

APPROVED AS TO FORM AND
LEGALITY

By: [Signature]
City Attorney

**FIRST EXTENSION TO THE CONTRACT
BETWEEN THE CITY OF GAINESVILLE AND
THE HIPPODROME STATE THEATRE**

THIS AGREEMENT is made and entered into this 9th day of September, 2002, by and between THE CITY OF GAINESVILLE, FLORIDA, a municipal corporation (hereinafter referred to as "CITY"), and THE HIPPODROME STATE THEATRE (hereinafter referred to as "LESSOR").

WHEREAS, the CITY and LESSOR have previously entered into a 20 year agreement for the "leased premises" known as the "Old Post Office Building" dated September 27, 1999, for the period July 1, 2000, through July 1, 2020, and

WHEREAS, the CITY and LESSOR desire to continue the agreement with an additional 5 years through, July 1, 2025,

NOW, THEREFORE, the parties hereto agree as follows:

1. LESSOR will continue to provide the services described in the agreement dated September 27, 1999, during the period of July 1, 2020, through July 1, 2025, subject to the same terms and conditions.
2. This extension, when executed, together with the original contract, constitute the entire contract between the parties.

WITNESS:

Nancy E. Stewart
Title: Attorney

HIPPODROME STATE THEATRE

Mark Lert
Title: Gen. Manager

WITNESS:

Jimmy Hogenbohem
Title: Deputy Assistant

CITY OF GAINESVILLE:

Wayne Brown
CITY MANAGER

This form Document No. P99-0132 is a legal instrument approved by the City Attorney. Any deviations from its intended use should be authorized by the City Attorney.

LEASE AGREEMENT
BETWEEN THE CITY OF GAINESVILLE AND
THE HIPPODROME STATE THEATRE

This Agreement made this 27th day of September, 1999*, by the City of Gainesville, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "LESSOR", and the Hippodrome State Theatre, a not for profit corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "LESSEE".

WITNESSETH:

WHEREAS, LESSOR owns a lot as hereinafter described, formerly housing the Old Post Office and Federal Courthouse located in Gainesville, Alachua County, State of Florida, hereinafter referred to as the "leased premises", and/or "Old Post Office Building", and

WHEREAS, LESSEE is engaged in the activities of encouraging a positive attitude towards the arts and the offering of live presentations of the performing arts, and

WHEREAS, LESSEE desires to obtain certain rights, in connection with the use of the leased premises, and the LESSOR is willing to grant and lease the same to LESSEE upon the terms and conditions hereinafter stated,

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable consideration, LESSOR does hereby grant and lease unto LESSEE, and LESSEE does hereby hire and take from LESSOR, certain premises, facilities, rights and privileged in connection with the leased premises and the improvements located thereon, as follows, to wit:

ARTICLE 1 – LEASED PREMISES

The LESSOR hereby leases to LESSEE and LESSEE hereby agrees to lease from LESSOR the following described land and improvements thereon as follows:

* Date of City Commission approval

LESSEE's option, partial payments may be made as long as the total amount is paid prior to May 31st of each year.

Rent is considered delinquent if not paid in full by May 31st of each year and a late payment of \$25.00 per day will be assessed for each day for which a delinquency exists.

Payments shall be made to:

City of Gainesville
Billings and Collections Division
Mail Station #47
P.O. Box 490
Gainesville, FL 32602

- B. The rent payable hereunder shall be renegotiated for each five-year period of the term or extended term of this lease. Six months prior to the expiration of each five-year period the LESSOR and the LESSEE shall begin such renegotiations. For the purposes of such rent renegotiations, the LESSEE shall provide an audited statement of its gross revenues, by general categories, for the preceding five-year period, for its services provided and sales under this Lease Agreement.
- C. In renegotiating the annual rent either by increasing or decreasing the rent, the parties shall consider the following:
1. Improvements made by LESSEE or LESSOR to the leased premises during the preceding five-year period, which improvements will influence a decrease/increase in rent.
 2. The usage of the leased premises on a constant, continued and year-round basis and the number of presentations offered annually during the preceding five-year period, which usage and number of presentations will influence a decrease/increase in rent.
 3. The ability of the LESSEE to price events within reach of citizens in the community while at the same time managing the facility in such a way that little subsidy is needed, which ability and management will influence a decrease in rent.
 4. The change in the National Consumer Price Index over the preceding five-year period.

construction phases shall be submitted to and approved by the State DAHRM and the United States Secretary of Interior as a certified rehabilitation.

