

Attachment 1

FACILITY USE AND OCCUPANCY AGREEMENT

BETWEEN

SEATTLE REPERTORY THEATRE

&

THE CITY OF SEATTLE

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**FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATRE
&
THE CITY OF SEATTLE**

This FACILITY USE AND OCCUPANCY AGREEMENT is entered into by THE CITY OF SEATTLE (hereinafter called "City"), acting by and through its Seattle Center Director, and the SEATTLE REPERTORY THEATRE (hereinafter called "SRT"), a not-for-profit corporation organized under the laws of the State of Washington.

IN CONSIDERATION of the mutual promises, covenants, conditions and performances described in this Agreement, the parties hereto agree as follows:

1. DEFINITIONS.

A. "Director" means the Director of the Seattle Center Department of The City of Seattle or such official's designee.

B. "Move-in day" shall mean the twenty-four hour period beginning at noon on the day immediately prior to the first day of a use of a portion of the Premises pursuant to Section 5 hereof.

C. "Move-out day" shall mean the period until 9:00 a.m. on the day after the last day of a use of a portion of the Premises pursuant to Section 5 hereof.

D. "New Premises" means the approximately 25,000 square foot, two (2) story addition to the south side of the Bagley Wright Theatre at Seattle Center containing a live theatrical performance hall seating approximately 284 people on the main floor and in a balcony, and connecting with circulation corridors for the Bagley Wright Theatre at the lobby and back of house that SRT is constructing pursuant to the parties' separate Construction Agreement (incorporated herein as Appendix 1).

E. "Old Premises" means the Bagley Wright Theatre at Seattle Center, the street address for which is 155 Mercer Street, Seattle, WA 98109, together with the loading dock and parking area adjoining such facility at its Northern side.

F. "Premises" means the Old Premises and the New Premises combined.

G. "SRT Managing Director" means the SRT's chief executive officer or such official's designee.

2. TERM OF AGREEMENT.

The term of this Agreement shall commence on the date this Agreement is fully executed (the "Commencement Date"), notwithstanding the fact that the New Premises are not "substantially complete" (as determined by the Architect pursuant to the Construction Agreement or the agreement between SRT and its general contractor) and an occupancy certificate has not been issued for the same. The Term of this Agreement shall expire at 11:59 p.m., May 31, 2026, unless terminated earlier pursuant to the provisions hereof.

11/28/96

3. LEASE AND DESCRIPTION OF PREMISES; NON-EXCLUSIVE LICENSE TO USE OF COMMON AREAS.

A. Premises Description. City hereby leases to SRT, and SRT hereby leases from City, subject to all the terms and conditions hereof, the Old Premises, together with all City-owned improvements and fixtures contained therein; the land upon which the New Premises is being constructed pursuant to the Construction Agreement; and all easements, and other land-related rights and privileges appurtenant to the Old Premises and New Premises as granted by this Agreement. Legal descriptions are set forth in Exhibit 1 for both the Old Premises and the land occupied by the New Premises, as completed pursuant to the Construction Agreement.

B. Non-exclusive License for Use of Common Areas. City hereby grants to SRT, and its directors, officers, employees, customers, agents, invitees and contractors the nonexclusive right during the term and any extended term of this Agreement to use Seattle Center common areas, as from time to time constituted, for access to and egress from the Premises, which use shall be in common with all other visitors and users of the Seattle Center and subject to the rules and regulations with respect thereto that are promulgated by the Director. For purposes of this Agreement, the term "common areas" means and includes any Seattle Center area designated by the Director as being for the general use of tenants, concessionaires, licensees, patrons, employees, and invitees of the Seattle Center and not within the exclusive control of any particular user, and shall include but not be limited to the immediate periphery of the Premises, parking areas, landscaped areas, roads, walks, corridors, malls, public stairs, ramps, elevators, and escalators as the same now or hereafter exist.

4. AUTHORIZED USE OF PREMISES UNDER THIS AGREEMENT.

The Premises and any of its various component parts may be used only for the presentation of live theatre, music, and dance rehearsals, productions and performances; film screenings; meetings; classes and other educational programs; fund-raising activities; SRT offices; and such other activities as are incidental to the foregoing; as well as the preparation, service and consumption of food and beverages in connection with such authorized activities. Notwithstanding any other provision in this Agreement, all activities undertaken in the Premises must be consistent with the Seattle Center Mission Statement as set forth in Resolution 27323 of the Seattle City Council or the latest revision of such statement. SRT may use the Premises for additional purposes with the prior, written approval of the Director, whose approval shall not be unreasonably withheld.

5. **CITY AND CITY-AUTHORIZED THIRD PARTY USE OF PORTIONS OF PREMISES.**

A. Space Reserved in Old Premises for City-Authorized Use. Notwithstanding any other provision hereof (except as provided in Subsection 5.F), City reserves and retains the right to use and to authorize third parties to use, as described more fully below, without any reduction in the rent payable by SRT and without any charge imposed by SRT for such use, the following portions of the Old Premises (hereinafter referred to as the "Old Premises Production Areas") during the time periods specified in Subsections 5.C and 5.D:

- Foyer
- Public lobby
- Southernmost box office
- Small office behind Southernmost box office
- Main floor of House
- Balcony of House
- Public rest rooms
- Stage
- Back of stage
- Trap room
- Dressing rooms
- Crew room
- Green Room
- Staff rest rooms
- Catwalks
- Lighting booth
- Follow spot booth
- Loading/unloading area in Parking Lot on North side of facility
- Dimmer room

B. Space Provided in New Premises for City-Authorized Use. SRT hereby authorizes City to use and to authorize third parties to use, as described more fully below, without any reduction in rent payable by SRT and without any charge imposed by SRT for such use, the following portions of the New Premises (hereinafter referred to as the "New Premises Production Areas") during the time periods specified in Subsections 5.C and 5.D:

- Foyer
- Public lobby
- Box office
- Main floor of House
- Balcony of House
- Public rest rooms
- Stage
- Back of stage
- Trap room
- Green room
- Dressing rooms

Crew room
Staff rest rooms
Catwalks
Lighting booth
Follow spot booth
Loading dock
Dimmer room

C. Dates When City and City-Authorized Third Parties' Use of Old Premises Production Areas is Guaranteed. SRT guarantees that City may annually use or authorize one (1) or more third parties to use the Old Premises Production Areas during each year of the term hereof, and without any reduction in rent payable by SRT or any charge imposed by SRT for such use, but subject to the conditions set forth in Subsection 5.E hereof, as follows:

(1) On Bumbershoot Festival Dates. For the Bumbershoot Festival or its successor by any other name (the producer of which shall be deemed to be a City-authorized third party), commencing on the Monday preceding Labor Day and continuing through Labor Day, and on one (1) move-out day after Labor Day;

(2) On Seven (7) Consecutive Dates. On the seven (7) consecutive days immediately preceding the first Saturday after July 4th plus one (1) move-in day and one (1) move-out day for such period (hereinafter called the "regular City use period"); Provided, that upon agreement of the Director and the SRT Managing Director, (a) the regular City use period may be rescheduled and provided at a different time than that specified herein, or (b) the New Premises Production Areas may be provided in lieu of the Old Premises Production Areas, or both of the changes described in (a) and (b) immediately above may be made.

(3) On Other Dates. On three (3) other days (which may or may not be consecutive) plus one (1) move-in and one (1) move-out day for each such use period. The particular dates to be provided for City use under this subsection shall be requested by the Director, in advance, and shall be subject to the consent of the SRT Managing Director, whose consent shall be granted unless the requested City use date has been previously scheduled for an activity of SRT or any of its subtenants; Provided, that in the event any of the three (3) other days is a day when there is no performance scheduled in the Old Premises (i.e., such facility is "dark") but a performance is scheduled to occur on the immediately preceding or succeeding day, then (a) if a performance occurs on the immediately preceding day, the commencement of the move-in day for such City use shall be delayed to whenever the immediately preceding use of the Old Premises stage, back of stage, and loading/unloading areas ends; and (b) if a performance occurs on the immediately succeeding day, the ending time for the move-out day for such City use shall be made earlier as necessary to accommodate the needs of the immediately succeeding Old Premises user. Within three (3) SRT business days after SRT's receipt of the Director's request for the use of the Old Premises Production Areas as provided in this subsection, the SRT Managing Director shall advise the Director if the requested date can or cannot be used by City.

D. Memorial Day Weekend & Other Dates When Theatrical Facilities Are To Be Made Available for City or City-Authorized Third Party Use.

(1) For Memorial Day Weekend Use. SRT shall make a good faith effort to make the Old Premises Production Areas available for use, subject to the conditions set forth in Subsection 5.E hereof, on the Friday through the Monday of Memorial Day weekend plus one (1) move-in day and one (1) move-out day by City or for the Northwest Folklife Festival or its successor by any other name (the producer of which shall be deemed to be a City-authorized third party).

(2) For Seattle International Children's Festival Use. SRT shall either make the Old Premises Production Areas available or ensure that one (1) or more alternative performance space(s) at the Seattle Center are made available to City or for the Seattle International Children's Festival ("SICF") or its successor by any other name (the producer of which shall be deemed to be a City-authorized third party), for use subject to the conditions of Subsection 5.E hereof, for a period of seven (7) consecutive days including one (1) move-in day starting no later than 12:01 a.m. on the Monday of the week of performances scheduled as provided below (or such earlier time as may be allowed by the SRT Managing Director) and one (1) move-out day lasting until 9:00 a.m. on the day immediately following the last performance in the space made available to SICF hereunder. Such seven (7) consecutive days shall include all of the performance dates specified below: May 12-17, 1997; May 11-16, 1998; May 10-15, 1999; and thereafter, on the six [6] consecutive performance days during the month of May that are scheduled for such event and are identified in a Director's notice to be delivered to SRT Managing Director as soon as such dates are known to the Director but no later than one (1) year prior to the first day of each such year's intended use. For purposes of this provision, the term "alternative performance space(s) at Seattle Center" shall mean and include the New Premises Production Areas, the Poncho Forum in the Premises, any other established theatrical facility at the Seattle Center, or a circus tent or comparable facility equipped with (a) bleachers or seats and risers that are safe for children to use and (b) theatrical lighting and other equipment to reasonably serve the needs of the performers and audience in such space

(3) No Restriction on Other Arrangements. Nothing herein shall restrict SRT from making separate arrangements with City or any City-authorized third party referenced in Subsection 5.D.(1) or 5.D.(2) for the use of other portions of the Premises by City or such City-authorized third party so long as use of the Premises is consistent with Section 4 hereof.

E. Detail of Use; SRT's Lighting Obligations.

(1) Use Pursuant to Subsection 5.C. Use of the Production Areas pursuant to Subsection 5.C shall be exclusive of SRT use, and to facilitate such activities, SRT shall do the following:

(a) Equipment Removal. Remove from the applicable Production Areas prior to the move-in date for such activities, all sets and other theatrical equipment and materials except items that the Director, after consultation with the SRT Managing Director, determines, on behalf of each person or entity authorized to use the Premises pursuant to Subsection 5.C hereof, may remain in place;

(b) Interference with Access. Not impede or delay reasonable access to and from the loading/unloading area for the Old Premises through the SRT scene shop in the Old Premises; Provided, that SRT personnel shall have reasonable access to the Production Areas to monitor the activities and usage of such facilities by the City, the people and entities authorized to use the Premises pursuant to Subsection 5.C and their invitees.

(2) Use Pursuant to Subsection 5.D. During all use authorized by Subsection 5.D hereof, SRT shall have the right to maintain its sets and other equipment including lighting as it deems appropriate in the applicable Production Areas except in the main floor of house, balcony of house, foyer, public lobby, and public rest rooms, and in that portion of the front of the stage that is reasonably necessary for a performance, which shall be kept clear for festival use under Subsection 5.D hereof.

(3) Stage Lighting. SRT shall further facilitate use of the Production Areas under Subsection 5.C or 5.D hereof by providing stage lighting arranged in a generic plot or as otherwise agreed upon with such user.

F. Equipment Use In Connection With Premises Use Pursuant to Section 5. Use of any portion of the Premises pursuant to this Section 5 by the City or any City-authorized third party shall not give City or such third party the right to use any SRT office equipment or personal property. SRT shall not restrict, or impose any charge for, use of the items listed on Exhibit 2 or 3 hereof by City or any City-authorized third party during any use pursuant to this Section 5 hereof. The use of any such equipment in the Premises by any person or entity other than SRT may be made subject to reasonable policies and restrictions that are generally applied by SRT to all third party users. If any such SRT equipment requires a knowledgeable operator for its operation, the qualifications of such operator shall be subject to approval by SRT's Managing Director, which shall not be unreasonably withheld. If the controls for such theatrical or other technical equipment are located in an area generally not made available for access by the general public or personnel otherwise unqualified to operate such equipment, access to such area may be restricted to personnel whose qualifications for access to such area are subject to approval by SRT's Managing Director, whose approval shall not be unreasonably withheld. In the event any of the items or systems listed on Exhibit 2 or 3 becomes unavailable for use by City or any City-authorized third party because of their damage, destruction, or malfunctioning, the SRT Managing Director shall notify the Director regarding such unavailability as soon as possible after such unavailability becomes known, and in such event, SRT shall not be financially liable to City or the City-authorized third party as a consequence of such equipment or system unavailability.

G. SRT Initial Use of New Premises. Notwithstanding the use rights provided for in this Section 5, no festival use nor City use of the performance space in the New Premises shall take place prior to the full run of performances scheduled in SRT's opening season in the New Premises without the prior, written consent of the SRT Managing Director.

H. Cleaning and Repair Associated with City or City-Authorized Third Party Use of Production Areas. By the end of the final move-out day for any use authorized under this Section 5 or as soon thereafter as is reasonably possible, City shall perform, or shall enforce its contract with the third party authorized by City to use the affected Production Area to perform,

the necessary clean-up of the Premises and repair of any portion of the Premises and all improvements and SRT property on the Premises damaged in connection with or as a result of such City or City-authorized third party's use to the condition they were in at the outset of such City or City-authorized third party's use unless a longer period of time is required for repair work, in which case such work shall be completed as quickly as is reasonably possible.

I. City To Require Insurance from City-Authorized Third Party Users of Production Areas. City shall require every City-authorized third party user of the Old Premises Production Areas or New Premises Production Areas to provide, with respect to the period of such entity's use of any portion of the Premises, public liability (including personal injury and property damage) insurance in the form, and in the coverage amounts specified in such City-authorized third party's use agreement with City, naming SRT as an additional insured. City shall also require such City-authorized third party to provide to SRT's Managing Director not less than seven (7) days prior to such City-authorized third party's first scheduled event in any portion of the Premises, evidence to the reasonable satisfaction of SRT's Managing Director that such insurance has been secured and is being maintained in full force and effect.

J. SRT Charges for Use of Production Areas. SRT may impose, as a condition of use of either the New Premises Production Areas or the Old Premises Production Areas, or any portion of any such area, by any person or entity, any of the following, as applicable, except as otherwise provided in Subsections 5.A, 5.B, and 5.F with respect to City and City-authorized third party use; Provided, that if any such charge is imposed, such charge shall be listed on a rate schedule that is published no more frequently than semi-annually:

- (1) A reasonable charge for the use of equipment in the Premises;
- (2) A reasonable rent;
- (3) A prorata share of utility costs attributable to operation of the New Premises Production Areas or Old Premises Production Areas during such entity's use thereof or a reasonable, flat charge in lieu thereof; Provided, that no utility charge shall be imposed on City or City-authorized third party pursuant to Section 5 hereof;
- (4) A reasonable damage deposit for the use of either the New Premises Production Areas or the Old Premises Production Areas; Provided, that no such deposit shall be required of City.

K. Limitation on Festival Use. If SRT has not been paid any amount due under Section 5 in connection with any City-authorized third party's use of any portion of the Premises, SRT may deny subsequent use of such portion of the Premises to such City-authorized third party until the amount in arrears has been paid. Similarly, if any portion of the Premises or any SRT equipment is damaged or destroyed as a consequence of any act or omission of a City-authorized third party or any of its officers, employees, agents or contractors using the Premises pursuant to Section 5 and such portion of the Premises or SRT equipment is not repaired or replaced to the reasonable satisfaction of the SRT Managing Director in a timely manner after SRT provides notice of such damage or destruction to such City-authorized third

party, SRT may deny further use of the Premises to such City-authorized third party until such repair or replacement occurs.

L. Gilbert & Sullivan Society Use of Old Premises. Unless otherwise agreed by the SRT Managing Director and the Gilbert & Sullivan Society, in writing, SRT shall schedule use of and activities within the Old Premises by SRT, its contractors, and all other users so that the Gilbert & Sullivan Society may use and occupy the Old Premises Production Areas for at least a period that includes the first four (4) Saturdays and Sundays from and after the first Saturday following each July 4th in each year during the term hereof, and all weekdays between such weekend days, under terms and conditions that are substantially the same as those that would apply if such space were made available directly by City to the Gilbert & Sullivan Society under a Seattle Center temporary facility use and occupancy agreement.

6. RENT, ADDITIONAL RENT & REIMBURSEMENT OF CITY EXPENSES.

A. Amount of Rent, City Charges and Expense Reimbursement Due. SRT hereby covenants to and shall pay rent for the Premises and shall reimburse City expenses and pay City charges as follows, all without any offset or deduction whatsoever:

(1) Rent for Old Premises Through May 31, 2009. During the period from and after the Commencement Date of this Agreement through May 31, 2009, the monthly rent for the Old Premises specified in the attached Old Premises Schedule for Rent Payments Through May 31, 2009 (Appendix 2).

(2) Rent for Old Premises on and after June 1, 2009. During the period from and after June 1, 2009, the monthly rent for the Old Premises specified in the attached Old Premises Schedule for Rent Payments From & After June 1, 2009 (Appendix 3).

(3) Rent for New Premises. During the period from and after the Commencement Date of the separate Construction Agreement between the parties through May 31, 2026, the annual rent for specified in Section 1 of the attached New Premises Rent Schedule (Appendix 4), except as provided in Subsection 29.C hereof.

(4) Reimbursement of City Expenses. During the period from and after the Commencement Date, reimbursement of the following City expenses:

(a) The cost of any cleaning, repair or maintenance work performed on the Premises on behalf of SRT pursuant to Subsection 12.F or 13.L hereof;

(b) The cost of heating provided by Seattle Center to the Premises as well as for any maintenance and repair work provided by City to the HVAC system located in the Premises that is not a City obligation under Section 13 or Exhibit 4, 5, 6 or 7;

(c) The cost of cooling services provided by Seattle Center to the New Premises from and after the date of issuance by City of a Certificate of Occupancy for the New Premises, and to the Old Premises from and after the third anniversary of the date of issuance

by City of a Certificate of Occupancy for the New Premises, all at the rate of One Hundred Ninety Dollars (\$190.00) per ton of cooling or whatever higher rate is identified, from time to time, by the Building Operators & Managers Association ("BOMA") as the industry standard;

(d) The cost of repairing or replacing damaged City property pursuant to Subsection 19.A hereof;

(e) The cost of insurance coverage secured for SRT by City, if any, pursuant to Subsection 18.F hereof; and

(f) Fifty percent (50%) of the total cost compensation and expense reimbursement paid for the independent evaluator's review and making of a determination with respect to any disputed invoice pursuant to Subsection 13.F hereof.

(5) Payment of City Charges.

(a) The applicable City charges for the removal and disposal of nonrecyclable solid waste from and after SRT's request for such service pursuant to Subsection 13.C.(1) hereof; and

(b) The applicable City charges for personnel services provided, upon SRT's request, pursuant to Subsection 16.B hereof.

(6) Additional Fee Due for Dishonored Check. In the event SRT presents to City a check that is later dishonored for insufficient funds or other reason, SRT shall pay whatever additional fee has been established therefor by ordinance, rule or regulation generally applicable to dishonored checks.

