

RESOLUTION NO. \_\_\_\_\_

ADOPTED: \_\_\_\_\_, 2021

A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING A  
LEASE AGREEMENT BETWEEN SALT LAKE COUNTY AND OQUIRRH  
HILLS PERFORMING ARTS ALLIANCE

RECITALS

A. Salt Lake County (the “County”) owns a parcel of real property located at 9094 West Magna Main St., Magna, Utah, also identified as Parcel No. 14-19-453-017 (the “Property”).

B. Oquirrh Hills Performing Arts Alliance (the “Alliance”) operates the Empress Theatre and occupies a building located at 9104 West Magna Main Street, identified as Parcel No. 14-19-453-016, which is on a parcel immediately adjacent to the Property (the “Empress Parcel”).

C. The Alliance would like to lease the Property from the County to provide parking for its employees, volunteers, invitees, and patrons and access to the Empress Parcel.

D. The County and the Alliance have negotiated a Lease Agreement, attached as Exhibit A hereto, which has a five year term commencing on November 1, 2021, and requires the Alliance to pay a nominal amount of \$1.00 per year and be responsible for the maintenance of the Property.

E. Pursuant to Section 17-50-303(3)(a) of the Utah Code, it has been determined that lease of the Property to the Alliance contributes to the safety, health, comfort and convenience of county residents.

F. It has been determined that the best interests of Salt Lake County will be served by leasing the Property to the Alliance as provided in the Lease Agreement.

NOW, THEREFORE, it is hereby resolved by the Salt Lake County Council finds that the Lease Agreement between Salt Lake County and the Alliance contributes to the safety, health,

comfort and convenience of county residents,

IT IS FURTHER RESOLVED by the Salt Lake County Council that the attached Lease Agreement, is hereby approved and the Mayor is authorized to execute said Lease Agreement.

APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

SALT LAKE COUNTY COUNCIL

By \_\_\_\_\_  
Steve DeBry, Chair

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
Salt Lake County Clerk

- Council Member Alvord voting \_\_\_\_\_
- Council Member Bradley voting \_\_\_\_\_
- Council Member Bradshaw voting \_\_\_\_\_
- Council Member DeBry voting \_\_\_\_\_
- Council Member Granato voting \_\_\_\_\_
- Council Member Winder Newton voting \_\_\_\_\_
- Council Member Snelgrove voting \_\_\_\_\_
- Council Member Stringham voting \_\_\_\_\_
- Council Member Theodore voting \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
R. Christopher Preston  
Deputy District Attorney

Exhibit A  
Lease Agreement



County Contract No. \_\_\_\_\_  
DA Log No. 2021-18636

## LEASE AGREEMENT

**THIS LEASE** (this “**Lease**”) is entered into between Salt Lake County, (“**Landlord**”), a body corporate and politic of the state of Utah, whose address is 2001 South State Street, S3-110, Salt Lake County UT 84190 and Oquirrh Hills Performing Arts Alliance (“**Tenant**”), a Utah non-profit corporation, whose address is 9104 West Magna Main St., P.O. Box 208, Magna, UT 84044.

### RECITALS:

A. Landlord owns a parcel of real property located at 9094 West Magna Main St., Magna, Utah, also identified as Parcel No. 14-19-453-017 (the “Property”). A map depicting the Property is attached hereto as Exhibit A.

B. Landlord has installed several improvements on the Property, including a 20 stall parking lot.

C. Tenant operates the Empress Theatre and occupies a building located at 9104 West Magna Main Street, identified as Parcel No. 14-19-453-016, which is on a parcel immediately adjacent to the Property (the “Empress Parcel”).

D. Tenant would like to lease the Property from Landlord to provide parking for its employees, volunteers, invitees, and patrons and access to the Empress Parcel.

E. Tenant desires to lease the Property from Landlord, and Landlord desires to lease the Property to Tenant on the terms and conditions set forth in this Lease and subject to the terms and conditions set forth in the Quit Claim.

### AGREEMENT:

**NOW THEREFORE**, in consideration of the promises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. **Lease of the Property.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property.

Section 2. **Lease Term.** The Lease shall have an initial term of five (5) years (the “**Lease Term**”) commencing on November 1, 2021 and shall terminate on October 31, 2026.

Section 3. **Rental.** For the Lease Term, Tenant shall pay to Landlord as rent (the “**Rent**”) for the Property the amount of One Dollar and shall maintain the Property as provided herein.