- E. Use of definitions prepared by the Secretary of Interior, United States Department of Interior for treatments that may be undertaken on historic properties listed in the National Register of Historic Places.

Except to the extent hereinafter indicated, the renovation and rehabilitation of the Old Post Office building including the selection of architects and contractors, both local and otherwise, shall be the sole right and responsibility of the LESSEE with the assistance of consultants from the National Endowment for the Arts and the Foundation for the Expansion and Development of the American Professional Theatre and the State DAHRM. The design of the performance and audience seating areas shall be under the exclusive direction of the above and other selected experts. Except as hereinafter provided, as to any other renovation or rehabilitation plans, the LESSOR and the State DAHRM, at its option, may review and provide comment on such plans.

LESSOR shall have the right to either modify or reject plans which (1) alter the external façade of the building, or (2) when related to the historical integrity or importance of the building as documented by an approved Historic Structures Report and as contained in the certified rehabilitation/restoration plans, which alter either the interior or exterior of the building. LESSOR understands that the subject building is being renovated and rehabilitated into a performing arts facility, that experts knowledgeable in theatre arts and historic preservation and builders and architects knowledgeable in those endeavors will be used and that consent to proceed under their advice shall not be unreasonable withheld.

As relates to the aforementioned renovation, rehabilitation and adaptive reuse, LESSOR will expedite all actions and/or procedures required of LESSOR.

As regards expenditures by LESSEE in the renovative and rehabilitative process of the leased premises, LESSEE will comply with the terms of the challenge grant of \$175,000.00

ARTICLE 6 – MAINTENANCE

LESSEE accepts the leased premises without any further responsibility on the part of the LESSOR to make any modifications to accommodate the needs or desires of the LESSEE. LESSEE acknowledges the historic significance of the leased premises and specifically agrees to take care in protecting the historic and architectural integrity of both the interior and exterior of

The only exception shall be that LESSOR will perform a routine annual maintenance on the heating and air conditioning systems and maintain an annual service contract on the elevator as needed to remain in compliance with State of Florida Elevator Codes. All other maintenance will continue to be LESSEE's responsibility.

- F. LESSOR shall have the right to enter the leased premises for the purpose of inspecting the same. Inspections shall be made by the LESSOR's authorized representative at least quarterly, and at any other time when the leased premises are in need of repairs. The City Manager shall appoint such inspector and notify the LESSEE in writing of such appointment.
- G. If any inspection by LESSOR reveals that LESSEE has failed to properly maintain the premises and make minor repairs as provided for herein, LESSEE shall be considered in default. LESSOR shall notify LESSEE of such default in writing and LESSEE shall be entitled to a period of ten days in which to cure said default. If the default is not cured within the ten-day period, LESSOR may at LESSEE's expense, cause such repairs to be made. Payment by LESSEE for such repairs shall not come from any grant funds from LESSOR to LESSEE.

ARTICLE 7 - OWNERSHIP OF IMPROVEMENT

It is agreed that title to all fixed improvements constructed hereafter on the leased premises by the LESSEE shall at all times during the term of this Agreement remain with the LESSEE. Upon termination, whether by expiration of the term, cancellation or forfeiture, said improvements shall become the property of the LESSOR. Title to all buildings on the leased premises shall be considered to be with the LESSOR, until termination of this Agreement. The following shall not be considered fixed improvements:

- a. Stage lighting equipment and sound systems.
- b. Light grid system.
- c. Sound and lighting booth paraphernalia, e.g. dimmers, amplifiers, tape systems, etc.
- d. Seating platforms and attached variable seats.
- e. Portable appliances purchased and installed by LESSEE, e.g. refrigerators, freezers, ice machines and appliances incorporated in a bar and serving area. This section is not intended to list all items.

ARTICLE 11 - RATES AND PRICES

All rates and prices shall be established by the LESSEE. However, they shall be fair and reasonable and in no case exorbitant and shall be subject to review by the LESSOR. Reasonableness and fairness of prices shall be determined by whether they are comparable to prices charged by other regional professional theatres throughout the United States.

