

EXHIBIT

"A"

TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2024 by and among R.C. CENTER LIMITED PARTNERSHIP ("**Landlord**"), PENFOLD THEATRE COMPANY ("**Tenant**"), and CITY OF ROUND ROCK (the "**City**").

WITNESSETH:

A. Tenant and Landlord are parties to that certain Retail Lease Agreement dated on or about the date hereof (the "**Lease**") for certain premises commonly known as Suite 290 (the "**Premises**") situated in the Rock Creek Plaza Shopping Center in Round Rock, Texas.

B. The City and Tenant are parties to that certain Grant Agreement for the Encouragement of the Performing Arts dated on or about the date hereof (the "**Grant Agreement**") which, among other things, contains certain agreements of the City to provide Tenant with certain grant funds to assist Tenant with its financial obligations under the Lease, all as more particularly set forth in the Grant Agreement.

C. In particular, pursuant to the Grant Agreement, on and subject to the terms and conditions more particularly set forth therein, the City has agreed to pay Tenant's base rent and estimated operating expenses under the Lease for eighteen (18) full months in an amount equal to \$326,330.00 ("**Grant Funds**"). In consideration therefor, the City is receiving the benefit of Tenant operating a theatre for the performing arts in the Premises.

D. On and subject to the terms of this Agreement, the parties hereto desire that the City pay the Grant Funds directly to Landlord each month when due in order to satisfy Tenant's monthly rental obligations to Landlord under the terms of the Lease, all as more particularly set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Payment of Monthly Rent by the City**. The parties hereby acknowledge and agree that the Lease states, in part, that Tenant shall pay to Landlord base rent (as defined in the Lease) per calendar month for the first twenty-two (22) full months of the term (as defined in the Lease) (the period of time from the date hereof until the expiration of such 22-month period, the "**City Payment Term**") in the amounts as shown below, which base rent is in addition to Tenant's prorata share of the retail center operating expenses which are currently estimated to be \$9.33 PSF/YR per square foot of usable area for the calendar year 2024 (for the avoidance of any doubt, the rent table shown below is not a complete depiction of all rent due under the Lease for the entire Lease term).

<u>Period</u>	<u>Base Rent</u> <u>per Calendar Month</u>	<u>Estimated Operating Expenses</u> <u>per Calendar Month</u>	<u>Total Monthly</u> <u>Payment</u>
Months 1 – 4*	\$12,928.00*	\$5,022.00*	\$17,950.00*
Months 5 – 12	\$12,928.00	\$5,022.00	\$17,950.00
Months 13 – 22	\$13,251.00	\$5,022.00	\$18,273.00

*Rent for the first four (4) full months of the Lease term shall be abated so long as Tenant is not in default hereunder beyond any applicable notice and cure periods.

Accordingly, notwithstanding anything in the Grant Agreement or the Lease to the contrary, the parties hereto hereby expressly agree that the City shall pay the total monthly payment required to be paid by Tenant under the Lease in the amount set forth above (each a "Monthly Payment") directly to Landlord each month for full months 5-22 of the Lease term (for a total of 18 full Monthly Payments) per the instructions in this section below, and Tenant and the City, by their execution of this Agreement below, hereby expressly authorize and agree to the City making each such Monthly Payment directly to Landlord for the benefit of Tenant under the Lease. The City shall pay each Monthly Payment to Landlord as follows:

- i. Within five (5) business days after Landlord delivers written notice to the City that the delivery date (as defined in the Lease) has occurred, the City shall pay directly to Landlord, for the benefit of Tenant under the Lease, an amount equal to \$17,950.00, which shall serve as prepaid rental to be applied towards the first full Monthly Payment due under the Lease (*i.e.*, to be applied towards the Monthly Payment for the 5th full month of the Lease term).
- ii. Commencing on the first day of the calendar month in the sixth (6th) full month of the Lease term, and on each first day of the calendar month thereafter for the next sixteen (16) calendar months thereafter (*i.e.*, the 6th full month of the Lease term thru the 22nd full month of the Lease term), the City shall pay directly to Landlord, for the benefit of Tenant under the Lease, the applicable Monthly Payment amount set forth above for the respective month due to be applied towards the Tenant's Monthly Payment due under the Lease for such respective month.

