

City of Fayetteville Staff Review Form

2021-0921

Legistar File ID

12/7/2021

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Peter Nierengarten

11/17/2021

SUSTAINABILITY/RESILIENCE (631)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of an access easement, sidewalk easement and temporary construction easement with Lushbaugh Holdings, LLC for the premises located at 418 W. Meadow St., in consideration of the terms and conditions more fully described in the agreement for easements.

Budget Impact:

4608.860.7800-5810.00

Cultural Arts Corridor Bond

Account Number

Fund

46080.7800

Arts Corridor Improvements

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 18,678,413.00

Funds Obligated \$ 8,798,959.07

Current Balance **\$ 9,879,453.93**

Does item have a cost? Yes

Item Cost \$ 1,299.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 9,878,154.93**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # 244-21

Change Order Number: _____

Approval Date: 10/5/2021

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 7, 2021

TO: Mayor and City Council
THRU: Susan Norton, Chief of Staff
FROM: Peter Nierengarten, Environmental Director
DATE: November 16, 2021
SUBJECT: **Agreement for Easement with Lushbaugh Holdings, LLC**

RECOMMENDATION:

Staff recommends approval of an access easement, a sidewalk easement and a temporary construction easement with Lushbaugh Holdings, LLC for the premises located at 418 W. Meadow St., in consideration of the terms and conditions more fully described in the agreement for easements.

BACKGROUND:

During right-of-way acquisition phase of the Ramble/Cultural Arts Corridor project along West Ave, it was discovered that a portion of the property leased to Theatre Squared (at 477 W. Spring Street) was being utilized by the property owner to the south, Lushbaugh Holdings, LLC (at 418 W. Meadow St.) for driveway access to the property. Lushbaugh Holdings, LLC requested an access easement for that portion of property from the City in order to continue using the driveway. On October 5, 2021 the Fayetteville City Council approved Resolution No. 244-21 authorizing a lease amendment with Theatre Squared, Inc. that included removal of 91 square feet of property from their lease so that it could be granted to Lushbaugh, LLC as an access easement.

DISCUSSION:

The agreement for easements includes a sidewalk easement, a temporary construction and grading easement for sidewalk improvements and a driveway access easement for the 91 square foot portion of property used as a driveway by Lushbaugh Holdings, LLC. Additionally the agreement for easements includes provisions related to the replacement retaining wall and landscaping along West Avenue and includes stipulations related to the reconstruction of the sidewalk and driveway improvements along Meadow Street.

BUDGET/STAFF IMPACT:

The cost for the four month temporary construction and grading easement is \$1,299.00, however if the construction easement is required beyond May 31, 2022, the cost of the agreement shall be \$649.50 for each additional month.

Attachments:

- Agreement for Easements
- Driveway Assess Easement
- Driveway Access Easement Exhibit
- Sidewalk Easement
- Temporary Construction & Grading Easement
- Sidewalk and Temporary Construction & Grading Easement Exhibit
- Resolution No. 244-21

**AGREEMENT FOR EASEMENTS
BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS
AND LUSHBAUGH HOLDINGS, LLC**

This agreement (“Agreement”) is entered into on _____, 2021, by and between the City of Fayetteville, Arkansas (“City”) and Lushbaugh Holdings, LLC (“Lushbaugh”). In consideration of the foregoing and the mutual promises, covenants, and agreements contained in this Agreement, the Parties agree as follows:

1. Sidewalk Easement. Lushbaugh shall convey a 70 square foot permanent sidewalk easement to the City for the purpose of constructing and maintaining a public sidewalk. A copy of the easement is attached to this agreement as Exhibit A. The easement shall provide that the easement may be revoked by abandonment of the sidewalk area by the City.
2. Parking and Access Easement. As consideration for Lushbaugh’s conveyance of the sidewalk easement, the City shall convey a 91 square foot permanent access easement to Lushbaugh for the driveway area that is located on City property. Lushbaugh agrees to coordinate and cooperate with TheatreSquared, Inc. or its successor in interest in the event TheatreSquared requires access to the easement area for construction or maintenance activities. The easement shall provide that the easement may be revoked by abandonment of the driveway area by Lushbaugh and its successors and assigns. A copy of the easement is attached to this agreement as Exhibit B.
3. Temporary Construction and Grading Easement. Lushbaugh shall convey to the City a 432 square foot temporary construction and grading easement in exchange for, the sum of \$1,299.00 which the City shall pay Lushbaugh when the temporary construction and grading easement is executed. The temporary construction and grading easement shall expire one hundred twenty (120) days after the date the City or its contractor begins staging or construction in the temporary construction and grading easement. Construction is scheduled to be completed on Lushbaugh’s property by May 31, 2022. However, in the event the temporary construction and grading easement is required for more than one hundred twenty (120) days or has not been terminated by May 31, 2022, the City shall pay Lushbaugh a monthly rate of \$649.50 for each additional month or portion of a month it continues to occupy or use the temporary construction and grading easement until the temporary construction and grading easement is no longer being used and is terminated by appropriate instrument executed and recorded by the City.
4. Replacement of Retaining Wall in West Avenue Right of Way. The City shall replace the existing poured concrete retaining wall next to the West side of Lushbaugh’s property, which is also along West Avenue, with a native stone retaining wall which shall not have any fence on top of it but will have bermuda grass on top of the backfill dirt which shall be graded downhill from East to West to the top of the native stone retaining wall so surface water can flow freely over the top of the native stone retaining wall.
5. Landscaping Restrictions in West Avenue Right of Way. The City shall not plant, or allow to be planted, any trees within the right of way of West Avenue that will be of a type that, at

maturity, will block Lushbaugh's view of Old Main. Such trees may include, but are not limited to, redbuds and dogwoods but in any event shall not exceed 12 feet in height at maturity.

6. Sidewalk Improvements on Meadow Street. The City shall reduce the elevation and flatten the grade of the sidewalk across Lushbaugh's driveway on Meadow Street in order to alleviate high-centering problems for automobiles attempting to turn into and out of the driveway and parking spaces on Lushbaugh's property, which will also allow the City to move parallel parking to the south side of Meadow Street.
7. This agreement is binding upon, and inures to the benefit of, the parties and their respective successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the day and year first written above.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Lioneld Jordan, Mayor

Date: _____

ATTEST:

By: _____
Kara Paxton, City Clerk-Treasurer

LUSHBAUGH HOLDINGS, LLC

By: _____
Brad Lushbaugh, Managing Member

Date: _____

PARKING AND ACCESS EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTOR, for and in consideration of the conveyance of a sidewalk easement, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto Lushbaugh Holdings, LLC, an Arkansas limited liability company, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for parking, ingress, egress, and access purposes in, on, over, and across the land described below as Permanent Parking and Access Easement (Servient) Description, situated in the County of Washington, State of Arkansas, to-wit:

PERMANENT PARKING AND ACCESS EASEMENT (SERVIENT) DESCRIPTION:

A part of the Southwest Quarter (SW¼) of Block Numbered Nine (9) in the City of Fayetteville, Arkansas, also being described as follows, to-wit: Beginning at the Southwest corner of said Block Nine (9), thence North 02°41'07" East 81.28 feet along the existing right-of-way of West Avenue to the point of beginning which is the northwest corner of the property described in Instrument No. 2004-17115; thence North 02°41'07" East 2.50 feet; thence South 87°59'49" East 40.61 feet; thence South 02°15'00" West 2.00 feet; thence North 88°42'06" West 40.63 feet to the point of beginning, having an area of 91 square feet, more or less.

A sketch of this easement is attached as Exhibit "A" and is to be considered a part of this document. It is understood that this sketch is descriptive only of the size, shape, and location of the Permanent Parking and Access Easement and does not constitute a plat or survey of the Grantor's property.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, for the uses and purposes, and subject to the obligations, duties, and conditions, hereinafter set forth; provided, however, the easement may be terminated by mutual written agreement of Grantor and Grantee or Grantee's successors and assigns, if Grantee, or Grantee's successors and assigns, permanently ceases to use the Easement for parking, ingress, egress, or access to the real property described below as Grantee's (Dominant) Legal Description.

The Permanent Parking and Access Easement granted herein shall run with the land and inure to the benefit of Grantee, and Grantee's successors and assigns, forever.