ARTICLE 12 - COMMUNITY USE

During each 12 month period beginning July 1, 2000, 12 days will be allocated for City or Community use of the main stage or the second stage, if appropriate, the scheduling of which will be determined by LESSEE in conjunction with the City of Gainesville, Department of Cultural Affairs. The aforementioned 12 days will be fairly and equitably apportioned between the City and the Community groups desiring use of one or more of the days. Additional performance days will be given by LESSEE when available, which availability will not be unreasonably withheld.

As a guide, requests for scheduled use of the leased premises for any of the aforementioned 12 performance days shall be made one year in advance. The schedule granted by the LESSEE shall ensure use during the period of peak audience appeal for the groups requesting facility use.

Any person or agency using the main stage during the 12 days allocated for City or Community use will pay LESSEE a daily fee of \$100.00 for performance days and a daily fee of \$75.00 for rehearsal days, which are apart from performance days. Daily performance fee and rehearsal fees will be equal to the actual operating cost of the space used. Any person or agency using the facility beyond the aforementioned 12 days must arrange for use with LESSEE. A reasonable daily fee for facility use beyond the aforementioned 12 days will be established by the LESSEE.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

LESSEE shall not at any time assign this Agreement or any part thereof, nor sublet all or any portion of the leased premises herein without written approval of LESSOR which approval shall not be unreasonably withheld, provided that the foregoing shall not prevent the assignment of this Agreement to any solvent corporation with which LESSEE may merge or consolidate, or which may succeed all or any portion of the business of LESSEE.

ARTICLE 18 – FIRE LOSS AND INSURANCE

The LESSEE shall replace any buildings or facilities destroyed by fire and return them to pre-damage condition so that the replacement will be equivalent in value to the original facilities. The LESSEE shall permit a proportionate abatement of rent during a reasonable time for the repair or replacement of such buildings or facilities. The LESSEE agrees to supply at its own cost and expense fire and extended coverage of at least 80% of the value of the leased premises with insurance companies licensed to do business in the State of Florida or state insurance fund if one is established.

ARTICLE 19 – INSPECTION BY LESSOR

LESSOR may enter upon the premises now or hereafter leased exclusively to LESSEE hereunder at any reasonable time for any purpose necessary; incidental to or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

ARTICLE 20 – SECURITY AND PROTECTION OF PREMISES

The LESSOR shall provide reasonable security to the premises in the form of lighting and routine police patrol. The LESSEE will be responsible for taking reasonable security and protection precautions for entry to the building and furnishing or other properties. The LESSEE will carry its own insurance coverage of contents of building and will afford the same protection to LESSOR's owned furnishings or contents as its own. The LESSOR shall not be liable for damage to, nor loss of, LESSEE's property on the leased premises, for any reason. Actions or conduct of LESSEE's clients, visitors, or employees shall be the sole responsibility of the LESSEE.

ARTICLE 21 – UNLAWFUL USES NOT PERMITTED

The LESSEE shall not permit any unlawful use of the leased premises.

ARTICLE 22 – NON-DISCRIMINATION

The LESSEE for itself, its personal representative, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

- A No person on the grounds of race, color, sex, and national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

ARTICLE 24 - WAIVER OF PERFORMANCE

Failure of the LESSOR to insist in any one or more instances upon a strict performance by the LESSEE of any of the provisions, terms, covenants, reservations, conditions or stipulations herein shall not be deemed to have been made, in any instance, unless specifically expressed in writing by the LESSOR as an amendment to this lease.

ARTICLE 25 - NOTICES

Notices to LESSOR provided for herein shall be sufficient if sent by registered mail, postage prepaid to: City Manager, City of Gainesville, Mail Station #6, P.O. Box 490, Gainesville, FL. 32602.

Notices to LESSEE, if sent by registered mail, postage prepaid, addressed to: Hippodrome State Theatre Administration, 25 Southeast 2nd Place, Gainesville, FL. 32601, or to such other respective addresses as the parties may designate to each other in writing from time to time.

ARTICLE 26 - PARAGRAPH HEADINGS

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

ARTICLE 27 - LITIGATION EXPENSES

In the event either party is required to enforce any of the terms of this Agreement against the other party, the defaulting party shall pay all costs and expenses applicable thereto, including reasonable attorneys' fees, whether initial court, appellate court or any other proceeding.