Prior to the Monthly Payment due by the City hereunder for the 6th full month of the Lease term, once the rent commencement date (as defined in the Lease) under the Lease is known, Landlord shall deliver to the City written notice setting forth the applicable Monthly Payment dates so that the City shall know when each such Monthly Payment is due to Landlord hereunder. Except as otherwise set forth in the immediately preceding sentence and in romanette i. above with respect to the notice of the occurrence of the delivery date, each Monthly Payment shall be paid by the City, for the benefit of Tenant under the Lease, without any notice, demand, or grace period whatsoever and shall be deemed as delinquent if not paid on the date due. In the event that the City does not timely make the applicable Monthly Payment when due pursuant to this Agreement above, such failure shall constitute a default by the City hereunder and a default by Tenant hereunder and under the Lease, and Landlord may, without any other or further notice, exercise any or all remedies set forth in the Lease (but subject to the terms of the Lease), in addition to any other remedies available

to Landlord at law or in equity (all of which are cumulative), including, without limiting the foregoing, (1) pursuing legal action against the City and/or Tenant with respect to such default, and/or (2) Landlord may accelerate all Monthly Payments due hereunder for the remainder of the City Payment Term and such accelerated amount shall be due and payable by the City within ten (10) business days of delivery of a written notice therefor. Additionally, without limiting the foregoing, if the City should fail to pay to Landlord when due any Monthly Payment installment, the City shall also pay Landlord on demand a late charge equal to the greater of (A) \$100.00, or (B) ten percent (10%) of the past due amount. Failure to pay such late charge within five (5) business days of written demand shall also be an event of default hereunder and shall be deemed to be an event of default by Tenant under the Lease. Provision for such late charge shall be in addition to all other rights and remedies available to Landlord under the Lease, this Agreement, at law, and/or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner. Landlord's acceptance of any late Monthly Payment shall not operate to allow the City and/or Tenant to pay such sum late thereafter and shall not constitute a waiver of Landlord's remedies for subsequent late payments. Any payment obligations hereunder shall expressly survive any termination of this Agreement.

2. Payment Notation and Related Matters. All payments shall be made by check drawn on a local bank or by electronic wire transfer, not cash. The City agrees to make a notation on any check or electronic wire transfer for any Monthly Payment described above indicating that such payment is for rent for the benefit and on behalf of Tenant under and pursuant to the Lease. The City further hereby represents, warrants, covenants and agrees that, for purposes hereof and the payment of the Monthly Payment directly to Landlord, Landlord is and shall for all intents and purposes be deemed to be an "approved vendor" of the City (and the City is hereby expressly authorized to make such payments to Landlord directly and Landlord is authorized to accept same), and no other or further consents or approvals shall be required to be obtained for the City to make such payments to Landlord and/or for Landlord to receive such payments from the City.

3. All Other Payments to be Made by Tenant. Except as otherwise expressly provided in Section 1 above, all rental, sums, and amounts due under the Lease shall be the sole and exclusive responsibility of Tenant. Without limiting the generality of the foregoing or any terms and conditions otherwise set forth in the Lease, the parties hereby agree that Tenant shall be expressly responsible for the following amounts:

- i. If the rent commencement date under the Lease is a date other than the first day of the calendar month, the first partial month's partial rent payment shall be prorated and shall be due and payable by Tenant on the first day of the calendar month in the 23rd full month of the Lease term (*i.e.*, the first calendar month after the expiration of the City Payment Term when Tenant shall commence paying full rent under the Lease).
- ii. As more particularly described in Exhibit C attached to the Lease, if actual operating expenses (as defined in the Lease) for a calendar year are more than estimated operating expenses for such year and if Tenant's estimated prorata share therefor paid by (or on behalf of) Tenant was insufficient, Landlord shall invoice Tenant for

Tenant's underpayment, and Tenant (and not the City) shall make such payment to Landlord within thirty (30) days after delivery of invoice to Tenant therefor.

- iii. Tenant shall be responsible for paying Landlord the security deposit pursuant to Section 3.3 of the Lease.

4. Defaults During the City Payment Term.

a. Default by Tenant under or Termination of the Grant Agreement. The parties hereby expressly acknowledge and agree that any default by Tenant under, or any termination of, the Grant Agreement prior to the expiration of the City Payment Term, shall be an automatic event of default by Tenant under the Lease and under this Agreement entitling Landlord to immediately exercise any remedies available to Landlord under the Lease, under this Agreement, at law, and/or in equity with respect thereto without any other or further notice whatsoever, including, without limitation, accelerating all Monthly Payments as more particularly described in this Agreement above; provided further that the parties otherwise hereby expressly acknowledge and agree that no termination of the Grant Agreement shall in any way relieve the City of its obligations hereunder to make the Monthly Payments under this Agreement.