Section 4. **Utilities.** Tenant shall be responsible for keeping the Property operational and paying for the maintenance, utilities, and all other costs associated with the use of the Property. If any new utility services are extended to the Property, Tenant shall be responsible to pay for all charges and expenses related to such utility services.

Section 5. **Damages and Repairs; Maintenance; Improvement.** Tenant, at its expense, shall be responsible for all maintenance, repairs, and improvements to the Property. Tenant shall keep Property in good working order free of weeds, debris and trash and shall be responsible for maintaining the parking lot, the landscaping, and all other improvements on the Property and the park strip along 9080 West in their current or better condition. Tenant may improve the Property at its own cost and expense with Landlord's prior written approval. Tenant shall immediately remove or repair any and all damage to or dangerous conditions occurring on the Property during the Lease Term. Tenant will also provide snow removal for the Property.

Section 6. **Taxes.** The Property is tax exempt but to the extent the Property is subject to real property taxes Tenant shall pay all real property taxes on the Property.

Section 7. **Insurance.** Tenant shall, at its sole cost and expense, secure and maintain during the term of this Lease, the following minimum insurance coverage:

A. Commercial general liability insurance on an occurrence form with the Landlord as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the Landlord, Tenant, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Tenant's use of the Property under this Lease, whether performed by Tenant itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

B. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Lease, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Lease or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the Landlord.

C. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

(1) Currently rated A- or better by A.M. Best Company;

—OR—

(2) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

D. Tenant shall furnish certificates of insurance, acceptable to the Landlord, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

E. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty-(30)-days prior written notice to the Landlord in a manner approved by the Salt Lake County District Attorney.

F. In the event Tenant fails to maintain and keep in force any insurance policies as required herein, Landlord shall have the right at its sole discretion to obtain such coverage and charge payments to Tenant for the costs of said insurance.

Section 8. **Condition of Property.** Tenant acknowledges that it has inspected the Property, that it accepts the Property in its condition as of the date of this Lease “AS IS,” and that Landlord makes no warranties, implied or explicit, including no warranties of habitability or fitness for a particular purpose. Upon termination of this Lease, Tenant shall return the Property to Landlord in the same or similar condition as at present.

Section 9. **Modifications/Improvements.** Tenant may improve the Property for the use and benefit of the general public with Landlord’s prior written approval,

Section 10. **Assignment.** Tenant may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Lease, in whole or in part, without the prior written approval of Landlord. This Lease shall be binding upon the heirs, successors and assigns of the parties.

Section 11. **Use.** The purpose of this Lease is to allow Tenant to use and maintain the parking lot on the Property and to allow Tenant and its employees, volunteers, invitees and patrons to access the Empress Parcel. Tenant shall not commit, or permit others to commit, waste on the Property or commit any other act that could disturb the quiet enjoyment of Landlord or of neighbors on adjacent property.

Section 12. **Use Conditions.** Tenant shall not use or occupy or permit the Property to be used or occupied in whole or in part in a manner which may violate the laws, orders, ordinances, rules, regulations, or requirements of any department of federal, state, county or city governments.

Section 13. **Termination.** This Lease may be terminated by either party at any time upon sixty (60) days’ prior written notice to the other as provided in Section 18(j) below. Upon such termination, Tenant agrees to vacate the Property on the termination date and return possession thereof, including any improvements made by Tenant thereon, to Landlord. Notwithstanding the foregoing, if breach of contract is alleged by either party against the other party, fifteen (15) days prior written notice of default shall be given to the other party before any legal action shall be taken. If the defaulting party fails to take any action to correct the default within fifteen (15) days of receipt of the written notice, this Lease shall automatically terminate.

Section 14. **Hold Harmless/Indemnification.** Landlord is a political subdivision of the State of Utah, and except as otherwise provided for by statute, is immune from suit under the Utah

Governmental Immunity Act, Utah Code Ann. § 63G-7-101, et seq. Landlord does not waive governmental immunity by entering into this Lease. Landlord shall not be liable to Tenant for (a) loss or theft of, or damage to, Tenant's property or (b) any injury to person or property incurred by Tenant or its invitees, licensees, or the like on the Property. Tenant shall indemnify and hold Landlord harmless from any and all claims, actions, or damages arising out of Tenant's use or occupancy of the Property.