B. Times and Place for Payments.

(1) Rent. One twelfth of the annual rent due and payable to City shall be remitted by SRT to City on or by the first (1st) calendar day of each and every month following the Commencement Date unless such day is a City holiday or weekend, in which case such payment shall be due and payable on the first City business day thereafter. SRT's initial payment of rent hereunder shall include, in addition to payment of rent for the month for which such payment is made, not only an additional, prorated amount for the period from and after the Commencement Date through the last day of the month in which the Commencement Date occurs for the rent due pursuant to Subsection 6.A.(1) hereof, but also all retroactive rent due pursuant to Subsection 6.A.(3) hereof; Provided, that in the event SRT has paid rent for use of the Old Premises under the Bagley Wright Theatre at Seattle Center Licensing Agreement executed on or about February 20, 1981, as amended on or about November 3, 1983, for the full month in which the Commencement Date occurs, the amount so paid shall be prorated, and the portion of such payment that is applicable to the period in such month from and after the Commencement Date of this Agreement through the last day of that month shall be credited against the amount due as rent for that same period under Subsection 6.A.(1) of this Agreement. In the event this Agreement is scheduled to expire or terminate on a day other than the last day of a month, the rent for that last partial month shall be pro-rated by dividing the rent amount

prescribed in the Rent Schedules for the final year of this Agreement by thirty (30) and multiplying the resulting quotient by the number of days between the first day of that final month and the expiration or termination date, inclusive. Until such time as SRT receives the Director's notice of the amount of the latest CPI-adjusted rent to be paid by SRT for the Old Premises in any calendar year, SRT shall remit to City, as a partial payment of the rent payable in that calendar year, the amount of the monthly rent payable for the Old Premises during the immediately preceding calendar year. After SRT's receipt of the Director's latest notice of the CPI-adjusted monthly rent payable to City, SRT shall remit the full amount of rent due to City as specified in the latest such Director's notice, and within forty-five (45) days after the receipt of such notice, SRT shall remit the difference between the aggregate amount of the partial payments of rent by SRT for the year in which such rent adjustment notice was given and the aggregate amount of rent payable to City as specified in the latest such notice.

(2) Reimbursement of City Expenses and Payment of City Charges. All City expense reimbursements and City charge payments due from SRT shall be payable within thirty (30) days after invoicing by City therefor unless SRT disputes the reasonableness of the charge made by City pursuant to Subsection 6.C. In such event, SRT shall pay the undisputed amount within said thirty (30) day period, and notify City of the basis of dispute as to the remaining amount. SRT shall not be deemed to be in breach of this Agreement if SRT contests charges made by City pursuant to Subsection 6.C. as being unreasonable. In the event that any City expense reimbursement invoiced to and disputed by SRT is ultimately found to be due and owing to City, SRT shall also pay interest on such disputed amount and the service charge applied to delinquent sums as provided in Subsection 6.B.(3) hereof.

(3) Remittance address; Interest & Service Charge on Delinquent Sums. All payments shall be made to The City of Seattle and delivered to the Seattle Center Accounting Office, at the street address specified in or pursuant to Section 37 hereof. All sums due and owing to the City shall be delinquent if not paid on or before the fifth (5th) day after the date due. In the event any payment is delinquent, SRT shall also owe to City (a) interest at the rate of one percent (1%) per month on the delinquent amount, plus (b) for each month such delinquency is invoiced, a service charge of Fifty Dollars (\$50.00) for the additional accounting required as a consequence of such delinquency, or such larger accounting service charge as may be established, from time to time, by City ordinance, which interest and service charge shall be added to the amount of the delinquency and become immediately due and payable.

C. Contestability of Alleged Underpayments and Overpayments. In the event either party to this Agreement contends, in good faith, that it has overpaid or has been underpaid any amount of money under this Agreement, such party shall give notice to the other party of its claim explaining, in detail, all facts upon which such claim is based. In the event the other party disputes any part of such claim, and refuses to provide the relief requested by the party giving such notice, the party that gave notice of such claim may file an action for the reimbursement or collection, as appropriate, of such claimed amount; Provided, that if an action is not filed for the collection or reimbursement of such claimed amount within sixty (60) days after the date of the claimant's notice to the other party regarding such claim, such claim shall be deemed to have been waived.

7. BOOKS AND RECORDS.

Each party to this Agreement shall keep true, separate, accurate, complete and auditable records and receipts for all cleaning, maintenance and repair work performed on the Premises by or for it, including but not limited to copies of all invoices received and all analogous and collateral supporting data regarding such expenses. All such records shall be retained in King County, Washington, for at least six (6) years after the close of such party's fiscal year.

8. AUDIT.

SRT shall permit the Director, City Director of Finance, City Auditor or State Auditor, from time to time, as such official or his/her functional successor or designee deems necessary, to inspect and audit in King County, Washington, at any and all reasonable times, all pertinent books and records of SRT pertaining to maintenance and repair work performed on the Premises. SRT shall supply such auditors with, or shall permit such auditors to make, at no expense to SRT, a copy of all such books and records and any portion thereof, upon the request of such official or such official's functional successor or designee. The Director shall give notice to SRT regarding any audit exception found in the course of any such audit. For any audit performed by City, the SRT Managing Director shall be afforded an opportunity to discuss the audit with the persons who have conducted the same in an exit interview and to review the preliminary audit findings and make a response thereto within such reasonable time period as is specified by the auditor.

9. PREMISES IMPROVEMENTS, ALTERATIONS AND ADDITIONS.

A. SRT Responsibility for Premises Modifications Subsequent to the Making of Initial Improvements. SRT shall be responsible for the making of all improvements, additions, and alterations to the Premises deemed by SRT to be desirable or necessary for its use that do not constitute maintenance, repair, janitorial, or sanitation control work to be performed pursuant to Section 13 of this Agreement. No such improvement, addition, or alteration, or any portion thereof, shall be made at City expense unless otherwise specifically and expressly agreed upon, in writing.

B. Prior Approval of Plans & Specifications Required for Alterations, Additions & Improvements to Portions of Premises Owned by Other Party. No alteration, addition or improvement that either party proposes to make or have made to any portion of the Premises that is not then owned by such modification proposer shall be undertaken by the modification proposer without the prior, written approval of the party owning the portion of the Premises that would be affected by such proposed modification; Provided, that in the event of an emergency, any such modification may be made without the securing of such prior approval, but in such event, the party responsible for the making of such modification shall provide notice to the other party detailing the nature and extent of such modification work as soon as possible after the commencement thereof. Where such modification is to be made at the expense of the modification proposer and will have no adverse financial impact on the other party, such approval shall not be unreasonably withheld or delayed. In addition to the foregoing, prior to

the commencement of any improvement, addition or alteration work by or for SRT to (1) the exterior of the Premises or (2) any plumbing, mechanical, structural, or electrical system serving the Premises, SRT shall submit to the Director, for approval, schematic designs, design development drawings, and final working drawings and specifications for the construction of the same. SRT shall not begin or permit the commencement of any such activity until after the Director has approved the same, which approval shall not be unreasonably delayed or withheld but may be conditioned upon, among other things, (a) the insuring of City against liability for personal injury and death and damage to property; (b) the protection of City against laborers' or materialmen's liens; and, (c) if requested by the Director, the restoration, upon the expiration or earlier termination of this Agreement, of (i) the Old Premises or the exterior of the New Premises; or (ii) any plumbing, mechanical, structural, or electrical system serving the Premises, or any combination thereof to its condition immediately prior to such change. Nothing in this Section 9 shall require either party's prior approval with respect to cleaning, repair or maintenance undertaken by the other party pursuant to Section 13 of this Agreement.

C. Specific Alterations, Additions & Improvements.

(1) Wiring & Electrical & Electronic Equipment. All electrical wiring and electric and electronic equipment that SRT desires to have installed in the Premises on or after the full execution date of this Agreement shall be installed at no cost to City (except as provided under Section 13 hereof) by a properly licensed contractor.

(2) Old Premises Stage Floor. City shall provide and expend the funds appropriated through City's Capital Improvement Project S9502 to acquire the materials needed for the replacement of the Old Premises Stage Floor and pay the necessary project management and administrative expenses associated therewith. SRT shall complete the necessary alteration of such materials and the installation work to replace the stage floor, which SRT activity shall be treated as an SRT, rather than City, alteration or improvement project. In addition to the other indemnification obligations assumed by SRT hereunder, SRT shall indemnify, defend, and hold City harmless from any and all damages, losses, actions, suits, and causes of action arising out of the alteration of such materials and the installation of the replacement stage floor in the Old Premises and the use of the same subsequent to the date this Agreement is fully executed.

D. No Representation or Liability Created by Approval. The approval by the Director of any design, drawing, or specification for any improvement, addition or alteration to be made to the Premises by or for SRT shall not constitute an opinion or representation by City as to the compliance of such design, drawing or specification with any law or ordinance or its adequacy for other than the Seattle Center Department's own purposes; and such approval shall not create or form the basis of any liability on the part of City or any of its officers, employees or agents for any injury or damage resulting from any inadequacy or error therein or any SRT failure to comply with applicable laws or ordinances.

E. Work Inconsistent with Approved Plans and Specifications. If the other party's approval is required under this Section 9 with respect to the plans and specifications for any improvement, alteration and addition to be constructed, placed or erected on the Premises, or if such other party is responsible for the maintenance of the portion of the Premises on which any such improvement, alteration or addition would be constructed, placed or erected, the party

for which such construction, placement and erection work or any portion thereof is performed shall ensure that the same is undertaken only in accordance with such approved plans and specifications. The party that owns the portion of the Premises that is affected by such improvement, alteration or addition may, but is not obligated hereunder to, inspect such work to verify that it is or has been undertaken in accordance with the approved plans therefor. In the event any such work is not according to the approved plans, the party that owns the portion of the Premises affected by such improvement, alteration or addition may send a Notice of Noncompliance to the other party. Immediately following its receipt of such notice, the party that has made such noncompliant improvement, alteration or addition shall either remove from the Premises the improvement, addition or alteration at variance from the approved plans and specifications, or make it consistent with such approved plans and specifications within the reasonable time period specified in such notice.

F. Construction Bond. If required by the Director, SRT shall file with the Director prior to the commencement of any improvement, addition, or alteration to the Premises to be made after completion of the work contemplated in the Construction Agreement (Appendix 1) and involving aggregate costs in excess of \$100,000.00, a good and sufficient corporate surety bond subject to approval by the City Attorney as to form and surety, conditioned upon the completion and installation of said improvement, addition, or alteration work as described in plans submitted to and approved by City, and in accordance with the provisions of all licenses, permits, regulations, ordinances and laws governing such activity, and further conditioned upon the payment of all persons supplying labor and material therefor and upon the completion of said improvement, addition or alteration without cost and expense to City.

G. Construction Liability Insurance. If SRT acts as its own general contractor, SRT shall furnish and maintain, and if otherwise, SRT shall require every contractor with which it contracts to furnish and maintain, during the full period of the making of any part of any improvement, alteration or addition to the Premises, at no cost to City, a policy of public liability and property damage insurance issued by an insurance company licensed to do business in the State of Washington, protecting City from any and all claims for damages for personal injury, including death, and for property loss or damage that may arise from any activity related to the making of said improvement, alteration or addition, whether such activity is by SRT, its contractor(s), any subcontractor(s), or by anyone directly or indirectly employed by or under contract to any of them. Said policy shall provide coverage in the following minimum amounts: One Million Dollars (\$1,000,000) for injury or death of any person; Two Million Dollars (\$2,000,000) annual aggregate for bodily injury; and Builder's Risk coverage equal to the replacement value of the Premises as well as the proposed improvement, alteration or addition, Provided, that minimum required insurance coverage amounts shall be subject to increase after each third anniversary of the Commencement Date to such amount(s) as the Director reasonably determines is necessary to protect City interests in the Premises, taking into account inflation, the foreseeable risks attending the proposed construction activity, and coverage limits customary for property of similar character. Under each such policy The City of Seattle shall be named as an Additional Insured except that for the Builder's Risk coverage, SRT, SRT's general architect, contractor, and subcontractors in every tier, in addition to The City of Seattle, shall be identified as Named Insureds. Each such policy shall provide that the terms thereof cannot be modified or terminated without thirty (30) days prior written notice to City, all in the manner and form specified in Subsection 18.C hereof. Evidence of such insurance, as provided in

Subsection 18.C hereof, must be filed with the City Risk Manager prior to the commencement of any demolition or construction work.

H. Delivery of Final Development Record Drawings and Related Materials. SRT shall deliver to the Director, within six (6) months after the substantial completion of the New Premises and all alterations, additions and improvements made to either the Old Premises or the New Premises by or on behalf of SRT, (a) 3.5" 1.44MB disks in Autocad 12 or other format acceptable to the Director reflecting and documenting the final development record drawings for the New Premises and the portion of Old Premises or New Premises in which such alteration, addition or improvement work was undertaken, and (b) two (2) copies of any operations and maintenance manuals that have been received by SRT and are necessary for the repair and maintenance of any structural, mechanical, electrical, or architectural building system installed in Premises by or for SRT.

I. Testing of Premises. SRT may make such tests, borings and other minor disturbances of the Premises as may be necessary to develop designs and plans for all improvements, additions and alterations to the Premises that are required or desired by SRT beyond that undertaken pursuant to the Construction Agreement, including installations and modifications to accommodate changes in trade fixtures and stage equipment intended for use on the Premises. SRT shall submit to the Director a report of the findings and results of each such test or boring within thirty (30) days after the date such findings and results are obtained, except any report regarding testing or boring performed with respect to the New Premises prior to the full execution of this Agreement, which shall be submitted within thirty (30) days after the full execution of this Agreement.

10. ACCEPTANCE OF PREMISES.

By entering into and occupying the Premises, or any portion thereof, SRT accepts the same in their condition as of the date of such occupancy. SRT covenants that no representation, statement or warranty, express or implied, have been made by or on behalf of City with respect thereto or the user occupancy that may be made thereof, except as may be contained herein or as is provided for in the Construction Agreement. Nothing contained in this section shall be construed to be made for the benefit of any party other than the City or waive any SRT rights with respect to such third parties.

11. CITY CONTROL OF CENTER BUILDINGS AND GROUNDS.

A. City Reserved Powers. Except as otherwise specifically provided in this Agreement, City reserves the exclusive right, without liability of any kind, to:

(1) Make Physical Modifications to Seattle Center. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and make improvements, alterations, and additions to the portions of the Seattle Center facilities that have not been made available to SRT for its exclusive use; and make other above-ground and underground

improvements in and to the Seattle Center regardless of whether or not any such improvement interferes with air, light or views available to or from the Premises; Provided, that the Director shall make a good faith effort to provide reasonable advance notice of each such modification that is proposed to occur in the immediate vicinity of the Premises;

(2) **Regulate Traffic.** Regulate all traffic within and adjacent to the Seattle Center including the operation and parking of vehicles of SRT, and any of its officers, employees, contractors, and invitees;

(3) **Impose or Authorize Imposition of a Charge for Admission to Seattle Center.** Impose a reasonable charge for admission to the Seattle Center other than the Premises and facilities therein; Provided, that no such charge shall be applied to or imposed on any holder of a ticket for admission to any SRT event, or to or on any SRT personnel seeking access solely to the Premises, other than the applicable charge imposed for the parking of a vehicle at a Seattle Center parking garage or lot or for transportation on the Monorail. City or any City-authorized third party using any portion of the Premises pursuant to Section 5 hereof may impose admission charges to events in those portions of the Premises being used by City or City-authorized third parties so long as SRT personnel and invitees are exempted from charges imposed for admission to the Premises for SRT business purposes or to participate in SRT programs occurring during the time of such City or festival use of such portion of the Premises; Provided, that nothing herein shall limit City authority to impose any admission tax;

(4) **Present Exhibits & Special Events.** Erect, display and remove promotional exhibits and materials and permit special events to occur on the Seattle Center grounds, and in the buildings and facilities thereof other than the Premises, and pursuant to Section 5 hereof, in the Premises;

(5) **Promulgate Rules & Regulations.** Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center other than the Premises, except City shall have the right to promulgate such rules and regulations with respect to events occurring in the Premises pursuant to Section 5 hereof;

(6) **Determine Hours of Operation.** Reasonably determine the days and hours the Seattle Center and various business operations conducted thereon shall be open to the public; and

(7) **Determine Extent of Business Operations at Seattle Center.** Determine the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken at Seattle Center; and to operate and authorize others to engage in any and all forms of concession activity at the Seattle Center and in any facility thereof, as the Director deems appropriate.

B. **Restricted SRT Access to Roof of Premises.** SRT shall not allow any of its officers, employees, agents, contractors or any other person or entity to have access to or use of the roof for any purpose whatsoever except as expressly authorized, in writing, by the Director.

12. ENVIRONMENTAL & OPERATING CONDITIONS

A. Definitions. For the purpose of this subsection, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(1) "Laws or Regulation" shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which SRT has knowledge), now or hereafter in effect including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

(2) "Hazardous Substance" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination or cleanup.

B. Restrictions on SRT Activities Involving Any Hazardous Substance. SRT shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process any Hazardous Substance except in compliance with all applicable Laws and Regulations. SRT shall provide the Director with the SRT's USEPA Waste Generator Number (if any) and shall make available for inspection at SRT's place of business upon reasonable request, all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence that SRT or any subordinate Premises user other than City or a City-authorized third party pursuant to Section 5 hereof receives from, or provides to, any governmental unit or agency in connection with the handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance on the Premises.

C. Correction of Violations. If SRT or any subordinate Premises user other than City or a City-authorized third party pursuant to Section 5 hereof violates any applicable Law or Regulation or any of the terms of this section concerning the presence or use of any Hazardous Substance or the handling or storing of any hazardous waste, upon receipt of notice of such violation or the expiration of all challenges and appeals of such notice, whichever occurs later, SRT shall promptly take such action as is necessary to mitigate and correct the violation. If SRT does not act in a prudent and prompt manner, City reserves the right, but not the obligation, upon reasonable prior notice to SRT, to act in place of SRT (for which purpose SRT hereby appoints City as its agent), to come onto the Premises and to take such action as is necessary to ensure compliance or to mitigate the violation. If the Director has a reasonable belief that SRT or a subordinate Premises user (other than City or a City-authorized third party user pursuant to Section 5 hereof) is in violation of any law or regulation regarding the presence or use of any Hazardous Substance, or that the action or inaction of SRT or any subordinate Premises user presents a threat of violation or a threat of damage to the Premises, City reserves

the right, upon reasonable prior notice to SRT, to enter onto the Premises and take such corrective or mitigating action as the Director deems necessary. All reasonable costs and expenses incurred by City directly attributable to any such action shall become immediately due and payable by SRT upon presentation of an invoice therefor.

D. Testing. SRT shall provide City with access to the Premises to conduct an environmental inspection at such reasonable time(s) as may be requested by City. In addition, SRT shall permit City access to the Premises at any time, upon reasonable notice, for the purpose of conducting environmental testing at City expense. SRT shall not conduct or permit any other person or entity to conduct environmental testing on the Premises without first obtaining the Director's written consent, which shall not be unreasonably withheld. SRT shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to SRT, and SRT shall provide a written copy of the same to the Director within thirty (30) days after the preparation of any such material.

E. Removal of Hazardous Substances Prior to Vacating Premises. Prior to SRT's vacating of the Premises, whether pursuant to Section 30 hereof or otherwise, SRT shall remove every Hazardous Substance placed on the Premises by SRT or any of its subtenants, employees, agents and contractors during the term of this Agreement and shall demonstrate such removal to the Director's reasonable satisfaction.

F. Reimbursement of City Costs. In addition to any remedy provided above, SRT shall reimburse City whenever City incurs any cost directly resulting from a violation by SRT or any subordinate Premises user (other than City or a City-authorized third party pursuant to Section 5 hereof) of any of the terms of this Section 12, including, but not limited to, the costs of any investigation, clean-up and other remedial activity; the fees of consultants, contractors, and attorneys; fines, penalties assessed directly against City, injuries to third persons or other property, and losses of revenue resulting from an inability to lease or re-license or market the Premises or any portion thereof due to its environmental condition as the result of the violation of the terms of this Agreement by SRT or any subordinate Premises user (other than City or a City-authorized third party pursuant to Section 5 hereof) even if such loss of revenue occurs after the expiration or earlier termination of this Agreement; Provided, that City shall notify SRT prior to incurring any such costs, and SRT shall be provided a reasonable opportunity to defend any claim giving rise to such costs.

G. Indemnification. In addition to all other indemnification provided in this Agreement, and notwithstanding the expiration or earlier termination of this Agreement, SRT shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance placed by SRT or any subordinate Premises user other than City or a City-authorized third party pursuant to Section 5 hereof on the Premises and resulting in a violation of any of the terms of this section, or the migration of any such Hazardous Substance from the Premises to other property or into the surrounding environ-

ment that results in a violation of any of the terms of this section, whether made, commenced or incurred (1) during the term of this Agreement, or (2) after the expiration or termination of this Agreement if arising out of an event occurring during the term of this Agreement; Provided, that City shall provide SRT with prior notice of any event giving rise to SRT's indemnification obligation hereunder.

