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03/08/2023 12:24 PM By: ECarter Fees: \$0.00
Rashelle Hobbs, Recorder Salt Lake County, Utah
Return To SANDY CITY RECORDER
10000 CENTENNIAL PARKWAY SANDY UT 84070



After recording, return to:

Sandy City
Attn: City Attorney
10000 Centennial Parkway
Sandy, Utah 84070

RIGHT OF FIRST REFUSAL AGREEMENT

(Beehive Improvements)

THIS AGREEMENT, made as of this 28th day of February, 2023, by and between HALE CENTRE THEATRE, a Utah non-profit corporation ("Grantor"), and SANDY CITY, a Utah municipal corporation ("Grantee");

RECITAL

1. The parties have previously entered into a certain Lease Agreement dated August 1, 2015, and a First Amendment to Lease Agreement, dated as of February 28, 2023 (collectively referred to as the "Ground Lease".)

WITNESSETH THAT:

IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, Grantor and Grantee hereby covenant and agree as follows:

1. Right of First Refusal.

Grantor does hereby grant unto Grantee, a right of first refusal (the "First Refusal Right") to purchase all of Grantor's right, title and interest in and to the building located on the real property identified in Exhibit A attached hereto and by this reference made a part hereof, and to all fixtures, and accessions thereto permanently affixed thereto which have been attached to or incorporated within, into or upon such property, and which thereby constitute fixtures or realty under applicable Utah law (collectively, for purposes of this First Refusal Right the "Beehive Improvements"), subject to and upon the terms and conditions set forth below.

During the term of this Agreement, in the event Grantor receives a bona fide written offer from any third party to purchase the Beehive Improvements, or any portion thereof, which Grantor desires to accept, Grantee may elect to purchase the Beehive Improvements or the applicable portion thereof, at the price and on the terms and conditions (except for the time within which to close the transaction) as are contained in the written offer. Grantor shall give notice to Grantee, including delivery to Grantee of a true and exact copy of the written offer, and allow Grantee thirty (30) calendar days subsequent to Grantee's receipt of such notice within which Grantee may elect to purchase the Beehive Improvements (the "Election Period"), or the applicable portion thereof, from Grantor; and in the event Grantee so elects to purchase the Beehive Improvements, or the applicable portion thereof, by giving notice of such election to Grantor within the Election Period, Grantor shall sell the Beehive Improvements, or the applicable portion thereof, to Grantee at the price and on the same terms and conditions as are contained in the written offer, except that

Grantee shall not be required to close the transaction prior to sixty (60) calendar days following the expiration of the Election Period. To the extent any portion of the price in the third-party bona fide offer is to be paid by non-cash consideration, such consideration shall be valued at the fair market value thereof as certified by an appraiser jointly selected by Grantor and Grantee.

Should Grantee, by written notice to Grantor, elect not to exercise the right to purchase, or should Grantee fail to notify Grantor of its election to purchase within the Election Period, then, in either of such events, Grantor shall be free to consummate the sale of the Beehive Improvements or such portion thereof to the third party submitting the written offer provided that the sale is closed and on the same material terms and conditions as are contained in the written offer, without any substantive modification thereto, except that the closing thereof may occur on or before the thirtieth (30th) day subsequent to the closing deadline (including any extensions) set forth in the written offer, but provided that the closing must occur within one (1) year after the date of the written offer. Should any such sale be consummated, this First Refusal Right shall thereafter be of no further force and effect with respect to the Beehive Improvements, or the applicable portion thereof. Should any such sale not be consummated as provided above, Grantor shall, in the event Grantor subsequently receives any modified or new bona fide written offer from any third party to purchase the Beehive Improvements, or any portion thereof, again follow the provisions of this paragraph requiring notice to Grantee and opportunity for Grantee to purchase the Beehive Improvements. Grantor shall not be obligated to offer to sell or to sell the Beehive Improvements, and Grantor shall not be obligated to disclose to Grantee any offer to purchase the Beehive Improvements or any portion thereof, which Grantor may receive which Grantor, in its sole discretion, does not accept or intend to accept.

2. Limitations and Exclusions on First Refusal Right.

Notwithstanding anything herein to the contrary, under no circumstances shall "a bona fide written offer from a third party" be deemed to include or shall this First Refusal Right be triggered by any of the following:

- i. a gift of the Beehive Improvements, or any portion thereof, by Grantor,
- ii. transfers to any parent, subsidiary or affiliate of Grantor or transfers to any entity controlled by or under common control with Grantor,
- iii. transfers by Grantor which are deemed or considered transfers by operation of law, liquidation or consolidation, including, without limitation, mergers, consolidations, reorganizations or dissolutions,
- iv. grants of easements, leases, licenses, concession agreements or transfers not in fee,
- v. involuntary transfers, including, without limitation, transfers in foreclosure, transfers in lieu of foreclosure, condemnation or deeds in lieu of condemnation, bankruptcy or court-ordered estate liquidation, and
- vi. other financing transactions of any nature no matter the structure, including financing arrangements which include lender acquisition rights.