Section 15. **No Hazardous Waste.** During the Lease Term, there shall be no disposal, release or threatened release of hazardous substance or hazardous waste on, from or under the Property by or through the act or neglect of Tenant or any of its employees, agents, subtenants, invitees, licensees or the like. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, liabilities, damages, actions and causes of actions involving Landlord or the Property and arising from or related to any breach by the Tenant of its obligations to guard the Property from any disposal, release or threatened release of hazardous substance or hazardous waste on, from or under the Property during the Lease Term. For purposes of this Section, the terms disposal, release and threatened release shall mean and include any hazardous, toxic or dangerous waste, substance or material or disposal, discharge, release or threatened release or any other such term that is defined as such (or for purposes of ) the Federal Comprehensive Environmental Response, Comprehensive and Liability Act or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree relating to any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect.

Section 16. **Liens and Encumbrances.** Tenant agrees that it shall not take any actions or make any representations in connection either with the Property or its activities on the Property which shall have the effect of, or result in the attachment of, any lien or other encumbrance to the Property or otherwise interfere with Landlord's title to the Property.

Section 17. **Quiet Enjoyment.** So long as Tenant keeps and performs all of its obligations under this Lease, Tenant shall have quiet enjoyment and possession of the Property during the Lease Term, free from any claims by Landlord or any person claiming by, through, or under Landlord.

Section 18. **General Provisions.** The following provisions also are integral to this Lease:

(a) **Binding Lease.** This Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Lease are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Lease or the intent hereof.

(c) **Counterparts.** This Lease may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Lease are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Lease.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Lease.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.

(g) Amendment. This Lease may not be modified except by an instrument in writing signed by the parties hereto. This Lease constitutes the entire integrated agreement between the parties and supersedes any and all other prior and contemporaneous understandings, negotiations or agreements between the parties, whether oral or written.

(h) Time of Essence. Time is the essence of this Lease.

(i) Interpretation. This Lease shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(j) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed as set forth above or to such substitute address(es) as may be provided by a party to the other from time to time in writing.

Section 19. **Condemnation**. If the whole of the Property shall be taken by any public or governmental authority under the power of eminent domain, then the term of this Lease shall cease as of the date possession is taken by such authority and the lease payments required hereunder shall be paid through the date of possession and not thereafter. If only a part of the Property shall be taken and the remainder not so taken remains tenantable for the purposes for which Tenant has been using the Property, then this Lease shall continue in full force and effect as to said remainder and all of the provisions hereof shall continue. If the remaining Property is untenable for Tenant's purposes, then Tenant may terminate this Lease by giving written notice to Landlord. The term "eminent domain" as used in this paragraph shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu thereof by a governmental entity. Landlord reserves all rights to compensation for damages to the Property, the land and the leasehold accruing by reason of the exercise of eminent domain.

Section 20. **Entry and Inspection**. Tenant grants a continuing right of access to the Property or any part hereof to Landlord and its employees, agents, and representatives. Said access shall be afforded at all reasonable times for the purpose of inspecting the Property, for necessary repairs and maintenance, for enforcement of the provisions hereof or for any other necessary or reasonable purpose of Landlord.

Section 21. **Ethical Standards.** Tenant represents that it has not: (a) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County Code of Ordinances § 2.07 (2001); or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

Section 22. **Effective Date.** This Lease is effective upon the signature of the last party to sign, as indicated by the corresponding date next to the signature.

IN WITNESS WHEREOF, the parties hereto sign and cause this Lease to be executed.