H. Noise. SRT recognizes and accepts City's current use of Seattle Center facilities and grounds areas for events with noise and vibration. When making any addition, alteration or improvement on or to the Premises, SRT shall take and include such preventive measures as it deems appropriate to reduce the impact of Seattle Center noise and vibration and to make the Premises suitable for SRT's intended use. In the event City desires to undertake construction and maintenance that would generate noise likely to interfere with any scheduled SRT activity, City shall provide notice to SRT regarding the need to make such noise and the expected date(s), time(s), and duration of the same as soon as reasonably possible after City learns of such potential noisemaking, and the parties shall consult regarding possible adjustments in their respective planned activities to minimize the impacts on both parties or to otherwise address the issue; Provided, that no such notice or consultation shall be required in the event such noise is generated as a consequence of construction or maintenance work undertaken in response to an emergency situation.

I. Premises Use Schedule to be Provided by SRT to City. SRT shall submit to the Director not later than ten (10) days after the beginning of each month, a written schedule detailing the following information with respect to activities that are scheduled to occur in the Premises during the immediately succeeding month: (a) for performances, (i) the performance's name, (ii) the name of its presenter, (iii) the particular facility(ies) that will be used, (iv) each performance date, and (v) its starting and ending times; and (b) for other uses including but not limited to performances, meetings and other assemblies of people that will occur in any area of the Premises to which people other than SRT officials, employees, and volunteers (i.e., members of the general public) are invited, (i) the type of use, (ii) the name of the user, (iii) the particular facility(ies) that will be used, (iv) each use date, and (v) the starting and ending times for such use. SRT may satisfy this reporting obligation by submitting to the Director an annual schedule of its rehearsal and performance season and by periodically supplementing such annual schedule with such other information as required herein.

13. MAINTENANCE, RECYCLING, CLEANING AND REPAIR

A. Maintenance Responsibilities of Parties; Authority to Use Third Parties. The SRT and City, at no expense to the other, shall maintain in good order, condition, and repair (reasonable wear and tear and damage by fire or other casualty excepted) the particular portions of the Premises assigned to it in Subsection 13.B and Exhibits 4 through 7 and in the manner and to the standards specified in such exhibits. Except as otherwise limited by applicable law, collective bargaining contracts, or this Agreement, each party may select, without interference from the other, its own agents, contractors or designees to perform the maintenance and repair activity that is designated as such party's responsibility under this Agreement.

B. Janitorial Activity & Sanitation Control.

(1) City Responsibilities. City shall ensure that whatever janitorial activity and sanitation control is necessary to keep the interior of the building on the Old Premises and the loading/unloading/parking area of the Old Premises clean, attractive, and free from vermin, is secured, undertaken and performed in a timely manner. All such work shall be performed at no additional cost or expense to SRT through May 31, 2009. SRT may commission a consultant to provide a reasonable estimate of the cost of, or issue a public request for proposals or invitation to bid for, the performance of janitorial work to be performed in the Old Premises on and after June 1, 2009, which document shall detail the type and extent of all such work to be performed and the required terms and conditions of any contract to be issued in connection therewith, which conditions shall include compliance with R.C.W. Ch. 39.12, Ch. 49.28, and Ch. 49.46, or the successor enactment(s) thereto requiring the payment of minimum and prevailing wages and regulating the hours of work for janitorial services in publicly owned facilities. City shall be eligible to respond to such request for proposals or invitation to bid. In the event that SRT receives a credible proposal or bid or a reasonable consultant's estimate for the performance of such work that indicates such work could be performed by another entity at a cost that is lower than the proposal or bid received from City for the same work or the consultant's reasonable cost estimate for the same work, and City continues to be obligated to allow City janitorial staff to perform such work, then, from and after June 1, 2009, SRT shall reimburse all direct expenses (such as wages, benefits including but not limited to paid time off, supplies, equipment, and equipment maintenance) incurred by City in having such work performed plus an amount for City-incurred indirect expenses associated therewith equal to the direct expenses multiplied by the Seattle Center's indirect rate (which shall be no more than fifteen percent [(15%)]); Provided, that the aggregate reimbursement shall be no greater than the lowest credible cost for the performance of such work as specified in the proposals or bids received by SRT. If the collective bargaining agreement between City and the labor organization representing City employees performing janitorial work in the Old Premises is modified to permit SRT to make direct arrangements for the performance of janitorial services in and with respect to the Old Premises, the Director shall give notice to SRT of such modification. If SRT desires to have an entity other than City perform janitorial services in the Old Premises after SRT's receipt of such Director's notice, SRT shall give notice to the Director of the date on which City janitorial services are to end and SRT's contractor's services are to commence (which date shall not be less than one (1) year after the date of such SRT notice). City shall have no responsibility to perform janitorial services in the Old Premises after the date specified in such SRT notice.

(2) SRT Responsibilities. SRT shall ensure that whatever janitorial activity and sanitation control is (a) necessary to keep the interior of the Premises, the loading/unloading/parking area of the Old Premises, and the exterior courtyard on the west side of the New Premises clean, attractive, and free from vermin and (b) not a City performance responsibility under Subsection 13.B.(1) hereof, is secured, undertaken and performed in a timely manner and at no cost or expense to City.

C. Removal of Recyclable & Non-Recyclable Solid Waste.

(1) Removal of Solid Waste. SRT shall have all recyclable and non-recyclable solid waste generated on and in the Premises removed from the Premises and appropriately disposed of at a location other than the Seattle Center at no cost to the City. Upon SRT's request, City shall provide such removal and disposal services on a regular, scheduled basis, for which SRT shall pay the City charge established, from time to time, for such service. The Director reserves the right to specify the minimum frequency for the removal from the Premises of solid waste and recyclable materials, as well as the access route across the Seattle Center for any motor vehicle used for such removal activity.

(2) Authorized Storage Location of Recycling Containers, Garbage Cans, Dumpsters and Other Equipment. Any storage containers used for the disposal of recyclable materials, garbage cans and dumpsters serving the Premises shall be located only in the exterior location(s) that have received the prior, written approval of the Director. Unless otherwise authorized by the Director, SRT shall not store any equipment of any kind or nature (whether owned by SRT, City or a third party) on the loading dock for the New Premises at any time, or in other areas outside of the buildings on the Premises between 2:00 a.m. and 7:00 a.m. except in the loading/unloading/parking area of the Old Premises.

D. City Access to Premises for City Maintenance, Cleaning & Repair. City, its consultants and contractors, and their respective officers, employees, agents, representatives, and subconsultants and subcontractors shall have the right to enter the Premises at all reasonable business hours and, in the event of any emergency, at any time, to examine and inspect the same and to make such evaluations, and perform such repairs, maintenance and cleaning as is required of City or permitted by SRT under this Agreement, all without abatement of rent or any other fee or charge that may become due and payable after such action unless SRT is required to materially suspend its use and occupancy of the Premises for the period of such action as a direct consequence of such inspection, evaluation, repair, maintenance or cleaning. To facilitate such activity, scaffolding and other necessary structures may be erected when necessary. The person or entity undertaking any such work shall use its best efforts to minimize interference with egress and ingress to, and with SRT's activities on, the Premises. In the event any such inspection, evaluation, repair, maintenance or cleaning activity requires access to the Premises for a period greater than one (1) day or would interfere with any SRT scheduled activity identified in the notice provided pursuant to Subsection 12.I hereof, the Director shall coordinate such activities with SRT schedule requirements. City shall be liable for any and all damage to the Premises and SRT property resulting from City negligence, or the negligence of its employees or agents in connection with such activities. SRT shall provide the Director with such key(s) as will unlock all of the doors in the Premises (excluding SRT's vaults, safes, and desks and files) to facilitate City access for the performing of inspection, evaluation, repair, maintenance and cleaning activity contemplated in this Agreement; City shall have the right to use any and all reasonable means to obtain entry to the Premises in an emergency. No entry into the Premises in accordance with the foregoing by City or any of its contractors or consultants or any of their officers, employees, subconsultants, subcontractors, or agents shall be construed to be an eviction of SRT or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof, or the breach of this Agreement. Due care for the Premises and persons and property on the Premises shall be exercised when City or any of its officers,

employees, consultants, contractors, subconsultants, subcontractors, or agents enter the Premises.

E. Inspection for Maintenance Purposes. The Director shall inspect the Premises at least once per year, at City expense, and shall provide a written report to SRT of City's findings and recommendations regarding necessary or advisable maintenance and repair to be undertaken by SRT as contemplated in Exhibits 4 and 7 hereof. SRT may also inspect the Premises, at its own cost, and may notify the Director of any necessary or advisable repair and maintenance to be undertaken by City as contemplated in Exhibits 5, 6 and 7 hereof. Within a reasonable time after receipt of such report or notice, the party receiving the same shall perform such necessary repair and maintenance work as is its responsibility under this Agreement.

F. Bagley Wright Theatre Maintenance, Repair & Replacement Fund & SRT Replacement Trust Fund.

(1) Creation of City Fund. Within sixty (60) days after the full execution of this Agreement City shall create a "Bagley Wright Theatre Maintenance, Repair & Replacement Fund" (hereinafter "BWTMR Fund") for the holding, in trust, of the City-provided share of money to be accumulated and expended exclusively for replacement and repair purposes with respect to the Old Premises (including but not limited to the administration of replacement and repair projects) as provided herein.

(2) Creation of SRT Replacement Trust Fund. On or by July 1, 1997, SRT shall make arrangements for the creation of a separate Replacement Trust Fund that shall be used for the holding, in trust, of SRT deposits of money to be accumulated and expended exclusively for replacement, maintenance and repair purposes with respect to the Old Premises (including but not limited to the administration of replacement, maintenance and repair projects) as provided herein.

(3) Remittance of Minimum Annual SRT & City Deposits. Within sixty (60) days after the full execution of this Agreement, and on or by February 1st of each year thereafter through 2009, City shall deposit into the BWTMR Fund as its minimum annual deposit thereto, the amount of money specified in Exhibit 8 for that year. (No deposit into the BWTMR Fund shall be required of City for 2010, or for any year thereafter under this Agreement or otherwise.) On or by August 1st of each year from and after 1997 through 2025, SRT shall deposit into the separate Replacement Trust Fund created pursuant to Subsection 13.F.(2) hereof, as its annual minimum remittance thereto, the amount of money specified in Exhibit 8 for that year. Each such deposit shall be an independent obligation of SRT and City hereunder and shall be made without setoff or deduction of any kind or nature and without regard for any claim whatsoever that either party may have against the other.

(4) City & SRT Remittances of Supplemental Deposits.

(a) City Supplemental Deposits. In the event that on or before May 31, 2009, the Director and SRT Managing Director agree that (a) any maintenance, replacement or repair project with respect to the Old Premises costing \$5,000 or more must be undertaken one (1) or more years prior to the year such work was anticipated according to the schedule

attached hereto as Exhibit 8, or a maintenance, replacement or repair project not identified in Exhibit 8 must be undertaken to keep the Old Premises a fully functional and safe, live theatrical facility, and (b) the aggregate balance of the BWTMRR Fund and SRT Replacement Trust Fund is insufficient to pay for such premature or unanticipated project without jeopardizing the funding of future, planned maintenance, repair and replacement projects as projected in Exhibit 8, then, solely based on the financial reality that City assets, as compared to SRT assets, may be more readily available to pay for such premature or unanticipated project, City shall deposit into the BWTMRR Fund whatever additional funds are necessary to pay the cost of such premature or unanticipated project; Provided, that before City is obligated to make any supplemental remittance pursuant to this subsection, the Director and SRT Managing Director shall meet to review Exhibit 8 and determine whether any anticipated expenditure listed therein could be deferred or Exhibit 8 could be otherwise modified to eliminate the need for the providing of any such supplemental remittance. In the event any such supplemental remittance must be made by City to pay a premature expense (*i.e.*, an expense required prior to the year in which it was expected to occur according to Exhibit 8), then, beginning in the year in which such expense was to occur, according to Exhibit 8, City shall invoice and be reimbursed from the BWTMRR Fund and, as necessary, from the SRT Replacement Trust Fund, in the amount of such supplemental remittance (without the addition of any interest); Provided, that if such reimbursement cannot be paid in any single year, then the amount of such reimbursement that is not payable in such year shall be paid in the next succeeding year. The parties acknowledge that they have purposefully not included in Exhibit 8 any costs associated with the installation of rigging, or any expense associated with the repair or replacement of the Old Premises stage floor. It is the parties' expectation and intention that SRT shall pay all labor costs associated with the installation of rigging as well as all costs of any kind or nature associated with the installation of the Old Premises stage floor (including any alteration of City-purchased materials in connection therewith), or the maintenance, repair or replacement of such stage floor other than the costs specified in Subsection 9.C.(2) hereof. If the amount of funds identified in Exhibit 8 for any Old Premises replacement or repair project is sufficient to pay not only the acquisition cost for the necessary materials to be replaced or repaired but also all or a portion of the installation costs associated with any project such installation costs may be paid using such funds. The parties' exclusion from Exhibit 8 of any installation costs or the cost of repairing or replacing the Old Premises stage floor shall not result in any such costs being treated as unanticipated costs under this subsection, however.

(b) SRT Supplemental Deposits. If, in any year during the term hereof through 2009, the SRT Replacement Trust Fund does not generate a return on investment equal to the average rate of return for money in the BWTMRR Fund over the existence of the BWTMRR Fund, SRT shall make a supplemental remittance to the SRT Replacement Trust Fund to equal the difference between the return actually received and the return that would have been received had money in the SRT Replacement Trust Fund been invested like funds in the BWTMRR Fund. If, after SRT has made any such supplemental remittance to the SRT Replacement Trust Fund, the average rate of return of the SRT Replacement Fund over the existence of the SRT Replacement Trust Fund, exceeds the midpoint rate of return between (i) the rate of return contemplated for the SRT Replacement Trust Fund in Exhibit 8 hereof and (ii) the average rate of return for money in the BWTMRR Fund over the existence of the BWTMRR Fund, then SRT may reimburse itself from the SRT Replacement Trust Fund by the amount of its supplemental remittance, or so much thereof as is reimbursable from the earnings of the SRT

Replacement Trust Fund received in excess of the earnings that would have been received had the money in the SRT Replacement Trust Fund always been invested at such midpoint rate of return.

(5) Investment of Money in BWTMRR Fund & SRT Replacement Trust Fund. All money in the BWTMRR Fund and the separate SRT Replacement Trust Fund shall be invested in such interest-bearing instruments as may be determined to be fiscally prudent, given the extent and timing of anticipated expenditures from BWTMRR Fund, which determination shall be made by the City's Finance Director with respect to the BWTMRR Fund, and by the SRT's Director of Finance & Administration or such official's functional successor (hereinafter "Director of F&A") with respect to the SRT Replacement Trust Fund, all in the exercise of each such official's reasonable discretion. All interest earned on money deposited in either such fund shall be deposited into and made a part of such fund as it is received.

(6) Project Management Expenses But Not Administration Charges Allowed Against BWTMRR Fund and SRT Replacement Trust Fund. Both parties hereto acknowledge that either or both may incur legal fees, fund-raising expenses and other costs in connection with administration of the BWTMRR Fund and SRT Replacement Trust Fund. No such administration cost or expense shall constitute or be treated as a charge or offset to or against any money in either such fund. Notwithstanding such limitation, the parties acknowledge that certain replacement and repair activity associated with the Old Premises may require appointment of one or more Project Manager(s) or other staff to supervise and coordinate such work. The reasonable direct costs (such as wages, benefits including but not limited to paid time off, supplies, equipment, and equipment maintenance) incurred by each of the parties hereto in connection with such replacement or repair project management plus an amount for indirect costs incurred by such party in connection therewith, which amount shall equal its direct costs multiplied by no more than fifteen percent (15%), shall be reimbursed from the BWTMRR Fund consistent with normal Seattle Center Project Management payroll processes, and from the SRT Replacement Trust Fund upon presentation and approval of an invoice therefor as provided in Subsection 13.I of this Agreement.

(7) Expenditures from BWTMRR Fund and SRT Replacement Trust Fund; Deferral of Planned Expenditures Requires Joint Approval. All money in the BWTMRR Fund and SRT Replacement Trust Fund shall be expended exclusively for maintenance, replacement and repair purposes associated with the Old Premises as specified in Exhibit 8, including project management and administration expenses incurred in connection therewith. Every invoice requesting payment for a maintenance, replacement or repair project undertaken in or with respect to the Old Premises shall be subject to joint approval by both the Director and SRT Managing Director, as specified in Subsection 13.I, for so long as any portion of a City deposit remains in the BWTMRR Fund after the making of the City's deposit for 2009. Jointly approved invoices shall be paid using money in the BWTMRR Fund before money in the SRT Replacement Trust Fund is expended for such purpose. After the date that the BWTMRR Fund has received the City remittance for 2009 and the balance of such Fund has been exhausted (and after the date on which City has no further obligation hereunder to make any contribution towards the payment of any expense incurred in connection with maintenance, replacement or repair work identified in Exhibit 8), SRT shall assume full responsibility for the completion of all maintenance, replacement and repairs scheduled in Exhibit 8. No maintenance, replacement

or repair work identified in Exhibit 8 shall be deferred beyond the year in which such work is scheduled to occur, according to Exhibit 8, without the express, written consent of the Director, which shall not be unreasonably withheld.

(8) Accounting Reports Regarding Administration of BWTMRR Fund & SRT Replacement Trust Fund. City shall provide to SRT with respect to the BWTMRR Fund, and SRT shall provide to City with respect to the SRT Replacement Trust Fund, a monthly and an annual summary accounting report detailing all financial transactions affecting the balance of the same including but not limited to the amount of each annual deposit thereto and the aggregate amount of all deposits thereto, the amount of each expenditure therefrom and the aggregate amount of all expenditures therefrom, the amount of interest received during the reporting period, and the balance of such fund as of the end of such reporting period. The City annual report to SRT shall cover the period from January 1st through December 31st, except for the initial reporting period, which shall commence as of the date of the initial deposit into the BWTMRR Fund. The SRT annual report to City shall cover the period from July 1st through June 30th, except for the initial reporting period, which shall commence as of the date of the initial deposit into the SRT Replacement Trust Fund.

(9) Annual Review and Possible Revision of Exhibit 8. The SRT Managing Director and Director shall meet as soon as reasonably possible after the full execution of this Agreement, and thereafter, on or before the last day in February of each year, to review and determine whether any of the expenditure time periods or cost estimate for undertaking maintenance, replacement and repair activity or for acquiring certain consumable stage equipment for the Old Premises, as set forth in the most recently agreed-upon Exhibit 8, should be modified. In the event the Director and SRT Managing Director agree that any portion of Exhibit 8 should be modified, a revised, replacement and substitute Exhibit 8 shall be prepared as provided in Section 44 hereof, and substituted for the last previously attached and incorporated Exhibit 8. As part of each such meeting, the Director and SRT Managing Director shall determine whether any of the maintenance, replacement and repair work assigned to one party hereunder might be more efficiently performed by the other; how such other party might be compensated for assuming any of the maintenance, replacement or repair responsibilities that are not assigned to such other party by this Agreement; what the schedule should be for accomplishing the work identified in Exhibit 8 for the next succeeding year; and if any of the work identified in Exhibit 8 for such year has not been specifically assigned to a party, which party is to perform such work.

G. City-Funded Replacement Projects Subject to City & State Administrative Processes for Contracting Purposes; Inventorying of Items Procured Using City Funds. The undertaking of any maintenance, replacement or repair project with respect to the Old Premises that is to be paid for, in whole or in part, using City-provided funds shall be subject to City administrative processes and applicable state law, and as an activity under the control and jurisdiction of City's Department of Administrative Services or its functional successor until such time as the administrative head of such authority determines otherwise. City, in consultation with SRT, shall develop a scope of work for the completion of each such proposed maintenance, replacement or repair project. Subject to the availability of funding for each such proposed project, City shall thereafter proceed to contract for the completion of the maintenance, replacement or repair project(s) desired by SRT in accordance with applicable public work and

procurement contracting laws, ordinances, regulations and procedures, as determined by such authority and other governmental authorities having jurisdiction over such undertakings. All equipment and other material that is paid for, in whole or in part, using any City funds, shall be delivered, initially, to the Seattle Center central receiving depot; inspected consistent with City purchasing procedures; inventoried as a City Fixed Asset; and tagged with a City equipment label, all prior to being delivered to or installed in the Old Premises.