GRANTEE'S (DOMINANT) LEGAL DESCRIPTION: (Deed Ref. 2004-17115)

The West Eighty-eight (88) Feet of the South Half (S½) of the Southwest Quarter (SW¼) of Block Numbered Nine (9) in the Town (now City) of Fayetteville, Arkansas, also being described as follows: Beginning at the Southwest corner of said Block Nine (9), said point being a set ½" iron rebar; thence N 00°42'43" East along the West line of said Block Nine (9) 81.28 feet to a set ½" iron rebar; thence N 89° 19'26" E 88.94 feet (deed=88 feet) to a set ½" iron rebar; thence S 00°45'49" W 81.27 feet to an existing iron on the South line of said Block Nine (9); thence S 89°19'22" W 88.87 feet (deed=88 feet) to the Point of Beginning.

Neither of the parties hereto, nor their successors and assigns, shall erect, or permit the erection of, any buildings or structures in said access easement area. However, Grantee, and its successors and assigns, shall have the right to replace any portion or all of existing concrete driveway located in the Permanent Parking and Access Easement area and may also replace existing sewer drain lines, if any, running below grade across the Permanent Parking and Access Easement area.

Grantee has agreed to coordinate and cooperate with TheatreSquared, Inc. or its successor in interest to the lease agreement in the event TheatreSquared requires access to the easement area for temporary construction or maintenance purposes, PROVIDED, HOWEVER:

1. That neither Grantor nor TheatreSquared, Inc. and its successors and assigns, shall permit their staff, agents, customers, invitees, patrons or contractors to park motor vehicles or equipment, or store supplies, in the Permanent Parking and Access Easement area; and
2. In the event that either Grantor or TheatreSquared, Inc. or its successors and assigns, needs to use the Permanent Parking and Access Easement area for temporary construction or maintenance purposes, reasonable notice shall be given in writing to Grantee, or its successors and assigns, of the specific date, time, and reasonable duration the Permanent Parking and Access Easement area will be used for temporary construction or maintenance, after which the permanent parking and access easement area shall be unobstructed for the exclusive use of Grantee, its successors and assigns, clients, licensees, and invitees.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, successors and assigns of the parties hereto.

WITNESS the execution hereof on this the _____ day of _____, 2021.

**CITY OF FAYETTEVILLE, ARKANSAS,
a municipal corporation, GRANTOR**

ATTEST:

By: _____
Lioneld Jordan, Mayor

Kara Paxton, City Clerk

[Seal]

LUSHBAUGH HOLDINGS, LLC, GRANTEE

By: _____
Brad Lushbaugh, Trustee, Managing Member

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Lioneld Jordan** and **Kara Paxton**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2021.

MY COMMISSION EXPIRES:

Notary Public



765-01751-00
City of Fayetteville
477 W. Spring
Warranty Deed
Inst. No. 98-286605

N 02°41'07" E
2.50'

S 87°59'49" E 40.61'

S 02°15'00" W
2.00'

N 88°42'06" W 40.63'

North West Avenue

765-01754-000
Lushbaugh Holdings LLC
418 Meadow Street
Warranty Deed
Inst. No. 2004-17115

81.28'

N 02°41'07" E

P.O.B.

P.O.C.

Southwest Corner
Block 9 of the
Original Town Plat



ACCESS EASEMENT
- 91 S.F

EXHIBIT
MAY 2020

ACCESS EASEMENT
FOR
LUSHBAUGH HOLDINGS LLC

SIDEWALK EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Lushbaugh Holdings, LLC, an Arkansas limited liability company**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration including, but not limited to, the covenants contained in one Easement Agreement dated _____, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace a sidewalk for public access on, over, across, and through the land described below as Permanent Sidewalk Easement Description, situated in the County of Washington, State of Arkansas, to-wit:

PERMANENT SIDEWALK EASEMENT DESCRIPTION:

A part of the Southwest Quarter (SW¼) of Block Numbered Nine (9) in the City of Fayetteville, Arkansas, also being described as follows, to-wit: Beginning at the Southwest corner of said Block Nine (9), thence North 02°41'07" East 12.00 feet; thence South 41°56'26" East 16.71 feet; thence North 87°50'57" West 11.74 feet to the POINT OF BEGINNING; having an area of 70 square feet.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such sidewalk shall be maintained, together with free ingress to and egress from the land described in the Permanent Sidewalk Easement Description for the uses and purposes, and subject to the obligations, duties, and conditions, hereinafter set forth.