b. Tenant Use Default Under the Lease. During the City Payment Term only, in the event of a default by Tenant only under the terms of Section 1.2 of the Lease regarding Tenant's failure to abide by the permitted use of the Premises (including Tenant going dark in the Premises for a period in excess of 30 days, subject to permitted temporary closures as described in the Lease) (as the case may be, a "Use Default"), Landlord agrees to provide written notice of such Use Default to the City (concurrently with the giving of such notice to the Tenant). Further, in the event any such Use Default continues beyond any applicable notice and cure periods described in the Lease (as the case may be, a "Use EOD"), without in any way limiting Landlord's rights under the Lease, the parties expressly agree that Landlord may terminate Tenant's right of possession (without terminating the Lease), provided that Landlord shall, in the limited instance of a Use EOD, so long as no other event of default exists by the City under this Agreement, permit the City to, without obligation, during the City Payment Term only, obtain another performing arts operator ("Replacement Operator") to assume the Lease from Tenant (without in any way releasing Tenant from same), subject to the following remaining terms and conditions, all of which must be satisfied within ninety (90) days after delivery by Landlord to the City of the notice of such Use EOD (provided that, in the event the City desires to attempt to locate such Replacement Operator, (i) the City must inform Landlord thereof within ten (10) business days of the City's receipt of notice regarding such Use EOD, and (ii) the City must thereafter use diligent, best efforts to located such Replacement Operator, time in each case being of the essence): (1) the Replacement Operator must be acceptable to Landlord in its sole, but reasonable discretion, and must use the Premises only for the permitted use under the Lease as a performing arts theatre; (2) Tenant and the such Replacement Operator shall provide to Landlord a fully executed and acknowledged assignment and assumption agreement, which shall contain an express assumption agreement by the Replacement Operator in favor of Landlord of the terms and provisions of the Lease (it being expressly agreed that any other or subsequent transfers thereafter by the Replacement Operator shall be subject to the express prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole and

absolute discretion); (3) if required by Landlord, such Replacement Operator must provide a guarantor and guaranty of the Lease acceptable to Landlord in its sole, but reasonable discretion; and (4) Tenant and any guarantors of Tenant's obligations under the Lease shall at all times remain fully and primarily responsible and liable for the payment of the rental specified in the Lease and for compliance with all of its other obligations under the Lease for the entirety of the Lease term (including any renewals or extensions thereof). In the event the foregoing conditions are not all satisfied within such 90-day period, or in the event the City does not desire to locate a Replacement Operator or does not timely inform Landlord as to the City's desire to locate a Replacement Operator, then the foregoing provisions with respect to a Replacement Operator shall be of no further force or effect, and Landlord may exercise any and all remedies available to Landlord under the Lease or otherwise with respect to such Use EOD by Tenant.

5. **Notices.** Whenever written notice is required or permitted hereunder, such notice must be in writing and will be deemed delivered when delivered in person (or refused if delivery is refused) to the party to be notified via personal delivery, a delivery service, FedEx or any other nationally recognized overnight courier service or United States Mail, postage prepaid, certified or registered mail with return receipt requested, in each case that provides a return receipt showing the date of actual delivery of same to the addressee thereof. The term "**notice**" shall be inclusive of billings, requests, and demands. The respective address of each party hereto for notice purposes is as follows (provided that each party may change its notice address by valid notice delivered to the other parties hereto):

Landlord: c/o Danly Properties, Inc.
11940 Jollyville Road, Suite 300-S
Austin, Texas 78759

Tenant: Penfold Theatre Company
PO Box 81044
Austin, TX 78708

City: _____

6. **Term.** Unless earlier terminated, this Agreement shall expire automatically upon the expiration of the City Payment Term or earlier termination of the Lease, provided that any and all obligations hereunder accruing prior thereto that survive any such expiration or earlier termination of this Agreement.

7. **Entire Agreement; Other Agreements.** This Agreement, together with the Lease and the Grant Agreement, as the case may be, embodies the entire agreement of the parties hereto with respect to the subject matter hereof and incorporates all previous correspondence or communications with respect thereto, whether oral or written. The parties, however, expressly

acknowledge and agree that Landlord is not a party to the Grant Agreement and, therefore, has absolutely no obligations or liability whatsoever thereunder or with respect thereto. Additionally, subject to the City's obligations expressly set forth under this Agreement (including, without limiting the generality of the foregoing, the City's obligation to timely make the Monthly Payments as set forth in this Agreement), the parties expressly acknowledge and agree that the City is not a party to the Lease and has no rights and/or obligations under the Lease.

8. Counterparts. This Agreement may be executed in multiple identical counterparts, each of which is deemed an original but together constitute one and the same instrument, and may be executed by facsimile, e-mail, or PDF copy, each of which may be treated as originals.


9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

[Remainder of Page Intentionally Left Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties hereto have executed this document the day and year first above written.

TENANT:

PENFOLD THEATRE COMPANY

By: 
Name: Ryan Crowder
Title: Producing Artistic Director

CITY:

CITY OF ROUND ROCK,
a Texas home rule municipality

By: _____
Craig Morgan, Mayor

ATTEST:

By: _____
Meagan Spinks City Clerk

APPROVED AS TO FORM:

Stephanie Sandre, City Attorney

[Signatures Continue on Next Page]

LANDLORD:

R.C. CENTER LIMITED PARTNERSHIP

By: ROCK CREEK PLAZA, LTD.,
ITS GENERAL PARTNER

By: RCP PARTNERS, LLC,
ITS GENERAL PARTNER

By: 

Name: Jonathan Saad

Title: Manager

[End of Signatures]