(1) When City Shall Invite Bids for a Replacement Project's Construction. Before City shall invite bids for the construction of any such replacement or repair project, plans and specifications for the project's construction, appropriate bid documents, and the provisions of the contract for such work (including but not limited to terms acknowledging SRT as a third party beneficiary thereunder, unless prohibited by law), must have been prepared. SRT shall be fully consulted in connection with the preparation of the bid and contract documents.

(2) Review of Bids. Upon receipt of bids, SRT's designated representative and City officials shall jointly review the same in accordance with applicable City procedures. As between City and SRT, the City's public works contracting authority shall be the final authority with respect to the criteria to be used for the selection of the lowest and most responsive and responsible bidder and the terms and conditions of any contract to be executed with such person or entity for any such replacement or repair project in or with respect to the Old Premises.

(3) When a Bid for a Project's Construction Shall Be Accepted by City. Before a bid for any replacement or repair project that is to be paid for using any City-provided funds is accepted by City, the following actions must have occurred:

(a) The bidder that appears to be the lowest responsive and responsible bidder must have been identified; and

(b) The Director must have determined that the balance of the BWTMRR Fund is sufficient to pay all unpaid obligations that have been incurred through the date of such determination as well as the additional expense that would be incurred were the subject bid accepted, or that other funds have been appropriated to pay for such project. If the balance of the BWTMRR Fund is insufficient to pay all such obligations plus the additional amount that would become payable were such bid accepted, then the Director shall give notice to the SRT Director of F&A of that fact and the date by when SRT must have remitted to City such sum of money in the SRT Replacement Trust Fund as is required to make up the difference between the balance of the BWTMRR Fund and the amount required to pay all such obligations and the amount of such bid, to enable City to accept such bid.

H. SRT-Funded Replacement Projects & Alterations, Additions & Improvements to Old Premises Not Treated as Public Works for Contracting Purposes. Whenever SRT undertakes with respect to the Old Premises (1) any maintenance, replacement or repair project contemplated in Exhibit 8, or (2) any alteration, addition, or improvement pursuant to Section 9 hereof, using SRT-provided funds only and without use of any City-provided funds, such undertaking shall not be treated as a "public work" except to the extent required by applicable state law, and shall not be treated as an activity under the control and jurisdiction of City's

public works contracting authority. SRT shall give notice, in writing, to every bidder, proposer, and contractor with respect to any such work, and shall require every contractor performing any such work to give written notice to every subcontractor and supplier that provides any labor, material or equipment for such work, that the Old Premises is City-owned real property that is not subject to lien under R.C.W. Ch. 60.04 or 60.28. Prior to the commencement of any work by the contractor or any of its subcontractors or the delivery of any supplies or materials by any supplier providing supplies or materials for such project, SRT shall also require each such contractor to deliver to the Director, one or more documents, in writing, signed by an authorized representative of such contractor and each such subcontractor or supplier, acknowledging that inasmuch as the Old Premises is City-owned property, the same is not subject to any lien, and releasing every claim or interest that such contractor, subcontractor, or supplier has or may have against or in such City-owned real property as a consequence of work performed on or with respect to such City-owned real property by such contractor, subcontractor or supplier in connection with such undertaking. Before SRT makes any final commitment to expend \$5,000 or more in connection with the maintenance, replacement or repair of any significant component of a theatrical system in the Old Premises including but not limited to the sound system, the dimmers, or any other element of the lighting system, the SRT staff person primarily responsible for making such decision shall consult with his/her Seattle Center technical counterpart to seek concurrence with such SRT decision. In the event of any disagreement regarding such proposed expenditure, such SRT staff person and his/her Seattle Center counterpart shall schedule a meeting with the Director and SRT Managing Director for a discussion of the disagreement so that the SRT Managing Director can have a full understanding of the Seattle Center's position with respect to such proposed undertaking before SRT makes such commitment.

I. Process for Payment of Invoices During Existence of BWTMRR Fund. During the period any balance remains in the BWTMRR Fund after the making of the City's deposit for 2009, each invoice requesting payment from the BWTMRR Fund for work under a replacement or repair project contract or any related consultant contract or for reimbursement of a party's expense incurred in carrying out such replacement or repair project shall be submitted to the Director. The Director shall immediately provide a copy of the same to the SRT Managing Director, together with the Director's determination of whether such invoice should be paid, paid under protest or rejected (if such determination has been made) and an architect's certification that payment of the invoice is appropriate (if such certification is available). Unless otherwise agreed by the Director and SRT Managing Director, if an architect has been engaged to monitor the status of such replacement or repair work, no invoice from the contractor or any consultant engaged for work associated therewith shall be approved for payment without the architect having certified that its payment is appropriate. If the SRT Managing Director believes any such invoice should be paid under protest or rejected, notice of such opinion must be delivered to the Director within ten (10) calendar days after SRT's receipt of a copy of such invoice, and in the absence of any such notice, City may presume that the SRT Managing Director has granted approval for the payment of such invoice. In the event the SRT Managing Director and the Director disagree regarding what treatment any particular invoice should receive, such officials shall discuss, either in person or by telephone, their different opinions. All such discussions shall be held within whatever time period will permit, as appropriate, the processing of a warrant by City in a timely fashion.

(1) Agreement Regarding Payment. If the Director and SRT Managing Director agree that an invoice should be paid, the invoice shall be stamped "*APPROVED FOR PAYMENT*" and the Director and the SRT Managing Director shall sign their names within or adjacent to such approval stamp. Such invoice shall then be processed and paid consistent with established City procedures for such action and the provisions of this Agreement.

(2) Agreement Regarding Non-Payment. If the Director and the SRT Managing Director agree that an invoice should not be paid, the Director shall return the invoice to the person or entity that submitted the same with an explanation for why payment was not authorized, and provide a copy of such explanation to the surety (if any) for the person or entity submitting such invoice.

(3) Agreement Regarding Payment Under Protest. If the Director and the SRT Managing Director agree that an invoice should be paid under protest, the invoice shall be stamped "*APPROVED FOR PAYMENT UNDER PROTEST*," and the Director and the SRT Managing Director shall sign their names within or adjacent to such approval stamp. The Director shall provide written notice to the person or entity submitting such invoice as well as to the surety (if any) for such person or entity regarding the alleged bases for payment of such invoice under protest, the absence of any waiver by City or SRT of any deficiency in the invoicing person's or entity's performance or any other basis for payment under protest, and City's intent to withhold from the final payment(s) due to the person or entity requesting payment an amount equal to the aggregate amount of payment(s) made under protest until any alleged deficiency or failure is corrected and all disagreements regarding the appropriateness of making such payment(s) are resolved. Such invoice then shall be processed and paid consistent with established City procedures for such action.

(4) Referral of Dispute About Invoice to Independent Evaluator; Sharing of Costs of Independent Evaluator's Determination. If the Director and the SRT Managing Director disagree regarding the action that should be taken with respect to an invoice, the matter shall be referred to an independent evaluator jointly selected by the Director and SRT Managing Director, for such person's recommendation of whether such invoice should be paid, paid under protest, or not paid. Pending the determination by the independent evaluator, the invoice shall be held for further disposition. The costs of the independent evaluator's service in reviewing and making a determination regarding whether a disputed invoice should be paid, paid under protest or rejected shall be initially borne by City, subject to SRT's partial reimbursement of the same pursuant to Subsection 6.A.(4)(f) hereof.

(a) In the event the independent evaluator determines that a protested invoice should be paid without protest and, within seven (7) days after such determination is made, neither party insists that it be rejected or paid under protest, instead, the invoice shall be stamped, signed, processed, and paid as contemplated in Subsection 13.I.(1) hereof.

(b) In the event the independent evaluator determines that a protested invoice should be rejected and, within seven (7) days after such determination is made, neither party insists that it be paid without protest or paid under protest, the invoice shall be returned to the invoicing person or entity as contemplated in Subsection 13.I.(2) hereof.

(c) In the event the independent evaluator determines that an invoice should be paid under protest and, within seven (7) days after such determination is made, neither party insists that it be rejected or paid without protest, the invoice shall be processed as provided in Subsection 13.I.(3) hereof.

(5) Implementation of Party's Decision to Deal With Invoice in Manner Different from that Recommended by Independent Evaluator. Where the independent evaluator's determination with respect to a disputed invoice is based on a vote of two to one, only the party in the minority shall have the right to require that action contrary to that determined by the independent evaluator with respect to such invoice.

(a) If, notwithstanding the independent evaluator's determination that an invoice should be paid without protest, the party in the minority insists that it be paid under protest, the invoice shall be processed and paid under protest as provided in Subsection 13.I.(3) hereof, and such party shall become subject to Subsection 13.I.(7) hereof.

(b) If, notwithstanding the independent evaluator's determination that an invoice should be paid without protest, the party in the minority insists that it be rejected, the invoice shall be rejected as provided in Subsection 13.I.(2) hereof, and the protesting party shall become subject to Subsection 13.I.(6) hereof.

(c) If, notwithstanding the independent evaluator's determination that an invoice should be paid under protest, the party in the minority insists that it be rejected, the invoice shall be rejected as provided in Subsection 13.I.(2) hereof, and the party insisting that it be rejected shall become subject to Subsection 13.I.(6) hereof.

(d) If, notwithstanding the independent evaluator's determination that an invoice should be paid under protest, the party in the minority insists that it be paid without protest, the invoice shall be paid without protest as provided in Subsection 13.I.(1) hereof, and the party insisting that it be paid without protest shall become subject to Subsection 13.I.(7) hereof.

(e) If, notwithstanding the independent evaluator's determination that an invoice should be rejected, the party in the minority insists that it be paid without protest, the invoice shall be paid without protest as provided in Subsection 13.I.(1) hereof, and the party insisting that it be paid without protest shall become subject to Subsection 13.I.(7) hereof.

(f) If, notwithstanding the independent evaluator's determination that an invoice should be rejected, the party in the minority insists that it be paid under protest, the invoice shall be paid under protest as provided in Subsection 13.I.(3) hereof, and the party insisting that it be paid under protest shall become subject to Subsection 13.I.(7) hereof.

(6) Responsibilities Assumed by Party Insisting on Invoice Payment Under Protest or Rejection Contrary to Determination of Independent Evaluator. Whenever a party insists that an invoice be dealt with as specified in Subsections 13.I.(6)(b), or 13.I.(6)(c) hereof, such party shall become responsible for the defense of any claim or action brought by the invoicing person or entity for payment of the same or the payment of funds withheld from such

invoicing person or entity as a consequence of such party's insistence, and the payment of any sum found to be due and owing to such person or entity as well as all legal expenses and costs associated with any such defense, interest (if any) on withheld payment(s), and damages (if any, both direct and consequential) suffered by the other party.

(7) Responsibilities Assumed by Party Insisting on Expenditure of Funds Contrary to Determination of Independent Evaluator. Whenever a party insists that an invoice be paid without protest as specified in Subsection 13.I.(5)(d) or 13.I.(5)(e) or paid under protest as specified in Subsection 13.I.(5)(a) or 13.I.(5)(f) hereof, and the reason for the independent evaluator's determination regarding such invoice was that the invoicing person or entity's performance was deficient under the Construction Contract, Architect Agreement, or consultant's contract, or that some other condition for payment was not satisfied, and it is subsequently determined that such deficiency was not corrected or such condition was not satisfied, and the invoicing person or entity has been paid the disputed amount for its work, such party shall prosecute a claim or action to recover funds improperly expended, provide for the correction of the deficiency in the replacement or repair project that was the subject of the invoice dispute or the satisfaction of all condition for such payment (where possible), and assume, in connection therewith, all legal expenses and costs associated with such proceedings. No such claim or action shall be settled or compromised by the party responsible for its prosecution without the written approval of the other party to this Agreement. In the event that funds are recovered from a third person or entity as a consequence of the prosecution of such claim or action, the amount recovered shall be first allocated and expended to correct the performance deficiency and satisfy all conditions for payment (where possible). Any funds remaining after such corrective action has been completed shall be paid to the party responsible for such recovery.

(8) Withdrawal of Protest Regarding Payment or Order to Pay Withheld Funds. Whenever an invoicing person or entity makes corrections reasonably required to eliminate the basis for a party's protest against payment of any invoice paid under protest, or such invoicing party otherwise meets, to the reasonable satisfaction of the protesting party, all conditions for payment of an invoice paid under protest, or such party decides to abandon its protest against any invoice paid under protest, such party shall immediately provide written notice to the City's Project Manager that such party's protest is withdrawn. Whenever such Project Manager receives written notice that a protest against payment of any invoice paid under protest has been withdrawn, or City is ordered, by an arbitrator or judge having competent jurisdiction over the matter, to pay funds previously withheld from an invoicing person or entity under Subsection 13.I.(3) hereof, the Project Manager shall provide written notice to the appropriate invoicing person or entity that, contrary to any notice provided pursuant to Subsection 13.I.(3) hereof, a sum equal to the amount of the invoice paid under protest no longer will be withheld from the final payment(s) requested by such person or entity, and that such sum shall be paid when the same is due and payable.

J. Review of Replacement or Repair Project Contractor's and Consultants' Work; Withholding of Funds; Reporting of Progress and Expenses.

(1) Review of Replacement or Repair Project Contractor's and Consultant's Work. During the period from and after the date the City initial deposit is made into the BWTMRR Fund through the last day any balance remains in the BWTMRR Fund after the

making of the City's BWTMRR Fund deposit for 2009, the City's Project Manager shall review, on a regular basis, the performance of the contractor and every consultant working under a contract with respect to an Old Premises replacement or repair project to determine whether each performance deficiency asserted by the Project Manager, the SRT Managing Director, or the independent evaluator has been corrected and whether all other conditions for payment of invoices paid under protest have been satisfied.

(2) Withholding of Funds. During the period identified in Subsection 13.J.(1) hereof, City shall withhold from the total compensation and expense reimbursement respectively due to the contractor, the architect, and any consultant engaged for or related to any Old Premises replacement or repair project a sum equal to the aggregate amount paid under protest to such person or entity until the party that asserted a protest against the payment of a particular invoice paid under protest provides written notice to the Project Manager that such protest is withdrawn or abandoned, or until City is ordered to make such payment by an arbitrator or court of competent jurisdiction over the issue, whichever is earlier.

K. Construction Scheduling. The project manager for any Old Premises replacement or repair project shall consult with the Director and SRT Managing Director to schedule the undertaking of such project during such time period(s) as City and SRT mutually deem to be reasonable and feasible.

L. Remedy Upon Either Party's Failure to Clean, Repair or Maintain Premises. If either party fails, for more than thirty (30) calendar days after such party's receipt of a notice from the other party of the need for such work, to properly clean, repair and maintain the portion of the Premises for which it is responsible under this Agreement, the party providing such notice may (but shall not be obligated to) perform or cause to be performed such cleaning, repair, or replacement work on such dates and times as shall not unreasonably interfere with the operations of the other; Provided, that neither party shall undertake such work for the other if the other has requested proposals or invited bids for such work, has begun required processes for the undertaking of the same, or is otherwise diligently proceeding to have such repair or replacement work done. Upon completion of such repair or replacement work, the party responsible for performing such work under this Agreement shall reimburse the expenses incurred by the other party in securing the performance of such work.

M. Physical Modification of Old Premises and Performance of Janitorial Activity Therein Subject to Prevailing Wage Requirements.

(1) General Applicability of Requirements. The undertaking in, on and with respect to the Old Premises of any construction, alteration, improvement, enlargement, repair, demolition, replacement work (i.e., keeping the same in good, usable, operating condition other than the performing of ordinary, routine maintenance), and the performance of janitorial activity by janitors, rug shampooers, floor waxers, and window cleaners (hereinafter collectively referred to as "modification, maintenance or janitorial work") is subject to the wage requirements of R.C.W. Ch. 39.12 (Prevailing Wages on Public Works), R.C.W. Ch. 49.28 (Hours of Labor), and R.C.W. Ch. 49.46 (Minimum Wage Act), all as amended or supplemented. When any such activity is Federally funded, in whole or in part, Federal prevailing wage legislation and regulations shall apply, and such activity shall be subject to both State and Federal prevailing

wage requirements. SRT and its contractors and their subcontractors shall comply with whichever standard is the higher.

(2) **SRT's Obligations.** SRT shall prohibit its contractors and every subcontractor or other person doing any portion of any modification, maintenance or janitorial work from paying any laborer, worker, or mechanic less than the applicable prevailing hourly wage rates and fringe benefits for said worker's classification. Higher wages and benefits may be paid at the payor's option. SRT shall require its contractor to assign the appropriate classification to all laborers, workers or mechanics who perform any portion of such modification, maintenance or janitorial work pursuant to this Agreement, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries. SRT shall also require its contractor to ascertain the applicable prevailing rate of wage for each such classification. Laborers, workers, and mechanics must be paid in full in lawful money of the United States and at least once each week or such other frequency as is required by applicable law or regulation.

(3) **SRT's Indemnification of City from Prevailing Wage Claims.** City shall hold SRT responsible for the compliance by SRT's contractor(s) and all subcontractors with payroll reporting requirements and payment of prevailing wages. SRT shall indemnify, defend, and hold City harmless against any and all claims, demands, suits, causes of action, administrative proceedings, damages, costs and expenses (including but not limited to attorneys' fees) arising out of the failure by SRT or any of its contractors or any of their subcontractors to pay the applicable prevailing wage to any person who performs any work on the Old Premises that is subject to the State or Federal prevailing wage law.

14. UTILITY SERVICES.

A. **Premises Heating & Cooling.** Subject to the service capacity limitations inherent in the current Seattle Center common HVAC utility system and the City need to provide service to tenants in addition to SRT, City shall provide, to the extent reasonably possible, heating and cooling services to the Premises through the Seattle Center's common HVAC utility system. Unless otherwise approved by the Director, whose approval may be granted, withheld, or conditioned in the exercise of such official's discretion, the number and locations of points of delivery of such services to the Old Premises shall be those in existence on the commencement date of this Agreement, and to the New Premises, as approved by the Director through the Construction Agreement. The providing of points of delivery shall be at the sole cost of SRT and only in accordance with plans and specifications that have received the approval of the Director prior to the modification of service or points of delivery. SRT shall not install in the Premises any equipment or otherwise engage in any activity that results in the overloading of the capacity of any utility system serving the Premises or install any equipment or device that is incompatible with the common HVAC utility system serving the Premises. No equipment that SRT desires to have installed in the Premises that would require any change in the HVAC utility system serving the Premises in order to make such equipment operable shall be installed (1) prior to SRT's providing to the Director, SRT's written commitment to pay all City costs associated with and resulting from the making of such HVAC change, and (2) except in accordance with plans and specifications therefor that have received the Director's prior, written

approval. The total cost of cooling services provided to the Premises shall be divided in the following manner: Sixty percent (60%) shall be attributed to the Old Premises, and the remainder shall be attributed to the New Premises.

B. SRT-Secured Utility Services. SRT shall secure directly from the service provider thereof, whatever utility services are desired by SRT or its sublessees that are not provided by City through the Seattle Center Department under this Agreement, including but not limited to electricity, water and sewer, telephone, cable television and other cable-connected services, and solid waste removal services. Installation activity requiring any physical modification of the Old Premises or the exterior surface of the New Premises shall occur only with the prior written consent of the Director, which consent will not be unreasonably withheld or delayed.

C. Utility Expenses. SRT shall make arrangements with each utility service provider other than Seattle Center for the direct billing to SRT for the providing of all such service. SRT shall pay, before delinquency, all fees and charges imposed (if any) for all utility services provided to the Premises as well as special utility requirements such as transformers, converters, and the installation, change and relocation of points and means of service of all utility lines and systems.

D. City Grant of Easements. City hereby agrees, subject to the Director's reasonable approval, to grant to SRT such easements and/or licenses as may be needed to install the utilities provided for or permitted in this section. The Director shall execute such documents, in recordable form if required, to evidence the foregoing easements and/or licenses.

