

Document Number

Document Title

THIRD AMENDMENT OF
LEASE AGREEMENT BETWEEN CITY OF
MILWAUKEE
AND
MARCUS CENTER FOR THE PERFORMING ARTS,
INC.

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AND
MARCUS CENTER FOR THE PERFORMING ARTS, INC.

Recording Area

Name and Return Address

Department of City Development
809 N. Broadway, 2nd floor
Milwaukee, WI 53202
Attention: Dan Casanova

This instrument was drafted by:

City of Milwaukee - Department of City Development
809 N. Broadway, 2nd Floor
Milwaukee, WI 53202

3921210100

Parcel Identification Number (PIN)

THIS THIRD AMENDMENT OF LEASE AGREEMENT (“**Third Amendment**”) is made as of _____, 2024, by and between the City of Milwaukee, a Wisconsin municipality, as lessor (“**Lessor**” or “**City**”), and Marcus Center for the Performing Arts, Inc., a Wisconsin non-stock corporation, assignee of Milwaukee County War Memorial Center, Inc., as lessee (“**Lessee**” or “**Marcus**”). Lessor and Lessee shall each be known for purposes of this Third Amendment as a “**Party**,” and together they shall be known for purposes of this Third Amendment as the “**Parties**.”

WHEREAS, on February 5, 1969, Lessor and Milwaukee County War Memorial Center, Inc. entered into a lease agreement (the “**Original Lease**”), recorded in the Milwaukee Register of Deeds Office on September 22, 1969 as document number 4488622, concerning the real property described as set forth on the attached Exhibit A (the “**Property**”) and the constructing, maintaining and operating of a parking structure on the Property;

WHEREAS, the Original Lease was first modified by Lessor and Milwaukee County War Memorial Center, Inc. pursuant to an instrument entitled “Amendment to Agreement between City of Milwaukee and Milwaukee County War Memorial Center, Inc.,” dated July 26, 1985 (the “**First Amendment**”).

WHEREAS, pursuant to the First Amendment, Lessor and Milwaukee County War Memorial Center, Inc. agreed, among other terms, to modify Section I of the Original Lease so that the lessee under the Original Lease (and the Lessee, as its assignee) should “have and . . . hold the leased premises for a term of 50 years, which term shall commence on the day the [Original Lease] is entered into and executed, and shall terminate on the 31st day of December, 2019, unless . . . extended or . . . sooner terminated either through consent or breach.”

WHEREAS, the Original Lease, as modified by the First Amendment, was further modified by by the Parties pursuant to an instrument entitled “Second Amendment of Lease Agreement,” dated March 3, 2015, and recorded in the Milwaukee Register of Deeds Office on April 6, 2015, as document number 10448533 (the “**Second Amendment**”);

WHEREAS, pursuant to the Second Amendment, the Parties agreed to further modify Section I of the Original Lease¹ so that: (i) the Lessee should “have and . . . hold the leased premises for a term that shall commence on the day when the [Original Lease] is entered into and executed, and shall terminate on December 31, 2022, unless . . . extended by the consent of both [P]arties or unless . . . sooner terminated either through consent or breach” and (ii) the term of the Original Lease, so extended, “shall automatically renew for an additional two-year term to expire on December 31, 2024, unless either [P]arty provides the other with written notice at least 90 days before December 31, 2022, of its intent to allow the [L]ease to terminate at the end of the term.”

¹ The Parties acknowledge and agree that the reference in paragraph 1 of the Second Amendment to “Section XI of the Original Lease” was inadvertent, and that the reference was intended to indicate--and shall for purposes of clarity be deemed to indicate—Section I of the Original Lease.

WHEREAS, the Original Lease, as so modified by the First Amendment and the Second Amendment, shall be referred to in this Third Amendment as the “**Existing Lease**.”

WHEREAS, neither Party delivered to the other written notice of intent to terminate the pertinent lease term ninety (90) or more days before December 31, 2022, and thus the term of the Existing Lease should, but for this Third Amendment, terminate on December 31, 2024.

WHEREAS, the Parties desire further to amend the Existing Lease upon the terms and conditions set forth in this Third Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Capitalized terms used, and not otherwise defined, in this Third Amendment shall have the same meanings as provided in the Existing Lease. The Existing Lease as modified by this Third Amendment shall herein collectively be referred to as the “**Lease**” and, from and after the date of this Third Amendment, any reference to the “**Lease**” shall mean the Existing Lease as modified by this Third Amendment.

2. Paragraph 1 of the Second Amendment—which further modified Section I of the Original Lease after its initial modification by paragraph 1 of the First Amendment—is hereby itself amended to delete the first two sentences of Section I of the Existing Lease in their entirety and replace them with the text set forth below:

Lessee is to have and to hold the leased premises for a term that shall commence on the day when the Lease is entered into and executed, and shall terminate on December 31, 2028, unless the Lease is extended by the mutual written consent of both Parties or unless the Lease is sooner terminated through consent or breach or as otherwise provided herein.

The Parties acknowledge that Lessor is actively pursuing efforts to redevelop the Property and may, upon approval by the City of Milwaukee Common Council of an agreement with a developer that includes an anticipated closing date for the conveyance of the Property to such developer (even if such approval contains contingencies to the redevelopment moving forward), deliver written notice to Lessee of Lessor’s intent to terminate the Lease in order to accommodate the redevelopment, whereupon the Lease shall terminate on a date specified in such notice—which date shall not be earlier than 180 days after Lessor delivers such notice to Lessee nor later than the Lease’s agreed expiration date of December 31, 2028. In addition, the Parties agree that Lessor shall hereafter provide Lessee with regular status updates on the timeline for redevelopment, to be provided at a minimum prior to February 1 of each calendar year beginning in 2025, in order to accommodate Lessee’s sale of parking to its season subscribers. The Parties shall also work together diligently and in good faith, prior to Lessor providing any such notice of termination and after such notice if needed, to coordinate the timely wind-down of parking operations at the Property in the event of such a termination, such coordination to include providing options for replacement parking for Lessee and addressing details

Exhibit A

All of Block 52 in Plat of Milwaukee, (East of the River), a recorded subdivision in the Northeast $\frac{1}{4}$ of Section 29, Township 7 North, Range 22 East, said block being bounded by North Edison Street, East Highland Avenue, East State Street, and North Water Street.

Property Address: 1001 N. Water Street

Property Tax Key No.: 3921210100

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