The parties acknowledge that any of the foregoing transactions, and any sale to a third-party, shall be subject to, and shall require such transferees assumption of, the Grantor's obligations under the Ground Lease, the Deed of Trust in favor of Grantee providing additional collateral security for the Grantor's obligations under the Ground Lease, and this Right of First Refusal Agreement.

3. Term of First Refusal Right.

The First Refusal Right shall commence as of the date hereof and shall remain in effect until December 31, 2067, unless earlier terminated or expired pursuant to Section 2 or this Section 3 herein, or by mutual written agreement of the parties. Notwithstanding the foregoing stated Term of the First Refusal Right, the following shall apply:

- a. In the event that Grantor exercises the "Purchase Option" as set forth in Section 25 of the Ground Lease between the parties, and closes upon the "Property" as defined therein, the First Refusal Right as to the Beehive Improvements shall automatically terminate and be of no force and effect.
- b. In the event that Grantor does not exercise the "Purchase Option" in Section 25 of such Ground Lease, and extends the Term of the Ground Lease as provided in Section 2.3 of the Ground Lease, the First Refusal Right shall remain in effect as long as the Ground Lease remains in effect.
- c. In the event that the Grantor does not exercise the "Purchase Option", or extend the Term of the Ground Lease (and the Ground Lease Term expires), or if the Ground Lease expires or is terminated for any reason, ownership of and fee title to the Beehive Improvements shall automatically revert to the Grantee (or other Landlord under the Ground Lease), and the First Refusal Right shall merge into such fee title and thereby terminate automatically.

4. Exercise of First Refusal Right.

To exercise the First Refusal Right, Grantee must deliver written notice of its election to exercise the First Refusal Right to Grantor as provided in Section above. Upon such notice being given, this Agreement shall become a contract of purchase and sale subject to the terms contained in this Agreement. In the event the First Refusal Right has expired and terminated, any attempt to exercise the First Refusal Right shall be ineffective.

5. Broker and Broker's Commission.

Grantor and Grantee warrant and represent to the other that such party has not employed any broker or agent in connection with this Agreement. Grantee acknowledges that Grantee shall be entitled to no commission in the event Grantee elects to purchase the Beehive Improvements or applicable portion thereof, pursuant to the First Refusal Right. Grantee and Grantor covenant and agree, each to the other, to indemnify the other against any loss, liability, costs, demands, damages, actions, causes of action, or suits based upon or arising out of the alleged employment or use by the indemnifying party of any real estate broker or agent.

6. Closing.

The closing (hereinafter referred to as the "Closing") of the exercise of the First Refusal Right shall be held as provided in Section 1 of this Agreement, in the offices of a title company located in Salt Lake County, Utah, that is selected by Grantee (the "Title Company"). The exact time and date of Closing shall be selected by Grantee by delivering written notice thereof to Grantor at least (10) business days prior to Closing. In the event Grantee has exercised the First Refusal but does not notify Grantor of the exact time and date of Closing, Closing shall be held at 10:00 a.m. on the last day for closing as described in Section 1.

7. Survey and Inspection of Beehive Improvements.

From and after the date on which Grantee has notified Grantor of its election to purchase the Beehive Improvements pursuant to this First Refusal Right and until the date of Closing, Grantee and Grantee's agents, employees and independent contractors shall have the right and privilege to enter upon the Beehive Improvements to survey and inspect the Beehive Improvements, all at Grantee's sole cost and expense; provided, however, Grantee shall provide Grantor with reasonable prior written notice of any inspection or survey and Grantee, and Grantee's agents, employees and independent contractors, shall not disrupt or interfere with Grantor's activities at the Beehive Improvements. Grantee hereby covenants and agrees to indemnify and hold harmless Grantor and their partners from any and all loss, liability, costs, claims, demands, damages, actions, causes of action, or suits arising out of or in any manner related to the exercise by Grantee of Grantee's rights under this paragraph.

8. Notice.

a. Any notice, election, exercise of the First Refusal Right, or other communication required or permitted hereunder shall be delivered by hand (or by professional overnight courier service) or by certified United States mail, return receipt requested, postage and charges prepaid, to the following addresses:

To Grantor: Hale Centre Theatre
10000 Monroe Street
Sandy, Utah 84070
Attention: President

To Grantee: Sandy City
10000 Centennial Parkway
Sandy, Utah 84070
Attention: Mayor and City Attorney

b. Any notice, election, exercise of the First Refusal Right, or other communication delivered or mailed as provided above shall be effective upon receipt or refusal to accept delivery.

c. Each party hereto may change its address for notice, elections, exercising the First Refusal Right, and other communications from time to time by notifying the other party of the new address in the manner provided for giving notice herein.

9. Time of Essence.

Time is of the essence of this Agreement.