E. Limitations on City's Liability Regarding Utility Service Interruption or Reduction. City shall not be liable for the interruption or reduction of any utility service under either of the following circumstances:

(1) For City Maintenance. During or in connection with City maintenance work (provided such maintenance work is scheduled at reasonable times and with advance notice to SRT), unless the interruption is due to negligence on the part of City; or

(2) For Capacity Reasons. Whenever the Seattle Center common HVAC utility system reaches its service capacity.

15. PARKING & VEHICULAR TRAFFIC.

A. Parking Required for New Premises. As part of the permitting process associated with the development of the New Premises, City and SRT have executed an Off-Site Accessory Parking Covenant under which forty-six (46) parking spaces in the Seattle Center's "Mercer Street Parking Garage" have been identified as legally established parking spaces in a parking site accessory to the New Premises (the "Principal Building Site"), which spaces are to be used for off-street parking accessory to the New Premises for a period of twenty (20) years from and after June 15, 1995.

B. Cooperative Parking. As of the commencement date of this Agreement, the Seattle Center has a "Cooperative Parking Status" under Title 23 of the Seattle Municipal Code. Accordingly, and notwithstanding the provisions of Subsection 15.A hereof, and except as provided in Subsection 15.C hereof, City does not provide any area for the reserved use as a parking area for or associated with the Premises (including but not limited to any such area required by or for SRT staff, suppliers or customers), and whatever general, non-reserved parking City makes available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

C. City Provided Parking for SRT Personnel. The loading/unloading/parking area of the Old Premises is the only area made available hereunder for the parking of motor vehicles by SRT staff and its invitees at no additional charge to SRT.

D. Parking & Loading/Unloading Restrictions. SRT shall not permit any motor vehicle to be parked within or adjacent to the loading dock area of the New Premises without having people actively engaged in the loading or unloading of such vehicle. A Seattle Municipal Court citation may be issued for any motor vehicle that is parked in or adjacent to such loading dock but is not being actively loaded or unloaded.

E. Vehicle Movement on Seattle Center Roadways. SRT shall ensure that no motor vehicle larger than a twenty (20) foot truck is driven into the New Premises loading dock by or for SRT, or any of its caterers, concessionaires, contractors, suppliers, or any other person or entity authorized by SRT to use all or any portion of the Premises for any purpose whatsoever. SRT shall make a good faith effort to ensure that no motor vehicle is driven upon any Seattle Center roadway on any day during the term hereof before 7:00 a.m. or after 11:00 a.m. without the driver of such motor vehicle having in such person's possession a valid Seattle Center permit authorizing such activity at that time. (A Seattle Municipal Court citation may be issued for the driving of any motor vehicle onto the Seattle Center grounds before 7:00 a.m. or after 11:00 a.m. on any day where the driver of such motor vehicle does not have in his/her possession such a permit.)

16. OPERATING EQUIPMENT, SERVICES & PERSONNEL.

A. City-Provided Equipment. As of the commencement date of this Agreement, City shall provide, as a part of the Old Premises, the fly system, lighting system, sound system, electrical distribution system and soft goods described in Exhibit 2. Any other or additional material or equipment desired by SRT in the Premises shall be secured by SRT at no cost or expense to City except as contemplated in Subsection 13.F hereof or Exhibit 8. Any modification of the Old Premises required for the installation of any such other or additional system(s) or equipment shall be subject to the prior, written approval of the Director.

B. Security Personnel. Security personnel shall be assigned by City through May 31, 2009, to assist in the protection of persons and property in the Old Premises during the Term of this Agreement at no additional cost to SRT. SRT may secure similar security personnel services through the Seattle Center for the performance of the same functions in and with respect to the New Premises, and from and after June 1, 2009, in and with respect to the

Old Premises, at the then-applicable City charge for such personnel services if the providing of such personnel and performance of such functions are standard Seattle Center business practices at the time such personnel are desired. The providing of any such security personnel service shall not constitute or be deemed to be insurance or protection for SRT against the effects of any criminal activity.

17. INDEMNIFICATION.

A. SRT Indemnification. Except as limited by Subsection 17.C hereof, SRT shall indemnify, defend, and hold City, its officers, employees and agents harmless from any and all liability, losses, claims, actions, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to the use and occupancy of the Premises or any portion thereof, or any act or omission of SRT or any of its sublessees, or any of the officers, employees, agents, contractors, or volunteers of any of the same on the Premises, or any claim by a third party arising from any of the foregoing, including but not limited to trademark, patent, and copyright infringement; Provided, that in the event the City determines that one or more principles of governmental or public law are involved, City retains the right to participate in such action at its own expense.

B. City Indemnification. Except as limited by Subsection 17.C hereof, City shall indemnify, defend and hold SRT and its directors, trustees, officers, employees and agents harmless from any and all losses, claims, actions, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any act or omission of City or any of its officers, employees or agents in connection with City's use, maintenance or occupancy of the Premises, or any claim by a third party arising from any of the foregoing including but not limited to trademark, patent, and copyright infringement.

C. Indemnification Regarding Any Alteration, Addition, or Improvement. Where any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any portion of the Premises or any road, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, the indemnification provided pursuant to Subsections 17.A and 17.B hereof, shall be limited to the extent of the indemnitor's negligence.

D. Waiver of Immunity and Limitations on Industrial Insurance Liability. For purposes of this indemnification and hold harmless provision, City and SRT expressly waive their respective immunity and limitations on liability under any industrial insurance legislation including but not limited to Title 51 R.C.W. and acknowledge that this waiver was specifically entered into after mutual negotiation.

18. INSURANCE.

A. Minimum Insurance to be Secured and Maintained. Prior to the commencement of any activity on the Premises under this Agreement, SRT shall secure and shall thereafter

maintain, in full force and effect at no expense to City, one (1) or more policies of insurance as specified in Exhibit 9.

B. Reconstruction Following Loss.

(1) Insurance Proceeds. In the event of any loss, damage or casualty that is covered by property insurance, the parties to this Agreement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which proceeds shall be jointly held in trust by City and SRT (including interest earned by City and SRT on such proceeds) for the purpose of restoring the Premises and improvements made thereto that have been damaged by the casualty to their former condition and usability or replacing the same with equivalent or more suitable improvements.

(2) Reconstruction. Using property insurance proceeds, the parties shall proceed with reasonable diligence as soon as sufficient funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary (a) to repair and restore the Premises and all improvements made thereto that have been damaged by any insured casualty to their former condition, or (b) to replace the Premises and all improvements made thereto with a facility of a quality and usefulness for the activities contemplated in this Agreement that is at least equivalent to, or more suitable than, the Premises and improvements that were damaged or destroyed; Provided, that notwithstanding the provisions of this subsection, in the event that the Premises or the improvements made thereto, or a substantial portion thereof is damaged or destroyed by other than the fault of SRT or any of its officers, employees, contractors or agents, SRT shall have the option to terminate this Agreement, which option shall be exercised by SRT's delivering notice thereof to the Director not later than ninety (90) days after the date of any such damage or destruction. In the event of any such termination, the amount of money payable in the form of insurance proceeds as a consequence of such damage or destruction shall be divided between SRT and City as provided in Exhibit 10.

C. Waiver of Subrogation. City and SRT waive all subrogation rights against each other, any contractors, architect, architects' consultants, service providers, and all of their respective subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 18 or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by City and SRT as fiduciaries. SRT shall require a similar waiver from every contractor performing any work on the Premises. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

D. Mutual Defense Obligations. With respect to any third-party claim against or potentially against both SRT and City that results from or arises out of any Premises use or the SRT operations thereon, SRT and City agree to coordinate their defense of such claims pursuant to this provision. The parties agree to work together in good faith, and cause their respective counsel to work together in good faith, to coordinate and implement a strategy with respect to the legal defense of any such action, including, without limitation, answers, counterclaims, motions, discovery, settlement, preparation for trial, dispute resolution and any other hearings,

and appeal. Notwithstanding the foregoing, the obligations hereunder shall not impair or restrict either party's rights with respect to the defense of such an action nor shall such obligations prohibit the taking of any action that is in a party's best interest, including, without limitation, seeking the dismissal or summary judgment of claims, negotiating or entering into a settlement or pursuing any form of alternative dispute resolution. Each party in all cases shall bear its own costs and related expenses with respect to any third-party claim hereunder, including, without limitation, attorneys' fees, costs, settlements and judgments.

E. Assumption of Risk. The placement and storage of personal property in the Premises shall be the responsibility, and at the sole risk, of SRT.

F. City Remedy Upon SRT Failure to Insure. The Director shall notify SRT whenever the Director has a reasonable belief that SRT has failed to secure or maintain insurance as required by this Agreement. In the event such failure is not remedied within such reasonable period as the Director may specify, the Director may secure such insurance and charge SRT the full premium cost therefor plus either an administrative service charge equal to the greater of either (a) fifteen percent (15%) of such premium charge or (b) Two Hundred Fifty Dollars (\$250) plus the percentage of such sum that equals the percentage increase, if any, in the Consumer Price Index ("CPI") for All Urban Consumer Items, All City Average, using the base 1982-84 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor, that has occurred between July 1996 and beginning of the month in which such insurance is to be secured; Provided, that in the event of any change in the index base (1982-84 = 100) or other modification of such index, the parties hereto shall apply whatever conversion factor(s) are necessary to establish the true percentage change in the CPI for any period in which such modification(s) occur, and in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes.

19. DAMAGE OR DEFAACEMENT OF PREMISES OR SEATTLE CENTER.

A. Damage or Defacement by SRT or Any SRT-Associated User. SRT shall not damage or in any manner deface the Premises or any building or the grounds of the Seattle Center and shall not cause or permit anything to be done by any of SRT's sublessees or licensee, or any invitee, agent, employee, officer, or contractor of any of the same such that the Premises or any other portion of the Seattle Center is damaged or defaced in any manner. In the event that any portion of the Seattle Center other than the Premises, or any portion of the Premises that is a City responsibility to repair and maintain, is damaged or defaced by an act or omission of SRT, any SRT sublessee or licensee, or any officer, employee, contractor, invitee or agent of any of the same, SRT shall pay City within thirty (30) days after the date of an invoice therefor, the full City costs for restoring such property to the condition it was in immediately prior to such damage or defacement.

B. Damage or Defacement by City. City shall not damage or in any manner deface the Premises or SRT property contained therein and shall not cause or permit anything to be done by any agent, employee, officer, or contractor of City such that the Premises or such SRT property is damaged or defaced in any manner. In the event that during the period of City's use

of the Premises, any portion of the Premises, or any SRT property therein, is damaged or defaced by an act or omission of City, or any of its officers, employees, contractors, invitees to the Premises, or agents, City shall restore the Premises to its condition immediately prior to such damage or defacement as quickly as is reasonably possible after the discovery of such damage and establishment of City responsibility for its damage or defacement or pay SRT within thirty (30) days after the date of an invoice therefor, the full SRT costs for restoring such property.

C. Standard for Restoration. The repair or restoration of the Premises following the occurrence of any damage or destruction thereof shall be to a condition substantially equal to or better than the condition the Premises were in immediately prior to the occurrence of such damage or destruction.

20. SIGNS & PROMOTIONAL MATERIALS.

A. Signs on Exterior of Premises. The SRT may install signs on the exterior of the Premises, identifying the building by name, its status as the site of the SRT's productions and containing other information related to SRT, including without limitation program information, fundraising information and special SRT announcements. The design, installation and location (but not the contents) of all such signs shall be subject to the written approval of the Director, which approval shall not be unreasonably withheld. No other sign(s) or other advertising matter, symbols, canopies or awnings shall be attached to, painted on, or otherwise installed on the exterior surface of any portion of the Premises, including any window thereof, without the prior written approval of the Director, who may approve, deny, or approve subject to conditions, any SRT request therefor in the exercise of such official's reasonable discretion.

B. Promotional Displays Outside of Premises. Areas outside of the Premises may be used for the posting or exhibiting by or for SRT of promotional, directional, or other communicative information or material only with the prior, express, written permission of the Director, who may approve, deny, or approve subject to conditions, any SRT request therefor in the exercise of such official's reasonable discretion. SRT shall ensure that any such material to which the Director objects, is removed from display immediately following SRT's receipt of such objection.

C. Promotional Materials to Include Reference to Premises. SRT shall, to the extent possible, include in any promotional material imprinted or published or otherwise produced by or on behalf of SRT that makes references to the Premises, including but not limited to advertisements, posters, programs, but not including tickets, notice that the Premises are located at the Seattle Center.

D. Promotional Material on Inside of Premises. All promotional materials on the interior of the Premises shall be designed and installed, to the extent reasonably practicable (given the fact that much of the exterior surface of the Premises consists of windows), to be primarily viewable by an audience that is inside, rather than outside, of the Premises. Neither City nor any City-authorized third party pursuant to Section 5 hereof shall post any information or material in or on the Premises except during periods of use of the Premises pursuant to

Section 5, and all such information or material shall relate only to such authorized use. All such information and material shall be submitted to SRT in advance of its being posted or displayed. The design, installation, and location (but not the contents) of said information or materials shall be subject to the written approval of SRT, which approval shall not be unreasonably withheld. City shall ensure that all such information and materials shall be removed at the end of the use period authorized under Section 5 hereof.

21. ASSIGNMENT, TRANSFER & SUBLEASES.

A. Prior Notice, Consultation & Written Consent of Director Required. SRT shall not assign or transfer this Agreement or otherwise convey SRT's rights hereunder, or sublease all or any portion of the Premises without giving the Director at least fifteen (15) day's prior notice of such proposed action, and shall not execute any sublease of all or a portion of the Premises for a period of three (3) or more consecutive months (a "long-term sublease") without the prior written consent of the Director; Provided, that for the purposes of this section, different sublease agreements between SRT and the same subtenant of all or any portion of the Premises shall be treated as a single, long-term sublease if the aggregate duration of such subleases equals or exceeds ninety (90) days and the various periods of time that such subtenant is authorized to use and occupy any portion of the Premises under such sublease agreements are not separated from each other by at least sixty (60) consecutive days.

B. Conditions for Director's Consent. The Director's consent for any proposed assignment, interest transfer or long-term sublease shall not be unreasonably withheld or delayed when the following conditions are satisfied:

(1) Documentation Required to be Delivered to Director: SRT has delivered to the Director, to the Director's reasonable satisfaction, the following material:

(a) Identification of Proposed Assignee, Transferee, or Long-term Subtenant. SRT's written request to assign this Agreement or to execute a long-term sublease or to otherwise transfer all or a portion of its interests in this Agreement, which request identifies, with particularity, the legal name of the proposed assignee, transferee, or long-term subtenant; the form of organization that entity uses to engage in business; that entity's business address and telephone number; and, in the case of a long-term sublease, a description of the portion(s) of the Premises proposed to be sublet;

(b) Commitment to Operate Consistent with Seattle Center Policies. Evidence that a condition of the assignment, transfer or long-term sublease will require the proposed assignee, transferee or long-term subtenant to operate and conduct activities in the Premises consistent with the mission statement of, and activities otherwise permitted by, the Seattle Center;

(c) Commitment to Secure & Maintain Insurance and to Pay Fees & Royalties. Evidence that the proposed assignee, transferee or long-term subtenant has been legally obligated to secure and maintain during the term of its use and occupancy of the Premises or any portion thereof commercial general liability and business automobile insurance satisfying

the requirements of Section 18, hereof, and to pay any and all royalties, license fees and similar charges associated with its activities in the Premises;

(d) **Waiver of Property Damage Claims Against City.** A written waiver by such proposed assignee, transferee or long-term subtenant of any claim it has or may have against City for the damage or destruction during such assignee's, transferee's or long-term subtenant's use of the Premises or the subleased portion(s) thereof, of any personal property owned or under the control of such assignee, transferee or long-term subtenant (except damage or destruction that is due to City negligence);

(e) **Acknowledgement of Subordination of Long-term Sublease to Agreement and of SRT's Continuing Obligation to City.** Where SRT proposes to enter into a long-term sublease, a written acknowledgement executed by SRT and the proposed long-term subtenant that any such sublease is subordinate and subject to the terms and conditions of this Agreement, and that no sublease shall relieve SRT of its obligations under this Agreement; and

(2) **Determination Regarding Exclusive Use Conflicts.** The Director determines that the Premises use intended by the proposed assignee, transferee or long-term subtenant does not conflict with any exclusive use that may have been authorized for a third party at Seattle Center.

C. **Director's Consent Is No Waiver of Agreement Requirements.** The Director's consent to any assignment or other form of interest transfer or long-term sublease shall not be deemed a waiver of the requirement that SRT secure the consent of the Director for any subsequent assignment, interest transfer or long-term sublease. No assignment, transfer or sublease, with or without the Director's consent, shall release or relieve SRT of or from any of the obligations on its part to be kept and performed under this Agreement. In the event of any assignment of this Agreement, SRT shall cause to be delivered to the Director, simultaneously with such assignment, an instrument in writing, executed by the assignee, in which the assignee assumes and agrees to perform all of the terms and provisions of this Agreement, including those to be kept and performed by SRT that have not been fully performed.

22. **CONCESSION OR CATERING ACTIVITY.**

A. **Definitions.** As used in this section, unless the context clearly requires a different meaning,

(1) "Caterer" means any "caterer" as defined in the "Seattle Food Code" (Seattle Municipal Code Ch. 10.10 or its successor).

(2) "Concession or catering activity" means and includes the preparation, service, free distribution, or sale of food or any beverage, including any alcoholic beverage, or the free distribution or sale of any concession merchandise or service for any consideration including but not limited to the reimbursement of costs associated with such activity; and

(3) "Concession merchandise or services" means and includes inedible goods and hospitality services relating to the SRT, its sublessees, and the productions and performances presented in the Premises, but not elsewhere at the Seattle Center unless specifically authorized by the Director; it includes but is not limited to souvenirs and novelties and coat- and hat-checking services.

B. Grant of Right. Except as provided in Subsection 22.C, hereof, City grants to SRT the exclusive right to engage in concession or catering activity and to authorize individuals and other entities to engage in such activity for and on the behalf, or under the auspices of SRT, inside the buildings on the Premises, subject to the conditions set forth herein.

C. Right Not Effective During Certain Use Periods. The concession and catering rights granted to SRT in Subsection 22.B hereof shall not be effective during any period of time when the Production Areas are being used by City or by any City-authorized third party pursuant to Section 5 hereof. Nothing herein shall prohibit SRT from making separate arrangements with City or any City-authorized third party either for such person or entity's use of the SRT concession sales area(s) in the Premises or for SRT's engaging in concession or catering activity in the Premises during the period of time when the Production Areas are being used by City or any City-authorized third party pursuant to Section 5 hereof.

D. Food Service Establishment Permit Required. SRT shall ensure that all potentially hazardous food offered for sale within the Premises pursuant to this Agreement has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit or comparable authorization issued by the Seattle-King County Department of Public Health or its successor.

E. Insurance Required. SRT shall ensure that any person or entity that it contracts with, licenses, or otherwise permits to engage in concession or catering activity within the Premises pursuant to this Agreement secures and maintains in full force and effect during the period such person or entity engages in such activity, a policy of general commercial public liability insurance, and if such person or entity drives any motor vehicle on the Seattle Center grounds, business automobile insurance, all consistent with the requirements of Section 18 hereof, under which policy(ies) The City of Seattle is named as an additional insured.

F. Licenses and Permits; Contingent Expiration of Right. All licenses, permits and other authorization required in order to legally conduct the concession or catering activity contemplated herein shall be acquired and maintained at no cost to City. The inability of SRT or any caterer, lessee or subcontractor of SRT, to secure or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein.

G. Use of Banned Customer Service Serving Materials Prohibited. SRT shall not use, and shall prohibit every SRT subtenant and other person and entity authorized to engage in catering or concession activity hereunder from using, in connection with any concession or catering activity under this Agreement, any type of serving container or implement that is now or hereafter prohibited for use at Seattle Center. This SRT obligation with respect to materials other than polystyrene foam food or beverage containers shall be effective only after such materials have been identified by the Director through notice to SRT.

H. SRT's Restoration Responsibility for Areas Used for Serving Food & Beverages. Notwithstanding any other provision of this Agreement, in the event that any portion of the Premises or other portion of the Seattle Center is used for any catering activity by or for SRT, then, except as may be otherwise agreed upon by the Director and SRT Managing Director, SRT shall ensure that any area so used is restored immediately after such activity to at least as good a physical condition as such area was in immediately prior to such activity. All such restoration work on the interior of the Premises shall be completed within thirty (30) days after such event or such longer period as the Director shall allow, and on the exterior of the Premises, within such time period as the Director shall require.