**TENANT:**  
OQUIRRH HILLS PERFORMING ARTS  
ALLIANCE



\_\_\_\_\_  
Nathan Metcalf, Executive Director

**LANDLORD:**  
SALT LAKE COUNTY

By: Exhibit Only - Do Not Sign  
Mayor or Designee

Administrative Approval

\_\_\_\_\_  
Derrick L. Sorensen, Salt Lake County Real  
Estate Manager

APPROVED AS TO FORM

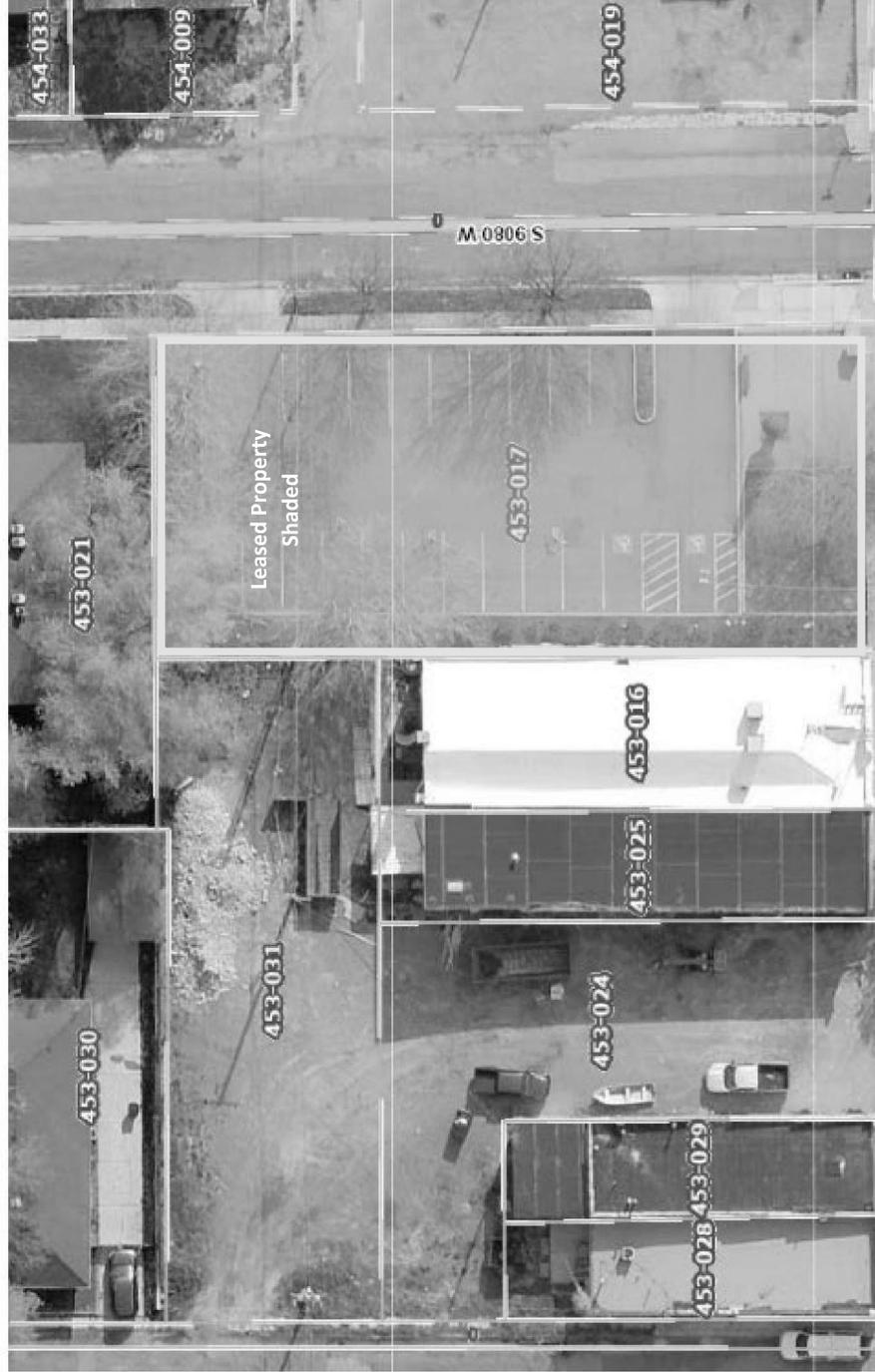


Digitally signed by R. Christopher  
Preston  
Date: 2021.10.08 17:50:46  
-06'00'

\_\_\_\_\_  
R. Christopher Preston  
Deputy District Attorney

# Exhibit A

Lease Agreement



Parcel	
Parcel Record	14194530170000
Owner	SALT LAKE COUNTY
Address	9094 W MAGNA MAIN ST
Total Acreage	0.28
Tax Class Id	400
Property Type	953
Tax District	ACB
% Exempt	100
Exempt Type	T
Municipal Zone	C-3
Valuation / Tax Year	2021
Land Value	\$ 80,700
Building Value	\$ 16,400
Final Value:	\$ 97,100
Legal Description:	COM 190 FT E FR SE COR LOT 1 LE CHEMINANT SUB E 74.5 FT N 166 FT W 74.5 FT S 166 FT TO BEG 0.28 AC