GRANTOR'S (SERVIENT) PROPERTY DESCRIPTION: (Document: 2004-17115)

The West Eighty-eight (88) Feet of the South Half (S½) of the Southwest Quarter (SW¼) of Block Numbered Nine (9) in the Town (now City) of Fayetteville, Arkansas, also being described as follows: Beginning at the Southwest corner of said Block Nine (9), said point being a set ½" iron rebar; thence N 00°42'43" East along the West line of said Block Nine (9) 81.28 feet to a set ½" iron rebar; thence N 89° 19'26" E 88.94 feet (deed=88 feet) to a set ½" iron rebar; thence S 00°45'49" W 81.27 feet to an existing iron on the South line of said Block Nine (9); thence S 89°19'22" W 88.87 feet (deed=88 feet) to the Point of Beginning.

The parties hereto shall not erect any buildings, structures, or monuments within the said Permanent Sidewalk Easement.

This Permanent Sidewalk Easement shall terminate at such time as the sidewalk on the land described above as the Permanent Sidewalk Easement Description is abandoned or permanently demolished by Grantee, or its successors or assigns.

Grantor makes no representations or warranties regarding legal title to the land described above in the Permanent Sidewalk Easement Description or reversionary rights, if any, therein.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, successors and assigns of the parties hereto.

WITNESS the execution hereof on this the _____ day of _____, 2021.

LUSHBAUGH HOLDINGS, LLC, GRANTOR

By: _____
Brad Lushbaugh, Trustee, Managing Member

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Lushbaugh Holdings, LLC, an Arkansas limited liability company**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a temporary construction and grading easement on, over, and through the land described below as Temporary Construction and Grading Easement Description, situated in the County of Washington, State of Arkansas, to-wit:

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A part of the Southwest Quarter (SW $\frac{1}{4}$) of Block Numbered Nine (9) in the City of Fayetteville, Arkansas, also being described as follows, to-wit: Beginning at the Southwest corner of said Block Nine (9), thence North 02°41'07" East 12.00 feet along the existing right-of-way of West Avenue to the Point of Beginning; thence North 02°41'07" East 69.28 feet along the existing right of way of West Avenue; thence South 88°42'06" East 5.00 feet; thence South 02°41'07" West 67.35 feet; thence South 41°56'26" East 19.50 feet; thence North 87°50'57" West 6.96 feet along the North right of way of Meadow Street; thence North 41°56'26" West 16.71 feet to the POINT OF BEGINNING; having an area of 432 square feet.

A sketch of this easement is attached as Exhibit "A" and is to be considered as part of this document. It is understood that this sketch is descriptive only of the size, shape, and location of the temporary easement and does not constitute a plat or survey of the Grantor's property.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first herein above described as Temporary Construction and Grading Easement for the uses and purposes, and subject to the obligations, duties, and conditions, hereinafter set forth.

The purpose of this Temporary Construction and Grading Easement is to allow Grantee to use the property described above as the "Temporary Construction and Grading Easement Description" in order to expand its sidewalk and to replace the current poured concrete retaining wall with a native stone retaining wall of similar size and shape.

GRANTOR'S (SERVIENT) PROPERTY DESCRIPTION: (Deed Ref. 2004-17115)

The West Eighty-eight (88) Feet of the South Half (S $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Block Numbered Nine (9) in the Town (now City) of Fayetteville, Arkansas, also being described as follows: Beginning at the Southwest corner of said Block Nine (9), said point being a set $\frac{1}{2}$ " iron rebar; thence N 00°42'43" East along the West line of said Block Nine (9) 81.28 feet to a set $\frac{1}{2}$ " iron rebar; thence N 89° 19'26" E 88.94 feet (deed-88 feet) to a set $\frac{1}{2}$ " iron rebar; thence S 00°45'49"W 81.27 feet to an existing iron on the South line of said Block Nine (9); thence S 89°19'22" W 88.87 feet (deed=88 feet) to the Point of Beginning.