I. Authorization for Subcontracting, Concession or Catering Activity. SRT is authorized to enter into such subcontracts, concession and caterer's agreements as it deems necessary to exercise the concession and catering right granted hereunder. This Agreement constitutes the prior express written authorization of City for the use of the Premises by SRT's caterers, concessionaires, and contractors, for concession or catering activity as described above.

J. No Catering or Concession Activity on Exterior Portion of Premises or on Seattle Center Grounds Without Director's Consent. Neither SRT nor any of its subtenants, caterers, or concessionaires shall use any exterior portion of the Premises or any other part of the Seattle Center for any catering or concession activity without the prior, express, written consent of the Director, whose consent shall not be unreasonably withheld.

23. OWNERSHIP OF PREMISES IMPROVEMENTS, ALTERATIONS & ADDITIONS.

Except as otherwise provided in this Agreement, all alterations, additions, and improvements to the Old Premises and all landscaping improvements made by SRT under the Construction Agreement shall become the property of City immediately upon their affixation to the Premises or their substantial completion, whichever is earlier, and shall be subject to all of the provisions of this Agreement. The improvements, additions and alterations made by SRT under the Construction Agreement other than landscaping improvements shall become City property as of the expiration or earlier termination of this Agreement.

24. COMPLIANCE WITH LAW.

A. Lawful Use. SRT, as the lessee hereunder, and City, with respect to its use of the Premises pursuant to Section 5 hereof, each agree to abide by, conform and comply with, and SRT and City each agrees to use its best efforts to ensure that every person it admits to the Premises abides by, conforms and complies with, all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; rules and regulations of the Seattle Center, Fire, Health, and Police Departments or the functional successors thereof; and licenses, permits, and authorizations required by any such authority. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation and shall make its best effort to prevent such

violations by any person admitted by it to the Premises. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between City and SRT.

B. Licenses and Similar Authorizations. SRT, at no expense to City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof; Provided, however, such responsibilities shall be City responsibilities with respect to City use of the Premises pursuant to Section 5 hereof.

C. Taxes. SRT shall pay, before delinquency, all taxes, levies, and assessments of any kind or nature that are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Premises pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises (other than non-SRT use pursuant to Section 5 hereof); taxes levied on SRT property, equipment, and improvements on or to the Premises; taxes on SRT's interest in this Agreement and any leasehold interest deemed to have been created thereby under RCW 82.29A, if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking; Provided, that in the event an assessment is based upon the extent of property lying adjacent to a street, SRT shall be responsible for its pro-rata share of such assessment based upon the portion of the street frontage occupied by the Premises. In the event the State of Washington makes any demand upon City for payment of any tax resulting from SRT's use or occupancy of the Premises or the conduct of any activity subject to tax, or the State withholds funds due to City to enforce collection of leasehold excise or any other tax, SRT, at its sole expense, shall contest such action and indemnify City for all sums expended by or withheld by the State from City in connection with such taxation; Provided, that SRT may pay any such tax in lieu of contesting it or indemnifying City. City shall pay, or shall contractually obligate all City-authorized third parties to pay, and shall indemnify and hold SRT harmless for all imposed taxes that relate to events in the Premises pursuant to Section 5 hereof (except for taxes imposed on concession sales by SRT or for SRT's benefit), and for all taxes that may be imposed on SRT or SRT's use of the Premises resulting from any use pursuant to Section 5 hereof by City or any City-authorized third party.

D. Attendance & Safety Standards. The Seattle Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Premises. SRT shall not sell or issue tickets or credentials for admission to the Premises in an aggregate number that exceeds the Seattle Fire Chief's determined number. SRT shall not admit to the Premises more people than the number so determined by the Seattle Fire Chief. SRT shall not permit any chair or movable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Premises shall not be obstructed by SRT or used for any purpose other than for ingress and egress to the Premises. City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Premises pursuant to Section 5 hereof.

E. Nondiscrimination and Affirmative Action. SRT shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including the Seattle Municipal Code (SMC), notably SMC Ch. 20.44; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

F. Women's and Minority Business Enterprise Utilization Compliance.

(1) Incorporation of Ordinance. This Agreement hereby incorporates by reference S.M.C. Ch. 20.46A (the "Women's & Minority Business Utilization ["WMBE"] Ordinance") and all regulations implementing the same. The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The failure of SRT or any contractor or subtenant of SRT to comply with any of the requirements of S.M.C. Ch. 20.46A in the exercise of the rights granted by this Agreement shall be a material breach of contract.

(2) SRT's Obligations. During the Term of this Agreement and any extension thereof, SRT shall:

(a) Meet the minority business enterprise ("MBE") and women's business enterprise ("WBE") set-asides established for this Agreement, if any;

(b) Make affirmative efforts to utilize WMBEs in performing SRT's obligations under this Agreement, whether as contractors, suppliers, subtenants, or in any other capacity;

(c) Require that all contractors and subtenants make affirmative efforts to utilize WMBEs in the performance of this Agreement;

(d) Maintain records reasonably necessary for monitoring compliance with the provisions of S.M.C. Ch. 20.46A, and submit such information as may be requested by the DAS Director or such official's functional successor in order to monitor and enforce compliance; and

(e) Require that contractors and subtenants maintain records reasonably necessary for monitoring the compliance of such contractors and subtenants with the provisions of S.M.C. Ch. 20.46A, and that the contractors and subtenants submit such information as may be requested by the DAS Director or such official's functional successor in order to monitor and enforce compliance.

(3) Liquidated Damages for Breach. City, in general, and its WMBE Program in particular, are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with S.M.C. Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, City and SRT agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside (if any) will fairly compensate City for resulting delays in carrying out the purpose of the WMBE Program, the costs of meeting utilization targets through additional

contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

25. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS.

SRT shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Premises or any portion thereof. City or its authorized third party users shall be responsible for all similar royalties, license fees and other charges in connection with such entities' use of the Premises pursuant to Section 5.

26. LIENS AND ENCUMBRANCES.

SRT shall keep the Premises free and clear of any lien or encumbrance arising or growing out of its use and occupancy of the Premises or any portion thereof. At City's request, SRT shall furnish City written proof of payment of any item that would or might constitute the basis for such a lien or encumbrance on the Premises if not paid.

27. MEDIATION OF DISPUTES.

The parties hereto shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to participate in good faith in the mediation process described below, and attempt to resolve all claims and disputes between them in a one mediation effort.

A. Involvement of Mediator & Mediator's Consultants. In the event an issue cannot be resolved by negotiations between subordinate staff of SRT and Seattle Center, the matter shall be referred to the Director and the SRT Managing Director. In the event those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute; Provided, that in the event the Director and SRT Managing Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association or the Judicial Arbitration & Mediation Service for the appointment of a mediator according to the process that is established by such entity for such action. SRT and City shall share equally the cost charged for the mediation of any dispute. The mediator shall have the authority to engage one or more expert consultants with knowledge in the field(s) or area(s) involved in the matter(s) that are in dispute to assist the mediator and the parties to evaluate their respective claims and possibly reach agreement to resolve their dispute.

B. Continuation of Efforts in Event of Dispute: No Litigation Without Mediation. Notwithstanding the existence of any dispute between the parties hereto, the parties shall continue to carry out, without unreasonable delay, all of their respective responsibilities under this Agreement that are not affected by the dispute. Neither party to this Agreement shall

commence any litigation against the other with respect to any claim or dispute under this Agreement without first participating, in good faith, with the other party in mediation as contemplated in this section.

28. DEFAULT.

A. Default by SRT. The following acts and omissions by SRT shall constitute a default and material breach of this Agreement:

- (1) SRT's failing to comply with any of the material requirements of Section 18 hereof, regarding insurance;
- (2) SRT's failing to cease, or correct or remedy, any violation of any law, ordinance, rule, or regulation, after SRT's receipt of notice and a reasonable time to cease such violation or make such correction or provide such remedy;
- (3) SRT's abandoning or vacating the Premises;
- (4) SRT's failing to pay any sum of money due to City within thirty (30) days after notice from City that such a payment is overdue, notwithstanding the right of City to interest on any such sums that become delinquent;
- (5) SRT's becoming insolvent, making a general assignment for the benefit of creditors, suffering or permitting the appointment of a receiver for its business or assets, becoming subject to any proceeding under any bankruptcy or insolvency law (whether domestic or foreign), or being wound up or liquidated, voluntarily or otherwise; or
- (6) SRT's failing to perform any other material condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by Subsection 28.C hereof, or such other period for remedial action as is expressly otherwise provided for in this Agreement.

B. Default by City. City shall be in default and material breach of this Agreement if City fails to perform a material condition or covenant required of it where such failure in performance is not remedied within the time allowed by Subsection 28.C hereof, or such other period for remedial action as is expressly otherwise provided for in this Agreement.

C. Notice of Default; Opportunity to Cure; Extension of Period to Cure Default. Neither City nor SRT shall be in default unless such party fails to perform an obligation required of it within a reasonable time, which time shall not extend more than thirty (30) days after written notice from the aggrieved party has been received by the other, specifying the particular obligation that the other has failed to perform or provision of this Agreement that has been materially breached; Provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance or the curing of such material breach, then the other party shall not be in default if it commences performance or cure within such thirty (30) day period, and thereafter diligently prosecutes the same to completion;

Provided, further, that if City has provided to SRT a notice of default and an opportunity to cure pursuant to the terms and conditions of the Construction Agreement, then no separate notice of default or separate opportunity to cure shall be required under this Agreement with respect to the termination by City of the Construction Agreement as a consequence of SRT's refusing or failing to have the New Premises constructed consistent with, or other material breach of, the terms and conditions of the Construction Agreement.

29. REMEDIES UPON DEFAULT AND MATERIAL BREACH.

A. City Right to Terminate Agreement. In the event a court of competent jurisdiction determines that there has been a material and substantial default or breach of this Agreement by SRT, and City is not in default or breach of this Agreement, City may terminate this Agreement, re-enter the Premises, permit others to use said Premises during any portion of the period of use remaining under this Agreement had it not been terminated, and receive compensation therefor. In such event, SRT's liability for the rent, expense reimbursements and other charges to be paid to City hereunder shall not be extinguished, and SRT shall pay to City within thirty (30) days after the date of any invoice therefor, the shortfall between what City actually receives on a monthly basis for the use and occupancy of the Premises by third parties and the amounts that are to be paid by SRT hereunder.

B. City Remedies Upon Material Breach of Concession & Catering Requirements. Notwithstanding any other provision hereof, in the event of a default and material breach of any provision of Section 22 of this Agreement, as now existing or hereafter amended, City may revoke and terminate the concessions and catering right granted to SRT without affecting SRT's right to use and occupancy of the Premises hereunder; and in such event Subsections 30.C and 30.D shall apply with respect to all property related to concession or catering activity installed on the Premises by or on behalf of SRT, except that all such property shall be removed by SRT within thirty (30) days after the effective date of the revocation and termination of the concessions and catering rights.

C. City Remedies Upon SRT's Material Breach of Construction Agreement.

(1) Adjustment of Annual New Premises Rent. In the event that by September 30, 1997, (a) the New Premises has not been completed as provided in the Construction Agreement (by, for example, not having the exterior appearance of the New Premises and its adjacent landscaping completed in accordance with the plans and specifications therefor as last approved by the Director [Exhibits A and D to the Construction Agreement], and (b) the New Premises has not had installed therein all of the theatrical equipment and furnishings identified in Exhibit 3 (the list of equipment that is required to keep the New Premises equipped as a fully functioning performance facility), then the rent payable under Subsection 6.A.(3) hereof shall be as specified in Section 2 of Appendix 4.

(2) SRT Assumption of Maintenance, Repair & Replacement Responsibilities With Respect to Premises Shell. If, at any time during the term of this Agreement, City determines that (a) the New Premises or the connection between the New Premises and the Old Premises is not weather-tight, (b) damage has occurred to the Premises or any of the

Provided, further, that if City has provided to SRT a notice of default and an opportunity to cure pursuant to the terms and conditions of the Construction Agreement, then no separate notice of default or separate opportunity to cure shall be required under this Agreement with respect to the termination by City of the Construction Agreement as a consequence of SRT's refusing or failing to have the New Premises constructed consistent with, or other material breach of, the terms and conditions of the Construction Agreement.

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B. City Remedies Upon Material Breach of Concession & Catering Requirements. Notwithstanding any other provision hereof, in the event of a default and material breach of any provision of Section 22 of this Agreement, as now existing or hereafter amended, City may revoke and terminate the concessions and catering right granted to SRT without affecting SRT's right to use and occupancy of the Premises hereunder; and in such event Subsections 30.C and 30.D shall apply with respect to all property related to concession or catering activity installed on the Premises by or on behalf of SRT, except that all such property shall be removed by SRT within thirty (30) days after the effective date of the revocation and termination of the concessions and catering rights.

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(2) SRT Assumption of Maintenance, Repair & Replacement Responsibilities With Respect to Premises Shell. If, at any time during the term of this Agreement, City determines that (a) the New Premises or the connection between the New Premises and the Old Premises is not weather-tight, (b) damage has occurred to the Premises or any of the

improvements made thereto or equipment installed therein as a consequence of the New Premises or the connection between the Old Premises and the New Premises not being weather-tight, and (c) the exterior of the New Premises and its adjacent landscaping were not constructed according to the plans and specifications therefor as last approved by the Director (Exhibits A and D to the Construction Agreement), SRT shall be given notice of such condition and a demand to correct such non-conforming construction and compensate City for all damage or losses occasioned by such condition. In the event that SRT fails, after having been provided such notice and an opportunity as contemplated in Subsection 28.C hereof, to correct such non-conforming construction and to compensate City for such damage and losses, then, notwithstanding anything to the contrary in Section 13 hereof or in Exhibits 5 through 7 hereto, and in addition to SRT's remaining liable to City for such compensation, SRT shall become responsible for the maintenance, repair and replacement of the roof and exterior shell of the New Premises (including but not limited to the exterior walls, exterior doors and locks, and exterior windows) and the connection between the New Premises and Old Premises until such time as SRT demonstrates, to the reasonable satisfaction of the Director, that the New Premises and its connection to the Old Premises have been constructed according to the plans and specifications therefor as last approved by the Director, or to such other plans and specifications for the New Premises as are approved by the Director, in the exercise of such City official's discretion.

D. Injunctive Relief & Specific Performance. In the event that after its receipt of due notice and an opportunity to cure as provided hereunder, either party fails to cure a material breach and default of any of its obligations hereunder, the other party shall be entitled to damages and, as appropriate, to an order for injunctive relief or specific performance.

30. **SURRENDER OF PREMISES AND REMOVAL OF SRT'S PROPERTY; DISPOSITION OF MONEY IN BWTMRR FUND & SRT REPLACEMENT TRUST FUND.**

A. Surrender of Premises. Upon termination or expiration of this Agreement, SRT shall surrender to City the Premises and all keys to any door or window therein.

B. Condition of Premises Upon Surrender. The Premises to be surrendered to City shall be surrendered in at least as good a condition as the Old Premises were in on the commencement date of this Agreement, except for the effects of construction of the SRT's improvements on the New Premises pursuant to the Construction Agreement and other improvements, additions, alterations, and repairs made to the Premises with the approval or concurrence of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; and reasonable wear and tear.

C. Removal of Property. Prior to the expiration of the term of this Agreement, or within sixty (60) days after this Agreement's earlier termination, SRT shall remove from the Premises, at no cost or expense to City, all office equipment, furnishings, and other personal property owned and placed in or on the Premises by SRT that is not reasonably required to keep the Premises in the condition of a fully functional and safe, live theatrical performance facility. In removing such material and property, SRT shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by SRT to the Director's reasonable satisfaction, at SRT's sole cost and expense. Structural alterations, additions,

improvements, and stage production equipment and fixtures identified in Exhibits 2 and 3 shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period.

D. Inventory & Ownership of Office Equipment & Related Items. SRT shall deliver to the Director on or by October 1, 1996, a written Property Inventory identifying all SRT-owned office equipment, furnishings and other personal property moved onto the Premises during any time prior to the immediately preceding July 1st that SRT expects to be able to remove at the end of the term of this Agreement. On or by October 1st of every year thereafter during the term of this Agreement, SRT shall deliver to the Director a replacement Property Inventory or a written addendum to the most recently delivered Property Inventory indicating additions and deletions to the same that occurred during any time during the twelve (12) months prior to the immediately preceding July 1st. Each such Property Inventory that is delivered to the Director and its supplementary additions and deletions list shall constitute and be incorporated herein as Exhibit 11 until a succeeding Property Inventory is delivered to the Director.

E. Disposition of Unremoved Property. In the event that after the expiration or earlier termination of this Agreement, SRT has not removed the removable office equipment, furnishings, and other personal property listed on the most recently filed Property Inventory within the time allowed for such removal, City may, but need not, remove the same and hold it for SRT, or may place the same in storage, all at SRT's expense and risk; and SRT shall reimburse City for any reasonable expense incurred by City in connection with such removal and storage. City shall have the right to sell such stored property, without notice to SRT, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied, first, to the cost of the sale; second, to the payment of the charges for storage; third, to the payment of any other amounts which may then be due from SRT to City; the balance, if any, shall be paid to SRT. SRT hereby waives and expressly releases City from any and all claims for loss or damage, of any kind or nature, arising out of said removal, storage and sale.

F. Disposition of Money in BWTMRR Fund & SRT Replacement Trust Fund. In the event this Agreement is terminated for any reason prior to the earlier of (a) May 31, 2009, or (b) the date when the BWTMRR Fund has received the City remittance for 2009 and the balance of that City fund has been expended, SRT shall remit to City, without protest, offset or deduction of any kind or nature whatsoever, all of the money in the SRT Replacement Trust Fund, which money City shall aggregate with and deposit into the BWTMRR Fund and thereafter divide and expend as follows: First, City shall deduct from the BWTMRR Fund an amount equal to all expenditures that (1) the parties expected to make in the year in which this Agreement is terminated with such funds, as indicated in Exhibit 8, and (2) have not been made as of the effective date of termination. Second, City shall deduct from the BWTMRR Fund an amount equal to the sum of all outstanding financial obligations of SRT to City under this Agreement and otherwise, to the extent such obligations can be paid therefrom. The aggregate amount (if any) remaining in the BWTMRR Fund after such deductions have been made shall be held by City as a reasonable damage deposit to cover all City costs that may be incurred in remedying any SRT failure to leave the Premises in the condition required by Subsections 30.B and 30.C hereof. Upon the full payment of all financial obligations of SRT to City under this Agreement and otherwise (whether by direct SRT payment or deduction from the BWTMRR

Fund as contemplated herein) and SRT's timely satisfaction of the requirements of Subsections 30.B and 30.C hereof, the balance of the BWTMRR Fund (if any) shall be divided between City and SRT consistent with following calculations:

The sum of the annual SRT deposits into the SRT Replacement Trust Fund pursuant to §13.F.(3) plus the sum of the unreimbursed SRT Supplemental Deposits made pursuant to §13.F.(4)(b) hereof through the effective year of termination = Σ SRT

The sum of the annual City deposits into the BWTMRR Fund pursuant to §13.F.(3) plus the sum of all City Supplemental Deposits into the BWTMRR Fund pursuant to §13.F.(4)(a) that have not been reimbursed, each through the effective year of termination = Σ City

Σ SRT + Σ City = Total Deposits

Σ SRT \div Total Deposits = SRT Share of Balance of BWTMRR Fund

Σ City \div Total Deposits = City Share of Balance of BWTMRR Fund

City shall remit to SRT the SRT Share of Balance of BWTMRR Fund within thirty (30) days after the determination of such amount.

31. NO WAIVERS.

No action other than a written document by the Director or the SRT Managing Director (or such other person as may be specified for such purpose in a notice given by SRT to the Director) specifically acknowledging that it constitutes a waiver of a particular breach or default by the other shall constitute a waiver by a party of such breach or default. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

32. BINDING EFFECT.

The provisions, covenants and conditions contained in this Agreement are binding upon the parties hereto and their legal successors and assigns.

33. REMEDIES CUMULATIVE.

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude or waive the right to use another.

