



Title: Resolution - High Point Theatre/Int'l Market Center HVAC Lease Amendment

From: JoAnne Carlyle, City Attorney

Meeting Date: November 19, 2018

Public Hearing: N/A

Advertising Date / October 17, 2018

Advertised By: High Point Enterprise

Attachments: Resolution
Sixth Amendment to Lease Agreement

PURPOSE: To standardize the HVAC expenses for the theatre to allow for a consistent budgeting for HVAC service and preventative maintenance.

BACKGROUND:

The original lease between the City of High Point ("Lessor") and the Southern Furniture Exposition Building, Inc. ("Lessee") was entered into on June 1st, 1973. That agreement was amended on February 21st, 1974. Neither the original lease nor the first amendment established a set yearly rate for utility payments that the City would be responsible for as the pro rata share for the High Point Theatre area of the building.

The High Point Theatre receives HVAC service from IMC. Historically the payout to IMC and its predecessors was based on a formula that only IMC understood for billing the theatre for this service. As a way of controlling the budget process for this service the Director of the theatre looked at a 5 year average of expenses for HVAC and developed, along with IMC a plan to standardize the expense.

This sixth amendment to the original lease will provide for a set monthly payment share by the High Point Theatre to be paid to IHFC Properties, LLC, whose predecessor in the property interest was the original Lessor, Southern Furniture Exposition Building, Inc. The remaining terms of the lease shall remain as set forth in the original agreement and the first amendment.

BUDGET IMPACT: \$90,000 annually

RECOMMENDATION / ACTION REQUESTED: Staff recommends adoption of a resolution approving the Sixth Amendment to the Lease.

**RESOLUTION AUTHORIZING EXECUTION OF
A SIXTH AMENDMENT TO LEASE
BETWEEN THE HIGH POINT THEATRE AND IHFC PROPERTIES, LLC
FOR HVAC USAGE**

WHEREAS, the City of High Point ("Lessor") and IHFC Properties, LLC's ("Lessee") predecessor-in-interest, Southern Furniture Exposition Building, Inc. entered into an Indenture of Lease dated June 1, 1973, as amended by that certain Amendment to Lease dated February 21, 1974, and that certain Second Amendment to Lease dated July 1, 2014, the Third Amendment to Lease dated July 1, 2015, the Fourth Amendment to Lease dated July 1, 2016, and the Fifth Amendment to Lease dated July 1, 2017 (collectively the "Lease") for real estate more particularly described in Exhibit A to the Lease and recorded in Deed Book 2714, Page 483, such real estate general known as 210-220 E. Commerce Ave, High Point, North Carolina; and

WHEREAS, pursuant to the Lease as amended, Lessee, among other things, constructed and tendered to Lessor a theater and office complex ("Theater") in compliance with building plans and specification approved by Lessor in the Lease, and provides heating and cooling services ("HVAC Services") to the Theater pursuant to mutually agreed upon terms and conditions; and

WHEREAS, both parties wish to extend the period of time during which the HVAC Services will be provided.

THEREFORE, BE IT RESOLVED BY THE HIGH POINT CITY COUNCIL that the Mayor is hereby authorized to execute the Sixth Amendment to the Lease between the City of High Point and IHFC Properties, LLC, which allows Lessee to continue providing the HVAC services for the period of July 1, 2018 through June 30, 2019, and that the remaining terms of the lease remain as set forth in the original agreement and previous amendments.

Adopted, this the 19th day of November, 2018.

Mayor Jay W. Wagner

Lisa B. Vierling, MMC
City Clerk



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WHEREAS, pursuant to the Lease as amended, Lessee, among other things, constructed and tendered to Lessor a theater and office complex (“Theater”) in compliance with building plans and specification approved by Lessor in the Lease, and provides heating and cooling services (“HVAC Services”) to the Theater pursuant to mutually agreed upon terms and conditions; and

WHEREAS, both parties wish to extend the period of time during which the HVAC Services will be provided.

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Mayor Jay W. Wagner

Lisa B. Vierling, MMC
City Clerk

SIXTH AMENDMENT TO LEASE

THIS SIXTH AMENDMENT TO LEASE (“Agreement”) made and entered into effective as of July 1, 2018 (the “Effective Date”) by and between the City of High Point, (“Lessor”), and IHFC Properties SPE, LLC, a Delaware limited liability company (“Lessee”) as successor-in-interest to IHFC Properties, LLC a Delaware limited liability company.