This temporary construction and grading easement as conditioned hereinafter shall terminate upon the EARLIER OF (1) one hundred twenty (120) days after Grantee or Grantee's agent has commenced work on the Temporary Construction and Grading Easement Description or (2) when the above-referenced project has been completed by Grantee or Grantee's contractor and accepted by Grantee; this Temporary Construction and Grading Easement is anticipated to be abandoned by May 31, 2022; however, in the event Grantee requires additional time to complete construction, Grantee shall pay the amount of \$649.50 for each additional month or portion of a month it continues to occupy the temporary construction easement.

It is expressly understood that the Temporary Construction and Grading Easement granted herein shall exclude any permanent structure(s) located or under construction within said temporary construction easement area during the construction of this project. Grantee shall be obligated to maintain, and not adversely affect, the structural integrity of the improvements on Grantor's (Servient) property while working on the above-referenced project; furthermore, Grantee shall preserve the grade on Grantor's (Servient) Property so that water will be able to easily drain over all improvements constructed pursuant to the above-referenced project. Grantee shall not construct any wall or fence above grade on or adjacent to Grantor's (Servient) Property. Grantee shall, within the time period allowed by this temporary construction and grading easement, return all Bermuda turf and landscaping immediately to the east of the new native stone retaining wall to the same or better condition it was in before the said easement period commenced.

Grantor makes no representations or warranties regarding legal title to the land described above in the Temporary Construction and Grading Easement Description or reversionary rights, if any, therein.

**CITY OF FAYETTEVILLE, ARKANSAS,
a municipal corporation, GRANTEE**

By: _____
Lioneld Jordan, Mayor

ATTEST:

Kara Paxton, City Clerk

[Seal]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Lioneld Jordan** and **Kara Paxton**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2021.

MY COMMISSION EXPIRES:

Notary Public

S 88°42'06" E
5.00'

5'

North West Avenue

N 02°41'07" E 69.28'

S 02°41'07" W 67.35'

Existing R/W

Proposed R/W

N 02°41'07" E
12.00'

S 41°56'26" E
16.71'

S 41°56'26" E
19.50'

11.74'

6.96'

N 87°50'57" W

Existing R/W

P.O.B.-R/W
Southwest Corner
Block 9 of the
Original Town Plat

P.O.B.
T.C.E.

Meadow Street



765-01754-000
Lushbaugh Holdings LLC
418 Meadow Street
Warranty Deed
Inst. No. 2004-17115



SIDEWALK EASEMENT
- 70 S.F.



TEMPORARY CONSTRUCTION
EASEMENT (5' WIDE)
- 432 S.F.

EXHIBIT
JUNE 2020

SIDEWALK EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT
FOR
LUSHBAUGH HOLDINGS LLC



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 244-21

File Number: 2021-0733

THEATRESQUARED, INC. LEASE AGREEMENT AMENDMENT:

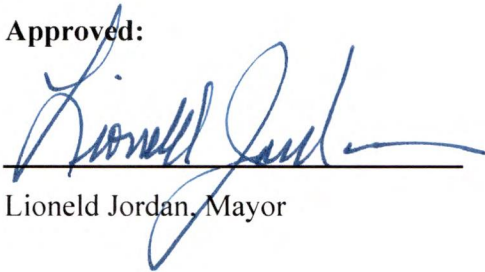
A RESOLUTION TO APPROVE AN AMENDMENT TO THE LEASE AGREEMENT WITH THEATRESQUARED, INC. TO REMOVE 91 SQUARE FEET OF PROPERTY FROM THE LEGAL DESCRIPTION, AND TO ALLOW THE RESIDENTIAL FACILITIES TO BE USED AS SHORT TERM RENTALS WHEN NOT NEEDED FOR PERFORMANCES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves an amendment to the Lease Agreement with TheatreSquared, Inc. to remove 91 square feet of property from the legal description and to allow the residential facilities to be used as short term rentals when not needed for performances.