34. APPLICABLE LAW AND VENUE.

This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

35. OBLIGATION OF SRT LIMITED TO CORPORATION.

Any and all obligations of SRT under this Agreement are enforceable only against the Seattle Repertory Theatre, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon SRT's officers, directors, trustees, members, employees, or agents.

36. NO PARTNERSHIP, ASSOCIATION OR JOINT VENTURE RELATIONSHIP CREATED.

In no event shall either party be construed, held, or become, in any way or for any purpose, a partner, associate, or joint venturer of the other party or any party associated with the other party in the conduct of the other party's business or otherwise. This Agreement does not constitute either party as the agent or legal representative of the other party for any purpose whatsoever, nor is either party granted any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

37. ADDRESSES.

Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Director
Seattle Center Department
305 Harrison Street
Seattle, Washington 98109

and to SRT at the following address:

Managing Director
Seattle Repertory Theatre
155 Mercer Street
Seattle, Washington 98109

Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

38. TITLES OF SECTIONS.

The titles of sections and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any section.

39. AMENDMENTS.

The parties hereto expressly reserve the right to amend this Agreement from time to time as they mutually deem necessary. No alteration or modification of the terms hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.

40. DIRECTOR'S AUTHORITY.

The action of the Director pursuant to or in implementation of this Agreement does not constitute any official action by any other City department or official that may be required by law, ordinance, rule or regulation.

41. SURVIVAL OF INDEMNIFICATION OBLIGATIONS.

The indemnification obligations assumed by each party under this Agreement shall survive the expiration or earlier termination of this Agreement.

42. ATTORNEYS' FEES.

In the event a suit or arbitration is initiated to resolve a dispute with respect to this Agreement, the losing party in such suit or arbitration shall pay to the prevailing party the reasonable attorneys' fees and other reasonable costs and expenses incurred by the prevailing party in such suit or arbitration. If City prevails, its attorneys' fees shall be computed as if it were represented by attorneys in a private law firm having as many attorneys as are employed by the Seattle Law Department, and with as much experience as that possessed by the attorneys actually representing City.

43. SUPERSESSION OF AMENDED LICENSING AGREEMENT & RELATED MEMORANDUM OF UNDERSTANDING.

This Agreement supersedes the "Bagley Wright Theatre at Seattle Center Licensing Agreement" executed on or about February 20, 1981; the "First Amendment to the Bagley Wright Theatre at Seattle Center Licensing Agreement" executed on or about November 3, 1983; the "Memorandum of Understanding by The City of Seattle and The Seattle Repertory Theatre regarding certain production-related equipment contemplated by the Bagley Wright

Theatre at Seattle Center Licensing Agreement" executed on or about July 19, 1991; the letter dated July 7, 1995 that was signed by a representative of each of the parties hereto; and all portions of Resolution 29212 of the Seattle City Council that are inconsistent with the contents hereof.

44. APPENDICES & EXHIBITS.

The following appendices and exhibits are incorporated herein, whether or not attached hereto. Notwithstanding any provision to the contrary herein, the parties hereto may agree to the substitution and replacement, from time to time, of subsequently agreed-upon exhibits without the formality of an actual amendment to this Agreement, each of which substitute and replacement exhibits shall be identified on the face thereof as a substitute and replacement exhibit and the effective date of such substitution and replacement.

Appendix 1	Construction Agreement between The City of Seattle and Seattle Repertory Theatre
Appendix 2	Rent Schedule for Use & Occupancy of Old Premises Through May 31, 2009
Appendix 3	Rent Schedule for Use & Occupancy of Old Premises On & After June 1, 2009
Appendix 4	Rent for Use & Occupancy of New Premises or Land Occupied by New Premises * * * * *
Exhibit 1	Legal Description of Premises
Exhibit 2	Equipment Required to Keep Old Premises Equipped as a Fully Functioning Performance Facility
Exhibit 3	Equipment Required to Keep New Premises Equipped as a Fully Functioning Performance Facility
Exhibit 4	SRT Maintenance & Repair Responsibilities With Respect to the New Premises
Exhibit 5	City's Maintenance & Repair Responsibilities With Respect to Old Premises Through May 31, 2009
Exhibit 6	City's Maintenance & Repair Responsibilities With Respect to New Premises

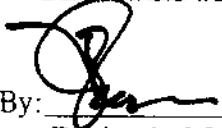
- Exhibit 7 City's & SRT's Maintenance & Repair Responsibilities With Respect to Old Premises On & After June 1, 2009
- Exhibit 8 BWTMRR Fund & SRT Replacement Trust Fund: Minimum Annual Deposits & Expenditure Schedule
- Exhibit 9 Minimum Required Insurance Coverage
- Exhibit 10 Division of Insurance Proceeds in Event of SRT Election to Terminate Agreement Following Substantial Damage or Destruction of Premises or Improvements Thereto
- Exhibit 11 SRT Property Inventory

45. ENTIRE AGREEMENT.


The parties hereto acknowledge that it is a negotiated understanding, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all of the exhibits attached hereto, embodies the entire Agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties regarding the Premises except as expressly referenced herein.

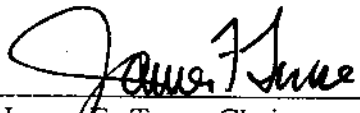
IN WITNESS WHEREOF, the authorized representative(s) of each of the parties hereto has/have executed this Agreement by affixing his/her/their signature(s) in the spaces below.

SEATTLE REPERTORY THEATRE

By: 
Benjamin Moore, Managing Director

THE CITY OF SEATTLE

By: 
Virginia Anderson, Director
Seattle Center Department

By: 
James F. Tune, Chairman
Board of Directors

STATE OF WASHINGTON)
) ss. (THEATRE'S ACKNOWLEDGEMENT)
COUNTY OF KING)

On this 7 day of May, 1996, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Benjamin Moore and James F. Tune, the respective Managing Director and Chairman of the Board of Trustees of the Seattle Repertory Theatre, who on oath stated that they executed the annexed agreement and acknowledged such agreement to be the free and voluntary act of the Seattle Repertory Theatre for the uses and purposes mentioned therein, and that they were authorized to execute said agreement for and on behalf of the Seattle Repertory Theatre.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Diane James
(Signature)

DIANE JAMES
(Print or type name of notary)

Notary Public in and for the State of Washington, residing at Seattle
My commission expires 6/9/98

STATE OF WASHINGTON)
) ss. (CITY'S ACKNOWLEDGMENT)
THE COUNTY OF KING)

On this 9th day of May, 1996, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Virginia Anderson, to me known to be the Director of the Seattle Center Department of The City of Seattle, who on oath stated that she executed the annexed agreement, and acknowledged said agreement to be the free and voluntary act and deed of The City of Seattle for the uses and purposes therein mentioned, and that she was authorized to execute said agreement for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Carolyn C. Gossard
(Signature)

CAROLYN C. GOSSARD
(Print or type name of notary)

Notary Public in and for the State of Washington, residing at Seattle
My commission expires 11/28/96

APPENDIX 1

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF SEATTLE
&
SEATTLE REPERTORY THEATRE**

[Document incorporated, but not attached because of its bulk.]

APPENDIX 2

**RENT SCHEDULE FOR USE & OCCUPANCY OF OLD PREMISES
THROUGH MAY 31, 2009**

As consideration for any use of the Old Premises by SRT and all other persons and entities (other than City and third parties authorized by City to use the Old Premises Production Areas pursuant to Section 5 of this Agreement), from and after the Commencement Date of this Agreement through May 31, 2009, SRT shall pay to City the following rent:

In 1996: \$7,332.83 per month.

Effective January 1, 1997, and each January 1st thereafter during the term hereof, the monthly rent shall be increased by the percentage increase (if any) in the Consumer Price Index ("C.P.I.") for All Urban Consumer Items, All City Average (using the base 1982-84 = 100) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of any change in the index base (1982-84 = 100) or other modification of such index, the parties hereto shall apply whatever conversion factor(s) are necessary to establish the true percentage change in the C.P.I. for any year(s) in which such modification(s) occur, and in the event such index is discontinued, the parties hereto shall select and use for such rent adjustment purpose, another, similar index that reflects consumer price changes.

(To illustrate the parties' intentions under this Agreement, if the C.P.I. index for January 1996 = 156.79, and the C.P.I. index for January 1997 = 162.59, the percentage increase in the C.P.I. occurring during 1996 = +3.7%. That percentage, when applied to the 1996 monthly rent of \$7,332.83, would result in an increase of \$271.31, and thus make the revised monthly rent payable for 1997 = \$7,604.14.)

Effective on the third anniversary of the date a Certificate of Occupancy is issued with respect to the New Premises, the then-current revised monthly rent shall be reduced by an amount equal to the average monthly cost incurred by the Seattle Center Department in providing cooling service to the Old Premises pursuant to Subsection 14.A of the annexed Agreement during the first three years after the date a Certificate of Occupancy is issued with respect to the New Premises. The Seattle Center Director shall calculate such average monthly cooling service cost as soon as reasonably possible after such anniversary date but no later than July 1, 1999, and provide notice of to the SRT Managing Director of (a) the amount of such average monthly cooling cost; (b) the amount by which monthly rent as revised by the C.P.I. as provided for herein is to be reduced, and the resulting revised reduced monthly rent; (c) the amount of any rent credit due to SRT (which credit shall be applied by City to the revised reduced monthly rent due for the month(s) immediately after the date of such Director's notice); and (d) the amount of the revised reduced monthly rent due for the month in which such credit is sufficient to pay only a portion of that month's revised reduced monthly rent. Until the SRT Managing Director's receipt of notice of the revised reduced monthly rent, SRT shall continue to pay in a timely manner the revised monthly rent last specified by the Director as provided herein.

APPENDIX 3

**RENT SCHEDULE FOR USE & OCCUPANCY OF OLD PREMISES
FROM & AFTER JUNE 1, 2009**

As consideration for any use of the Old Premises by SRT and all other persons and entities (other than City and third parties authorized by City to use the Old Premises Production Areas pursuant to Section 5 of this Agreement), from and after June 1, 2009, SRT shall:

1. Pay to City monthly rent equal to \$1.00 per month consistent with the requirements of Section 6 of the Agreement; AND

2. Provide to City for use by City and City-authorized third parties the Old Premises Production Areas and New Premises Production Areas as contemplated in Section 5 hereof; AND

3. Expend, and provide documentation to the reasonable satisfaction of the Director of SRT's having made an expenditure, no later than September 1, 2010, of not less than One Million Dollars (\$1,000,000) on capital renovations and improvements to the Old Premises (which expenditure shall be in addition to SRT's expenditures from the SRT Replacement Trust Fund pursuant to Section 13 of the annexed Agreement); Provided, that all such renovations and improvements shall be subject to the requirements of Section 12 of this Agreement; Provided, that:

- a. Notwithstanding any provision in Section 12 of this Agreement to the contrary, SRT shall submit to the Director, for the Director's approval, schematic designs, design development drawings, and final working drawings and specifications for all renovations and improvements to be paid for using any portion of such required expenditure;
- b. The Director's approval with respect to any such renovation or improvement project or undertaking involving or affecting, in any manner whatsoever, the exterior of the Old Premises or the New Premises (including but not limited to the appearance of the same) or any City maintenance responsibility under Section 13 of this Agreement, may be granted, withheld, or conditioned in the exercise of the Director's discretion.

In the event that SRT fails to not only expend the amount required by this Exhibit by the deadline specified hereunder but also provide written documentation to the reasonable satisfaction of the Director that such expenditure has been made, the rent for the Old Premises Production Areas shall be renegotiated by the Director and SRT Managing Director, but in the absence of their agreement, shall be fixed at a "fair market rate" as established by a qualified commercial real estate appraiser selected by the City's Mayor.

APPENDIX 4

**RENT SCHEDULE FOR USE & OCCUPANCY OF NEW PREMISES
OR LAND OCCUPIED BY NEW PREMISES**

1. Except as provided in Subsection 2 hereof, the annual rent for SRT's use and occupancy of the New Premises shall be the amount specified as the "Level Annual Rent" for the then-current year in the term of said Agreement that is indicated on the attached schedule.

2. In the event that SRT fails to have the New Premises construction fully completed by the date specified in Subsection 29.C of the annexed Facility Use & Occupancy Agreement, and the rent is to be adjusted as contemplated in such subsection, the annual rent specified in Subsection 6.A.(3) of such Agreement for SRT's use of the land occupied by the New Premises (or whatever portion thereof exists at the time) shall be the amount specified as the "Calculated Rent" for the then-current year in the term of said Agreement that is indicated on the attached schedule; Provided, that from and after the date that the New Premises has been completed in a manner consistent with the plans and specifications therefor as last approved by the Director (Exhibits A and D to the Construction Agreement) and all of the theatrical equipment and furnishings identified on Exhibit 3 have been installed in the New Premises (which date shall be reasonably determined by the Director after consultation with the SRT Managing Director), SRT shall pay only the rent for the New Premises specified in Section 1 of this Appendix 4.

NEW ADDITION BAGLEY WRIGHT THEATRE																
Facility:	15,754	Sq. ft.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
SRT Capital Contribution:	7,374,338		7,853,847	8,105,170	8,364,535	8,632,201	8,908,431	9,193,501	9,487,893	9,791,289	10,104,621	10,427,968	10,761,663	11,106,037		
Terminal Depreciation																
Present Value of Reversion																
Annual Payments to Recapture	844,668															
City Capital Contribution:	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Terminal Depreciation																
Present Value of Reversion																
Annual Payments to Recapture																
SRT CONTRIBUTION	75,030	Year	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030
Recapture of Improvements																
Annual Imputed Rent																
CITY CONTRIBUTION																
Hypothetical Land Rent:																
Land value @	787,700	\$0/sq.ft.	838,919	865,765	893,469	922,060	951,566	982,016	1,013,441	1,045,871	1,079,339	1,113,878	1,148,522	1,186,307		
increasing at CPI																
Annual return adj. every 5 years @	63,016	8.0%	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016	63,016
Recapture of Improvements	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Management Costs	4,000		4,260	4,396	4,537	4,682	4,832	4,987	5,146	5,311	5,481	5,656	5,837	6,024		
Calculated Annual Rent:	67,016		67,276	67,412	67,553	67,697	67,847	67,997	68,148	68,299	68,452	68,606	68,762	68,919		
"Fair Rent" = Calculated Rent less Imp. Rent	(9,014)		(7,754)	(7,617)	(7,477)	(7,341)	(7,209)	(7,081)	(6,957)	(6,837)	(6,720)	(6,606)	(6,495)	(6,387)		
Present Value of "Fair Rent" Payments	62,091															
(assumes 8.0% discount rate)																
Level Annual Rent	5,515		5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515

NEW ADDITION BAGLEY WRIGHT THEATRE																
Facility	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
SRT Capital Contribution:	11,461,430	11,828,196	12,206,698	12,587,312	13,000,426	13,416,440	13,845,766	14,288,830	14,746,079	15,217,947	15,704,922	16,207,479	16,726,119	17,261,354	17,813,718	18,383,757
Terminal Depreciation																(9,884,148)
Present Value of Reversion																
Annual Payments to Recapitulate	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8,499,609
City Capital Contribution:																
Terminal Depreciation																
Present Value of Reversion																
Annual Payments to Recapitulate																
SRT CONTRIBUTION	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030
Recapture of Improvements	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030
Annual Imputed Rent	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030	75,030
CITY CONTRIBUTION																
Hypothetical Land Rent	1,224,268	1,263,445	1,303,875	1,345,599	1,388,658	1,433,095	1,478,954	1,526,281	1,575,122	1,625,626	1,677,643	1,731,224	1,786,623	1,843,795	1,902,797	1,963,686
Land value @	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347	86,347
Annual return adj. every 5 years @	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Recapture of Improvements	6,217	6,416	6,621	6,833	7,052	7,277	7,510	7,751	7,999	8,255	8,519	8,791	9,073	9,363	9,663	9,972
Management Costs	92,564	92,763	92,968	93,180	93,399	93,624	93,857	94,098	94,346	94,602	94,866	95,138	95,420	95,710	96,010	96,319
Calculated Annual Rent	17,534	17,733	17,939	18,150	18,369	18,595	18,828	19,068	19,316	19,572	19,836	20,109	20,390	20,680	20,980	21,289
"Fair Rent" = Calculated Rent less Imp.																
Present Value of "Fair Rent" Payments (assumes 8.0% discount rate)																
Level Annual Rent	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515	5,515

EXHIBIT 1

LEGAL DESCRIPTION FOR OLD PREMISES

The building and adjacent parking area located on portions of Lots 2-5 and 10-14, Block 34, D. T. Denny's Home Addition to the City of Seattle, as recorded in Volume 3 of Plats, page 115, Records of King County, Washington.

LEGAL DESCRIPTION FOR LAND OCCUPIED BY NEW PREMISES

Portions of Lots 5-10, Block 34, D. T. Denny's Home Addition to the City of Seattle, as recorded in Volume 3 of Plats, page 115, Records of King County, Washington.

EXHIBIT 2

**EQUIPMENT REQUIRED TO KEEP OLD PREMISES EQUIPPED AS A
FULLY FUNCTIONING PERFORMANCE FACILITY**

LIGHTING:

Front End Control Console
Submaster Console
Dimmer Racks and Dimmers
Printer
System CRT Monitors
House Light Control Stations
Work Light Control Stations
Raceways
Cue Light System
Remote Cue Light System
40 Fresnels
65 PARS
100 Lekos
2 Followspots
40 Cyc Lights

OTHER:

Stage Floor
Theatre Seats

AUDIO:

Mixing Console and Remote Console
Built-in Amplifiers with Racks
Built-in Speakers including Center Cluster, Surround and Fill
Page/Monitor System
Headset System
Assistive Listening System
Effects Processing Equipment
2 Reel-to-Reel Tape Decks with Auto Locators
Misc. Miscrphones, Stands, Booms
DAT Recorder
CD Player
2 3-way Portable Monitor Speakers
4 2-way Portable Monitor Speakers
2 Mixing Console Monitor Speakers

RIGGING/FLY SYSTEM:

65 Counterweighted 50' Linesets
6 Motorized Tab Winches
2 Grid Motorized Winches
1 Bull Winch
80 Mule Blocks
30 Loft Blocks
Sand Bags, Hemp, Misc. Rigging Supplies

SOFT GOODS:

Fire Curtain
Act Curtain
Grand Teaser
4 Traveller Panels (Used for Blackout Curtain)
20 Legs
6 Borders
Cyc
Scrim

EXHIBIT 3

**EQUIPMENT REQUIRED TO KEEP NEW PREMISES EQUIPPED AS A
FULLY FUNCTIONING PERFORMANCE FACILITY**

LIGHTING EQUIPMENT:

Control Console
2 Back-up Control Consolettes
Dimmer Racks and Dimmers w/ Advanced Features
Printer
System CRT Monitors
House Light Control Stations
Worklight Control Stations
Raceways and Plug-in Boxes
Cue Light System
5 Lighting Trusses with Chain Motors
165 Lekos
20 Pars
20 Fresnels
8 Cyc Lights

OTHER:

Stage Floor
Theatre Seats

AUDIO:

Mixing Console
Amplifiers and Racks
Speakers for Effects and P.A.
Programmable Page/Monitor System
Headset System with Wireless Components
Dual Channel Assistive Listening System
Video Monitoring System with IR Lights
Equalizers
Effects Processor
CD Player
Cassette Player
CD Recorder
Power Conditioners
Otari Reel to Reel Decks
Patchbay and Cables
Wireless Mics and Receivers
Various Microphones
Production Control Panel

RIGGING/FLY SYSTEM:

Pipes
Rope for Linesets
6 General Purpose Chain Motors
Pin Rail

SOFT GOODS:

Grand Drape
Grand Valence
3 Borders
6 Legs
Blackout
3 Scrims
5 Storage Hampers

NOTE:

EXHIBIT 3 will be revised to reflect inventory
upon completion of new premises.

EXHIBIT 4

SRT'S MAINTENANCE & REPAIR RESPONSIBILITIES WITH RESPECT TO THE NEW PREMISES

1. DEFINITIONS

As used in this exhibit, the following definitions shall be controlling unless another meaning is clearly evident from the context:

"Routine repair" means work required when equipment or a structural or system element is partially or fully inoperable.

"Predictive maintenance" means work of a non-routine nature performed to avoid an untimely failure of equipment or a system.

"Preventive maintenance" means routine work accomplished on a regular schedule to avoid routine repair and/or to extend the useful life of equipment or a structural or system element.