B A C K G R O U N D

WHEREAS, Lessor and Lessee’s predecessor-in-interest, Southern Furniture Exposition Building, Inc., a North Carolina corporation, entered into an Indenture of Lease dated June 1, 1973 as amended by that certain Amendment to Lease dated February 21, 1974, that certain Second Amendment to Lease dated July 1, 2014, the Third Amendment to Lease dated July 1, 2015, the Fourth Amendment to Lease dated July 1, 2016, and the Fifth Amendment to Lease dated July 1, 2017 (collectively the “Lease”) for real estate more particularly described in Exhibit A to the Lease and recorded at Deed Book 2714 page 483; such real estate generally known as 210-220 E. Commerce Avenue, High Point, North Carolina 27260;

WHEREAS, pursuant to the Lease as amended, Lessee, among other things, constructed and tendered to Lessor a theater and office complex (the “Theater”) in compliance with building plans and specifications approved by Lessor in the Lease, and provides heating and cooling services to the Theater pursuant to mutually agreed upon terms and conditions;

WHEREAS, the parties wish to modify the agreement and to extend the period of time during which the HVAC Services will be provided;

NOW THEREFORE, for good and valuable consideration duly received and acknowledged by the parties to be adequate and sufficient for the terms contained herein Lessor and Lessee hereby agree that the Lease is modified and amended by this Agreement as follows:

1. Duration of HVAC Services

Lessee shall continue to provide the HVAC Services for the period July 1, 2018 through and including June 30, 2019 (“Service Period”). Any renewals or extensions of the Service Period shall be upon mutual agreement of the parties and shall be in writing.

2. Cost of HVAC Services

Effective as of July 1, 2018 through and including June 30, 2019 the cost of HVAC Services shall be \$7,500.00 per month (collectively the “Service Charge”) for a total annual cost of \$90,000.00 for the Service Period. The monthly cost shall be subject to review each January 1st of any Service Period and, in the event it is determined that the cost shall be adjusted, such

adjustment shall be communicated to the Lessor in writing and shall take effect upon the renewal of the HVAC Services.

Cost of "After Hours" HVAC Services

Lessee shall be responsible for labor costs associated with a maintenance call that occurs "After Hours". "After Hours" is defined as those hours occurring within the period of 4:00PM EST through 7:00AM EST on Monday through Friday and, all day Saturday and Sunday. The cost of a maintenance call occurring during "After Hours" shall be billed at \$52.00 per hour with a two-hour minimum. Landlord agrees to notify Lessee in writing of any change in the window defining "After Hours".

3. Payment for Services

Payment for HVAC Services shall be made payable to IHFC Properties, LLC and shall be remitted to the following payment address:

IHFC Properties SPE, LLC
P.O. Box 535595
Atlanta, GA 30353-5595

4. Notices

For purposes of this Agreement, any notice relative to the HVAC Services shall be given as follows:

If to Lessee:

International Market Centers
Mr. James Leatherwood
Director of Facilities
209 South Main Street
High Point, NC 27260
Phone: (336) 888-3730

If to Lessor:

High Point Theater
Mr. David S. Briggs
220 E. Commerce Avenue
High Point, NC 27260
Phone: (336) 883-3627

5. Lessor and Lessee each mutually covenant, represent and warrant to the other that it has had no dealings or communications with any broker or agent in connection with this Agreement and, to the extent permitted by law, each covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense (including reasonable attorneys' fees) or liability for any compensation, commission or charges to any broker or agent claiming through the indemnifying party with respect hereto.

6. Lessor represents and warrants that it has taken all corporate, partnership or other action necessary to execute and deliver this Agreement, and that this Agreement constitutes the legally binding obligation of Lessor enforceable in accordance with its terms. Lessor shall save and

hold Lessee harmless from any claims, or damages including reasonable attorneys' fees arising from Lessor's misrepresentation of its authority to enter into and execute this Agreement.

7. Capitalized undefined terms used herein shall have the respective meanings given such terms in the Lease. In the event of a conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall supersede and control.

8. The parties acknowledge and agree that all terms and conditions of the Lease shall remain in full force and effect, except as modified by the terms and conditions of this Agreement.

**REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto the day and year first above written.

LESSOR:
THE CITY OF HIGH POINT

By: _____
Jay W. Wagner
Mayor

ATTEST:

By: _____
Lisa Vierling
City Clerk

LESSEE
IHFC PROPERTIES SPE, LLC

By: _____

Name: Scott Eckman
Its: President of Home Décor and
Furniture Leasing

By: _____

Name: Robert Maricich
Its: Chief Executive Officer

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By: _____

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