PASSED and APPROVED on 10/5/2021

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer





City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2021-0733

Agenda Date: 10/5/2021

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A.12

THEATRESQUARED, INC. LEASE AGREEMENT AMENDMENT:

A RESOLUTION TO APPROVE AN AMENDMENT TO THE LEASE AGREEMENT WITH THEATRESQUARED, INC. TO REMOVE 91 SQUARE FEET OF PROPERTY FROM THE LEGAL DESCRIPTION, AND TO ALLOW THE RESIDENTIAL FACILITIES TO BE USED AS SHORT TERM RENTALS WHEN NOT NEEDED FOR PERFORMANCES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves an amendment to the Lease Agreement with TheatreSquared, Inc. to remove 91 square feet of property from the legal description and to allow the residential facilities to be used as short term rentals when not needed for performances.

City of Fayetteville Staff Review Form

2021-0733

Legistar File ID

10/5/2021

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Peter Nierengarten

9/16/2021

SUSTAINABILITY/RESILIENCE (631)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a lease amendment with Theatre Squared, Inc. for the premises located at 477 W. Spring St., in consideration of the terms and conditions more fully described in the lease amendment.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	<u>No</u>	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	<u>No</u>	Item Cost	\$ -
Budget Adjustment Attached?	<u>No</u>	Budget Adjustment	\$ -
		Remaining Budget	\$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # 121-16

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF OCTOBER 5, 2021

TO: Mayor and City Council
THRU: Susan Norton, Chief of Staff
FROM: Peter Nierengarten, Environmental Director
DATE: September 15, 2021
SUBJECT: Lease Amendment with Theatre Squared

RECOMMENDATION:

Staff recommends approval of a lease amendment with Theatre Squared, Inc. for the premises located at 477 W. Spring St., in consideration of the terms and conditions more fully described in the lease amendment.

BACKGROUND:

On June 7, 2016, the Fayetteville City Council approved Resolution No. 121-16 authorizing a long-term lease agreement with Theatre Squared, Inc. for property located at the southeast corner of Spring Street and West Ave (477 W. Spring Street). Since that time Theatre Squared constructed a state-of -the-art theatrical performance facility on the premises, including a restaurant/coffee shop and several residential apartments.

During right-of-way acquisition phase of the Ramble/Cultural Arts Corridor project along West Ave, it was discovered that a portion of the property leased to Theatre Squared is being utilized by the property owner to the south, Lushbaugh Holdings, LLC at 418 W. Meadow St. for driveway access to the property. Lushbaugh Holdings, LLC has requested an access easement for that portion of property from the City in order to continue using the driveway.

DISCUSSION:

The lease amendment with Theatre Squared, Inc. excludes from the leased premises the 91 square foot portion of property used as a driveway by Lushbaugh Holdings, LLC, the property owner to the south.

Additionally, during discussions with Theatre Squared, Inc. about the lease amendment, they requested an additional amendment to the portion of the lease regarding assignment and subletting. Their request is to allow residential units on the premises to be rented as short term rentals when not needed for visiting performance artists, playwrights, set/lighting/costume designers or directors.

BUDGET/STAFF IMPACT:

None

Attachments:

- Amendment No. 1 to Lease Agreement Between the City of Fayetteville, Arkansas and TheatreSquared, Inc.
- Exhibit A
- Resolution No. 121-16

Amendment No. 1 to Lease Agreement
Between the City of Fayetteville, Arkansas
And TheatreSquared, Inc.

WHEREAS, the Fayetteville City Council approved Resolution No. 121-16 authorizing a long term lease agreement with TheatreSquared, Inc. for approximately 0.90 acres of land at 477 W. Spring Street (the “Lease Agreement”) and the Lease Agreement was signed by Mayor Lioneld Jordan on behalf of the City of Fayetteville on June 9, 2016; and

WHEREAS, TheatreSquared has requested an amendment to the Lease Agreement to allow it to utilize its residential facilities as short term rentals when not being used to provide free housing for visiting artists and others involved in its artistic endeavors; and

WHEREAS, the City and TheatreSquared wish to remove from the Leased Premises a 91 square foot portion of land currently used as a driveway by the property owner to the south.

NOW, THEREFORE, The City of Fayetteville (“City”), TheatreSquared, Inc. (TheatreSquared) hereby amend the Lease Agreement as follows:

1. Section 1 of the Lease Agreement is amended to replace Exhibit “A” with the new Exhibit “A” attached hereto, which excludes from the Leased Premises the 91 square foot portion of property used as a driveway by Lushbaugh Holdings, LLC, the property owner to the south.