10. Entire Agreement.

This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by all the parties hereto. If all or any portion of this Agreement shall be declared invalid or unenforceable under applicable law, then the performance of such portion shall be excused to the extent of such invalidity or unenforceability, but the remainder of this Agreement shall remain in full force and effect; provided, however, that if the excused performance of such unenforceable provision shall materially adversely affect the interest of either party, the party so affected shall have the right to terminate this Agreement by written notice thereof to the other party, whereupon this Agreement

shall become null and void, except for those indemnities set forth in Section 7 of this Agreement and the provisions of Section 16 of this Agreement.

11. Headings.

The section headings are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope or content of this Agreement or any provision hereof.

12. Surviving Clauses after Closings.

Sections 5, 8 and 16 of this Agreement shall survive the Closing regardless of whether expressly incorporated into the closing documents. All other paragraphs of this Agreement shall be merged into the delivery of the closing documents and shall not survive Closing.

13. Applicable Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah.

14. Assignability.

Grantee may not assign Grantee's rights under this First Refusal Right Agreement without the prior written consent of Grantor, which may or may not be given in Grantor's sole discretion.

15. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee and their respective successors and assigns, if any.

16. Cancellation of Record of Grantee's Rights.

In the event the First Refusal Right expires and is terminated or if the First Refusal Right is exercised and the resulting contract is not consummated due to the default of Grantee, Grantee's rights and interests in and to the Beehive Improvements shall automatically be rendered void without action by Grantor or Grantee. No such termination shall affect the validity of the Deed of Trust in favor of Grantee securing Grantor's obligations under the Ground Lease.

[Intentionally left blank—signature page to follow]

IN WITNESS WHEREOF, Grantor and Grantee have set their hands and seals hereto as of the day and year first above written.

GRANTOR:

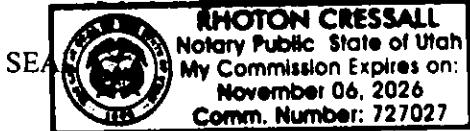
HALE CENTRE THEATRE

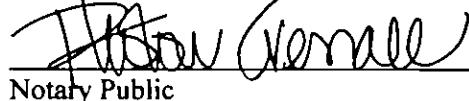
By:


Mark Dietlein, President

STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

On the 20th day of February, 2023, Mark Dietlein acknowledged to me that he executed this instrument as the duly authorized President of Hale Centre Theatre, a Utah nonprofit corporation.



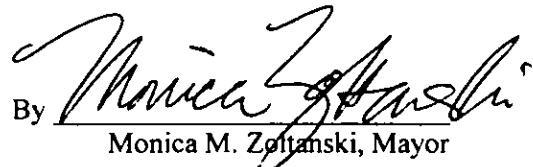


Notary Public



GRANTEE:

SANDY CITY, a Utah municipal corporation

By 
Monica M. Zoltanski, Mayor

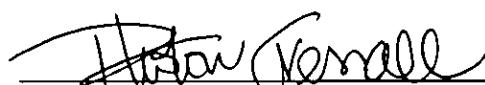
ATTEST:



Wendy Downs, City Recorder
CHARLIE CRESSALL

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 20th day of February, 2023, Monica M. Zoltanski and ~~Wendy Downs~~ each acknowledged to me that they executed this instrument in their capacities as Mayor and City Recorder, respectively, of Sandy City, Utah, a municipal corporation and body politic pursuant to the laws of the State of Utah.



Photon Cressall

Notary Public

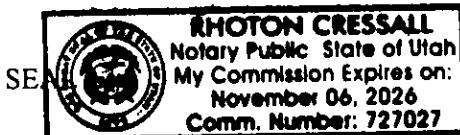


EXHIBIT "A"

Legal Description

The "Beehive Parcel" is a portion of Lot 103, Sandy Gardner Office Park Amended, according to the official plat thereof, filed and of record in the office of the Salt Lake County Recorder, and is more particularly described as follows:

Beginning at a point on the southerly boundary line of Lot 103 of the Sandy Gardner Office Park Amended, recorded as Entry No. 12753394 in Book 2018P at Page 166 in the Office of the Salt Lake County Recorder, said point being North 89°40'00" East 92.57 feet to a Salt Lake County survey monument in State Street and South 00°08'34" East 902.38 feet along the monument line in State Street and West 2,077.65 feet from the East Quarter Corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89°59'00" West 190.10 feet along said southerly boundary line to the Southwest Corner of said Lot 103; thence along the westerly boundary line of said Lot 103 the following three (3) courses:

- (1) North 125.07 feet;
- (2) East 124.00 feet;
- (3) North 1.18 feet;

thence North 89°56'08" East 63.34 feet; thence South 00°11'13" East 30.36 feet; thence North 89°58'54" East 2.65 feet; thence South 95.91 feet to the point of beginning.

Contains 23,768 Square Feet or 0.546 Acres

4882-6191-8027, v. 3