ARTICLE 28 - CONSTRUCTION OF AGREEMENT

This Agreement is made in and shall be construed in accordance with the laws of the State of Florida. All duties, obligations and liabilities of LESSOR and LESSEE with respect to the leased premises are expressly set forth herein and this Agreement can only be amended in writing and agreed to by both parties.

ARTICLE 29 - RECORDING

This Agreement when executed and delivered will be recorded in the Public Records of Alachua County, Florida, and cost of said recording shall be paid for by LESSOR.

City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601

Text File

File Number: 160393

Agenda Date: 10/20/2016

Version: 1

Status: Passed

In Control: City Manager

File Type: Staff
Recommendation

Title

Extend Hippodrome State Theatre, Inc. Contract (B)

This is a request to extend the Hippodrome State Theatre, Inc. Contract with the City by ten years in order to be eligible for Cultural Facilities Program Funds.

Explanation

The City of Gainesville has had a lease agreement Hippodrome State Theatre, Inc. for the past 36 years. A second 20-year lease was entered into on July 1, 2000, which was to continue until July 1, 2020. On September 9, 2002 the City Commission approved an extension of the lease agreement by 5 years from July 1, 2020 to July 1, 2025. The Hippodrome staff had requested, and the City Commission approved at its June 16, 2016 meeting, that the lease be extended one year in order for them to apply and be eligible for the 2016-17 Florida Division of Cultural Affairs Cultural Facilities Program funds, as application guidelines were recently revised requiring that agencies applying funds have at least a minimum lease of 10 years on the facilities for the category of Building Renovations Improvements. After subsequently reviewing options for a rolling extension of the lease to allow the Hippodrome State Theatre, Inc. to remain eligible for their recurring application for state capital improvement funding, the City Attorney in consultation with City Staff recommends instead of a one year extension, to extend the current lease 10 years to July 1, 2035.

Fiscal Note

The City of Gainesville currently grants the Hippodrome State Theatre, Inc. \$250,000 annually for rent payments and then receives \$250,000 back from the Hippodrome State Theatre, Inc. for payment of the rent. The rent amount has not changed since the initial Lease Agreement between the City and Hippodrome State Theatre, Inc.

Recommendation

The City Commission: 1) approve a ten year contract extension to the lease agreement with the Hippodrome State Theatre, Inc.; and 2) authorize the City Manager or his designee to execute the appropriate documents.



Artistic Excellence since 1973

Dear Commissioners:

January 24, 2017

On behalf of the company of actors, staff, board and supporters of the Hippodrome Theatre, we wish to extend our gratitude for your continued support and dedication to our artistic mission and community outreach.

As you are aware, the Hippodrome has been bringing professional theatre, independent cinema and arts education to Gainesville for more than forty years, and we have been anchor of our historic downtown since 1981. With hundreds of thousands of patrons and over 340 programming days annually, it is fair to say that no other institution has had - and continues to have - a more significant impact on the Gainesville arts community than the Hipp.

For decades now, the Hippodrome has enjoyed a treasured relationship with the City of Gainesville, and we appreciate the Commission's commitment to the Hippodrome and our continued partnership through the extension of our lease agreement through 2027. Furthermore, we look forward to working with you on the new long term agreement as was unanimously agreed to at the Commission meeting in October.

The annual lease grant provided to the Hippodrome provides a fantastic return on investment to our local economy. In fact, the University of Florida Center for Entrepreneurship and Innovation / Warrington College of Business completed a study on behalf of the Hippodrome which shows over \$8 million in economic impact to our region annually.

Hippodrome patrons spend an average of \$28 above and beyond their ticket purchase when they attend a play, creating over \$2,400,000 in direct economic impact to area businesses. Over 30% of Hippodrome patrons travel from outside Alachua County to attend the plays, films, special events and classes at the Hippodrome, bringing money into the county and contributing to tourism and destination enhancement for our area. The Hippodrome is a "Top Local Attraction" and one of the Top 3 "Can't Miss" places in Gainesville.

The Hippodrome is a gem in the heart of Gainesville's historic downtown, and thanks to our partnership with the City of Gainesville, the Hippodrome will continue to be a vital and dynamic cultural arts organization in service to our growing, innovative community.

Sincerely,

Lauren Caldwell, Artistic Director and Trustee

Jessica Hurov, Managing Director and Board Secretary