2. Section 17 of the Lease Agreement is amended to read as follows:

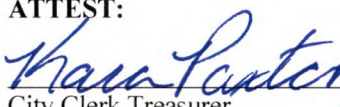
(17) **Assignment and Subletting.** Subject to Section 39, Theatre Squared, Inc. may not assign, sublet, mortgage or otherwise encumber its interest or estate in the Premises, or any part thereof, or its rights pursuant to this Lease Agreement, without the prior written consent of City of Fayetteville, Arkansas, which consent shall not be unreasonably withheld. Notwithstanding the

foregoing. Lessee shall be permitted to allow use of the Premises by art-related entities and resident companies. Temporary subletting of community meeting or education space and subletting portions of its planned residential facilities to visiting performance artists: playwrights: set, lighting, costume and similar designers: and directors around the period of their performances, rehearsals for said performances or artistic work at the Theatre Squared, Inc.'s theater are authorized without further Resolution of the City Council. When not needed for the above-described purposes, TheatreSquared may utilize its residential facilities as short term rentals (regardless of whether such rentals are art-related) without further Resolution of the City Council. Any assignment or subletting by Theatre Squared, Inc. shall not act or release Theatre Squared, Inc. from its obligations pursuant to this Lease Agreement.

CITY OF FAYETTEVILLE, ARKANSAS

By: 
Mayor Lionel Jordan

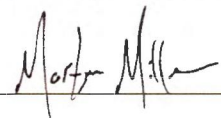
ATTEST:


City Clerk Treasurer


Date: October 5th, 2021



THEATRE SQUARED, INC.

By: 
Title: Executive Director

ATTEST:


Secretary

Date: September 17, 2021

EXHIBIT "A"

DESCRIPTION OF PREMISES

LEGAL DESCRIPTION:

A PART OF BLOCK 9 IN THE ORIGINAL PLAT OF THE TOWN OF FAYETTEVILLE, AR AND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NW CORNER OF BLOCK 9 THENCE S87°27'31"E 155.00 FEET, THENCE S03°00'42"W 151.50 FEET, THENCE S87°27'31"E 6.00 FEET, THENCE S03°00'42"W 92.13 FEET, THENCE N87°43'20"W 161.76 FEET, THENCE N03°11'17"E 244.38 FEET TO THE P.O.B., CONTAINING 0.88 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

LESS AND EXCEPT: A FIFTEEN FOOT STRIP DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF BLOCK 9; THENCE NORTH 89 DEGREES 27 MINUTES 19 SECONDS EAST 15 FEET; THENCE SOUTH 0 DEGREES 06 MINUTES 07 SECONDS WEST 151.50 FEET; THENCE SOUTH 89 DEGREES 27 MINUTES 19 SECONDS WEST 15 FEET; THENCE NORTH 0 DEGREES 06 MINUTES 07 SECONDS EAST 151.50 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT: A part of the Southwest Quarter (SW¼) of Block Numbered Nine (9) in the City of Fayetteville, Arkansas, also being described as follows, to-wit: Beginning at the Southwest corner of said Block Nine (9), thence North 02°41'07" East 81.28 feet along the existing right-of-way of West Avenue to the point of beginning which is the northwest corner of the property described in Instrument No. 2004-17115; thence North 02°41'07" East 2.50 feet; thence South 87°59'49" East 40.61 feet; thence South 02°15'00" West 2.00 feet; thence North 88°42'06" West 40.63 feet to the point of beginning, having an area of 91 square feet, more or less.



765-01751-00
City of Fayetteville
477 W. Spring
Warranty Deed
Inst. No. 95-286605

N 02°41'07" E
2.50'

S 87°59'49" E 40.61'

S 02°15'00" W
2.00'

N 88°42'06" W 40.63'

North West Avenue

81.28'

N 02°41'07" E

765-01754-000
Lushbaugh Holdings LLC
418 Meadow Street
Warranty Deed
Inst. No. 2004-17115

P.O.B.

P.O.C.

Southwest Corner
Block 9 of the
Original Town Plat



Less & Except 91 S.F

EXHIBIT
THEATERSQUARED, INC.

AUG. 2021