"Major maintenance" means work required when an item of equipment or a structural or system element has reached the end of its useful life and must be replaced or rebuilt.

"End of useful life" means the good faith and reasonable determination by the SRT Managing Director that an item of equipment or a building element no longer functions and cannot be economically repaired or rebuilt, or, in the case of a component, replaced.

"Stage production equipment" means theatrical equipment necessary to operate a live production for the stage, and includes but is not limited to the lightboard, dimmers, lighting equipment, soft goods, the sound system, and fixed and movable rigging equipment.

2. MAINTENANCE SCHEDULE

SRT shall perform or have performed all of the following maintenance work consistent with the schedule below:

A. Routine Repair:

Electrical system -- Repair all system components up to the service entrance including but not limited to panels, conduits, wires, fixtures, and lamps; replace exit lighting batteries.

Elevator -- After the elevator warranty expires, contract and pay for elevator maintenance servicing including all routine and emergency repair required; contract and

pay for monitoring of the elevator emergency telephone for A.D.A. compliance purposes; comply with the recommendations of City's elevator inspector(s).

Exterior Doors and Locks -- Repair as needed.

Exterior Building Lighting -- Repair controllers for the exterior lights connected to the New Premises electrical system.

Exterior Hard Surfaces -- Clean and maintain the hard surfaces of the courtyard on the West side of the New Premises.

Fixed Seats -- Repair seat anchors, pivots, upholstery, and other parts as necessary.

Interior Doors and Locks -- Repair as needed.

Interior Finishes and Accessories -- Repair walls, ceilings, floors, and all other interior finishes and accessories as needed; remove and/or paint over all graffiti and repair all other vandalism within three (3) days SRT's receipt of a report of the existence of such graffiti or vandalism, or such within shorter period as may be required by law or ordinance.

Potable Water System and Waste Water System -- Repair showers, sinks, drains, toilets, urinals, sump pump, dispensers, and drinking fountains, as needed; repair the waste water system lines out to the building cleanout closest to the exterior wall, and the potable water system out to the water meter, each as needed.

Rest room Stalls -- Repair doors, pilasters, hardware, and other parts as necessary.

Stage Production Equipment -- Repair all stage production equipment as necessary. After the warranties expire, where applicable, purchase a maintenance and emergency repair contract or contracts or otherwise provide for the necessary maintenance.

B. Preventive & Predictive Maintenance: (Task items and frequency are as specified below, or consistent with the manufacturer's recommendations, warranty requirements, or code or regulatory requirements, whichever is the most stringent.)

Electrical System -- Annually check, tighten and clean all panels, switch gears and connectors; check motor operation; read amperage; replace bad bearings; tighten connections on control and contactors; as necessary, rewind motor, replace bearings, controls, heaters, fuses, breakers, and occupancy sensors; every five years, replace emergency battery packs.

HVAC -- The following tasks shall be completed quarterly and repairs made as necessary:

Supply Fans -- Inspect fan bearings, scroll and blades, clean as required; inspect for leakage and clean coil face as required; inspect belt alignment and sheave wear. Inspect filters for condition and pressure drop; change and clean filter rack; inspect damper and valve controls; inspect motor bearings, record operating amps and check mountings and bolts.

Exhaust Fans -- Inspect fan bearings, scroll and blades; clean and grease as required; inspect belt alignment and sheave wear; inspect motor bearings; record operating amps and check mountings and bolts.

Pumps -- Inspect motor and bearings, check amperage and mounts, oil or grease as necessary; check pump for noise and vibration, and oil or grease as necessary; check packing for leakage and coupling for alignment and wear, adjust or replace as necessary; inspect pump mounts.

Elevator -- After the elevator warranty expires, contract and pay for elevator maintenance servicing providing for all necessary preventive and predictive maintenance.

Exterior Doors and Locks -- Annually inspect, adjust and tighten hinges, pivots and closure hardware; conduct three-cycle performance tests on doors.

Fixed Seats -- Annually inspect for motion and function of backs, seats, and standards; tighten as needed.

Interior Finishes and Accessories -- Annually inspect and repair walls, ceilings, floors and all other interiors finishes; biennially reseal all ceramic tile grout.

Potable Water System and Waste Water System -- Complete the following tasks quarterly and make appropriate repairs or replacements as necessary:

Drinking Fountain -- Check function, drain, cartridges and mounting.

Toilets and urinals -- Check flushometer, seat, base, drain and flow mountings.

Sink/valve and wash up sink -- Check operation flow, temperature mounting, drain, and back flow preventer; have operation of back flow preventer annually certified by properly licensed personnel.

Dispensers -- Check mounting and function.

Drains -- Check function.

Showers -- Check valve and drain.

Sump -- Check function, fittings and mounting.

Plumbing system, generally -- Treat plumbing system annually with bacterial viable enzymes.

Rest room Stalls -- Annually inspect for tightness and alignment of doors, pilasters, and hardware; tighten and adjust as needed.

Stage Production Equipment -- Where applicable, after the warranties expire, purchase a preventive maintenance contract or contracts or otherwise provide for the necessary maintenance; as necessary, repack bearings, change hemp, and lubricate the rigging equipment.

Other Elements -- Make repairs as necessary.

C. Major Maintenance:

Building Systems -- Replace or rebuild all interior building systems and individual components thereof when each reaches the end of its useful life.

HVAC -- Replace or rebuild supply and exhaust fans, pumps, belts, controls and other components when each reaches the end of its useful life.

Elevator -- Replace or rebuild the elevator when it reaches the end of its useful life.

Exterior Doors and Locks -- Replace or rebuild each when it reaches the end of its useful life.

Fixed Seats -- Reupholster or replace when each reaches the end of its useful life.

Interior Doors and Locks -- Replace or rebuild when each reaches the end of its useful life.

Stage Production Equipment -- Replace when each item thereof reaches the end of its useful life.

D. Record Keeping: SRT shall maintain complete and accurate records of all routine repairs, preventive and predictive maintenance, and major maintenance undertaken in and with respect to the New Premises. A written report documenting all of the routine maintenance, preventive and predictive maintenance, and major maintenance work performed in, on, and with respect to the New Premises during the twelve (12) months immediately preceding each July 1st during the term hereof shall be delivered annually by SRT to the Director on or before September 1st, beginning September 1, 1997, and continuing through September 1, 2009.

E. Permits & Certificates: Any permit or certificate, as required by law or ordinance, for operation of any elevator, hot water tank assembly or boiler, or air compressor on or in the

portion of the Premises to be maintained under this Exhibit, and any permit required by any hazardous substance or hazardous waste enactment affecting activity in the portion of the Premises to be maintained under this Exhibit shall be secured and maintained in full force and effect.

EXHIBIT 5

**CITY'S MAINTENANCE & REPAIR RESPONSIBILITIES
WITH RESPECT TO OLD PREMISES THROUGH MAY 31, 2009**

1. DEFINITIONS

As used in this exhibit, the following definitions shall be controlling unless another meaning is clearly evident from the context:

"Routine repair" means work required when equipment or a structural or system element is partially or fully inoperable.

"Predictive maintenance" means work of a non-routine nature performed to avoid an untimely failure of equipment or a system.

"Preventive maintenance" means routine work accomplished on a regular schedule to avoid routine repair and/or to extend the useful life of equipment or a structural or system element.

"Major maintenance" means work required when an item of equipment or a structural or system element has reached the end of its useful life and must be replaced or rebuilt.

"End of useful life" means the good faith and reasonable determination by the Director that an item of equipment or a building element no longer functions and cannot be economically repaired or rebuilt, or, in the case of a component, replaced.

"Stage production equipment" means theatrical equipment necessary to operate a live production for the stage, and includes but is not limited to the lightboard, dimmers, lighting equipment, soft goods, the sound system, and fixed and movable rigging equipment.

2. MAINTENANCE SCHEDULE

Seattle Center shall perform the following maintenance work with respect to the Old Premises through May 31, 2009, according to the schedule below:

A. Routine Repair:

Electrical system -- Repair all system components up to the service entrance including but not limited to panels, conduits, wires, fixtures, and lamps; replace exit lighting batteries.

Elevator -- Contract and pay for elevator maintenance servicing including all routine and emergency repair required; contract and pay for monitoring of the elevator emergency

telephone for A.D.A. compliance purposes; comply with the recommendations of City's elevator inspector(s).

Exterior Doors and Locks -- Repair as needed.

Exterior Shell -- Repair foundation, walls and all other exterior finishes other than exterior windows, doors and the roof, as needed; remove and/or paint over all graffiti and repair all vandalism within three (3) days after the receipt by Seattle Center's Technical Facilities Manager, or such official's functional successor, of a report of the existence of such graffiti or vandalism.

Exterior Windows -- Clean exterior side of windows one (1) time per year and repair damaged or broken windows as needed.

Exterior Building Lighting -- Repair controllers for the exterior lights connected to the Old Premises electrical system.

Roof -- Patch as needed; Provided, that if roof patching is necessary due to unauthorized access to the roof by SRT or any of its employees, agents or contractors, SRT shall reimburse City for the labor and materials required to repair the roof.

HVAC -- Repair supply and exhaust fans, pumps, belts, controls and other components as needed.

Fixed Seats -- Repair seat anchors, pivots, upholstery, and other parts as necessary.

Potable Water System and Waste Water System -- Repair showers, sinks, drains, toilets, urinals, sump pump, dispensers, and drinking fountains, as needed; repair the waste water system lines out to the building cleanout closest to the exterior wall, and the potable water system out to the water meter, each as needed; as needed, repair system lines from the building cleanout closest to the exterior wall to the main water line for the waste water system.

Rest room Stalls -- Repair doors, pilasters, hardware, and other parts as necessary.

Interior Doors and Locks -- Repair as needed.

Interior Finishes and Accessories -- Repair walls, ceilings, floors, and all other interior finishes and accessories as needed; remove and/or paint over all graffiti and repair all vandalism within three (3) days after the receipt by Seattle Center's Technical Facilities Manager, or such official's functional successor, of a report of the existence of such graffiti or vandalism.

B. Preventive & Predictive Maintenance: (Task items and frequency are minimum standard)

Exterior walls -- Inspect annually and repair as needed; seal every ten (10) years.

Exterior windows - Inspect annually and repair as needed.

Roof -- Biannually clean gutters and drains and inspect; floodcoat once every five (5) years.

Waste water system -- Inspect annually; clean from the building cleanout closest to the exterior walls to the main water line as needed.

Electrical System -- Annually check, tighten and clean all panels, switch gears and connectors; check motor operation; read amperage; replace bad bearings; tighten connections on control and contactors; as necessary, rewind motor, replace bearings, controls, heaters, fuses, breakers, and occupancy sensors; every five years, replace emergency battery packs.

HVAC -- The following tasks shall be completed quarterly and repairs made as necessary:

Supply Fans -- Inspect fan bearings, scroll and blades, clean as required; inspect for leakage and clean coil face as required; inspect belt alignment and sheave wear. Inspect filters for condition and pressure drop; change and clean filter rack; inspect damper and valve controls; inspect motor bearings, record operating amps and check mountings and bolts.

Exhaust Fans -- Inspect fan bearings, scroll and blades; clean and grease as required; inspect belt alignment and sheave wear; inspect motor bearings; record operating amps and check mountings and bolts.

Pumps -- Inspect motor and pump bearings, check amperage and mounts, oil or grease as necessary; check pump for noise and vibration, and oil or grease as necessary; check seals for leakage and coupling for alignment and wear, adjust or replace as necessary; inspect pump mounts.

Elevator -- Contract and pay for elevator maintenance servicing providing for all necessary preventive and predictive maintenance by an elevator mechanic.

Exterior Doors and Locks -- Annually inspect, adjust and tighten hinges, pivots and closure hardware; conduct three-cycle performance tests on doors.

Fixed Seats -- Annually inspect for motion and function of backs, seats, and standards; tighten and repair as needed.

Interior Finishes and Accessories -- Annually inspect and repair walls, ceilings, floors and all other interiors finishes; biennially reseal all ceramic tile grout.

Potable Water System and Waste Water System -- Complete the following tasks quarterly and make appropriate repairs or replacements as necessary:

Drinking Fountain -- Check function, drain, cartridges and mounting.

Toilets and urinals -- Check flushometer, seat, base, drain and flow mountings.

Sink/valve and wash up sink -- Check operation flow, temperature mounting, drain, and back flow preventer; have operation of back flow preventer annually certified by properly licensed personnel.

Dispensers -- Check mounting and function.

Drains -- Check function.

Showers -- Check valves and drains.

Sump -- Check function, fittings and mounting.

Plumbing system, generally -- Treat plumbing system annually with bacterial viable enzymes.

Rest room Stalls -- Annually inspect for tightness and alignment of doors, pilasters, and hardware; tighten and adjust as needed.

Other Elements -- Make repairs as necessary.

C. Major Maintenance:

Exterior walls -- Repair any damage to or replace exterior wall surface when it reaches the end of its useful life; paint as needed.

Exterior windows -- Replace caulking when it reaches the end of its useful life.

Roof -- Replace when existing roof reaches the end of its useful life.

Waste water system -- Replace supply and waste lines from the building cleanout closest to the exterior wall to the main line, as needed.

HVAC -- Replace or rebuild supply and exhaust fans, pumps, belts and controls and other elements when each has reached the end of its useful life.

Other Building Systems -- Replace or rebuild all interior building systems and individual components thereof when each reaches the end of its useful life.

Elevator -- Replace or rebuild the elevator when it reaches the end of its useful life.

Exterior Doors and Locks -- Replace or rebuild each when it reaches the end of its useful life.

Interior Doors and Locks -- Replace or rebuild when each reaches the end of its useful life.

Fixed Seats -- Reupholster or replace when each reaches the end of its useful life.

D. Permits & Certificates: Any permit or certificate, as required by law or ordinance, for operation of any elevator, hot water tank assembly or boiler, or air compressor on or in the portion of the Premises to be maintained under this Exhibit, and any permit required by any hazardous substance or hazardous waste enactment affecting activity in the portion of the Premises to be maintained under this Exhibit shall be secured and maintained in full force and effect.

EXHIBIT 6

CITY'S MAINTENANCE & REPAIR RESPONSIBILITIES WITH RESPECT TO NEW PREMISES

1. DEFINITIONS

As used in this exhibit, the following definitions shall be controlling unless another meaning is clearly evident from the context:

"Routine repair" means work required when equipment or a structural or system element is partially or fully inoperable.

"Predictive maintenance" means work of a non-routine nature performed to avoid an untimely failure of equipment or a system.

"Preventive maintenance" means routine work accomplished on a regular schedule to avoid routine repair and/or to extend the useful life of equipment or a structural or system element.

"Major maintenance" means work required when an item of equipment or a structural or system element has reached the end of its useful life and must be replaced or rebuilt.

"End of useful life" means the good faith and reasonable determination by the Director that an item of equipment or a building element no longer functions and cannot be economically repaired or rebuilt, or, in the case of a component, replaced.

2. MAINTENANCE SCHEDULE

Seattle Center shall perform the following maintenance according to the schedule below:

A. Routine Repair:

Exterior Shell -- Repair foundation, walls and all other exterior finishes other than exterior windows, doors and the roof, as needed; remove and/or paint over all graffiti and repair all vandalism within three (3) days after the receipt by Seattle Center's Technical Facilities Manager, or such official's functional successor, of a report of the existence of such graffiti or vandalism.

Exterior Windows -- Clean exterior side of windows one (1) time per year and repair damaged or broken windows as needed.

Roof -- Patch as needed; Provided, that if roof patching is necessary due to unauthorized access to the roof by SRT or any of its employees, agents or contractors, SRT shall reimburse City for the labor and materials required to repair the roof.

B. Preventive & Predictive Maintenance: (Task items and frequency are minimum standard)

Exterior walls -- Inspect annually and repair as needed; seal every ten (10) years.

Exterior windows - Inspect annually and repair as needed.

Roof -- Biannually clean gutters and drains and inspect; floodcoat once every five (5) years.

C. Major Maintenance:

Exterior walls -- Repair any damage to or replace exterior wall surface when it reaches the end of its useful life; paint as needed.

Exterior windows -- Replace caulking when it reaches the end of its useful life.

Roof -- Replace when existing roof reaches the end of its useful life.

D. Permits & Certificates: Any permit or certificate, as required by law or ordinance, for operation of any elevator, hot water tank assembly or boiler, or air compressor on or in the portion of the Premises to be maintained under this Exhibit, and any permit required by any hazardous substance or hazardous waste enactment affecting activity in the portion of the Premises to be maintained under this Exhibit shall be secured and maintained in full force and effect.

EXHIBIT 7

**CITY'S & SRT'S MAINTENANCE & REPAIR RESPONSIBILITIES WITH RESPECT TO
OLD PREMISES & NEW PREMISES ON & AFTER JUNE 1, 2009**

A. City Maintenance Responsibilities: On and after June 1, 2009, City shall continue to perform or have performed all of the exterior shell, exterior walls, exterior windows, exterior doors and locks, and roof maintenance work specified in Exhibits 5 and 6 according to the schedule set forth therein.

B. SRT Maintenance Responsibilities: On and after June 1, 2009, SRT shall perform or have performed all of the maintenance work described in Exhibits 4, 5 and 6 according to the schedule set forth therein, other than the maintenance of the roof and the exterior shell (including exterior doors and locks, exterior windows, and exterior walls) of the New Premises and Old Premises (which maintenance shall remain a City responsibility). SRT shall maintain complete and accurate records, in writing, of all routine repairs, preventive and predictive maintenance, and major maintenance undertaken in, on, and with respect to the Premises. Commencing on September 1, 2010, and on each September 1st thereafter during the term hereof, SRT shall deliver to the Director a written report documenting all of the routine maintenance, preventive and predictive maintenance, and major maintenance work performed in, on, and with respect to the Premises during the twelve (12) months that immediately precede the July 1st that is immediately prior to such report deadline.

EXHIBIT 8

**BWTMRR FUND & SRT REPLACEMENT TRUST FUND:
MINIMUM ANNUAL DEPOSITS & EXPENDITURE SCHEDULE**

**AMENDMENT NO. 1
TO FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATRE
&
THE CITY OF SEATTLE**

THIS FIRST AMENDATORY AGREEMENT is entered into by and between the **Seattle Repertory Theatre** (hereinafter referred to as "SRT"), a not-for-profit corporation organized under the laws of, and authorized to do business in the State of Washington, and **The City of Seattle** (hereinafter referred to as "the City"), a municipal corporation of the State of Washington.

WHEREAS, on or about May 9, 1996, the parties hereto entered into a Facility Use and Occupancy Agreement, (hereinafter referred to as the "Agreement"), pursuant to which SRT was authorized to use and occupy certain premises located at 155 Mercer Street at Seattle Center in Seattle, King County, Washington; and

WHEREAS, the Agreement provided for SRT to commence paying the City directly for the cost of heating and cooling services rather than having those costs included in the rent, and the rent was accordingly reduced by an amount intended to be equal to the average cost of heating the Old Premises, all of which was designed to be cost neutral for SRT and revenue neutral for the City, yet provide an incentive for SRT to conserve energy; and

WHEREAS, the formula used in calculating the average cost of heating the Old Premises, "Fuel Cost per Therm \times Boiler Efficiency \times (1 - Line Loss %) \times Pounds of Water per Gallon (pressure) \times Gallons of Condensate (units used) /100", was incorrect and should have been "(Fuel Cost per Therm / Boiler Efficiency / (1 - Line Loss %)) \times Pounds of Water per Gallon (pressure) \times Gallons of Condensate (units used) /100", thereby understating the average cost of heating; and

WHEREAS, the agreement included a rate and allocation percentage for the cost of cooling which was incorrect; and

WHEREAS, the Consumer Price Index for All Urban Consumer Items, All City Average included in the lease as the index for annual rent increases is inconsistent with the Seattle Center Department's practice of using the Consumer Price Index for All Urban Consumer Items, Seattle, Tacoma, Bremerton Area; and

WHEREAS, the Parties have agreed to delay the due date for notification of the Old Premises cooling cost credit; and

WHEREAS, the parties hereto desire to modify their agreement to make these corrections; and

WHEREAS, the changes contemplated above are not inconsistent with current City policies and procedures; NOW, THEREFORE,

IN CONSIDERATION of the mutual promises, covenants and conditions set forth in this Amendment, the parties agree as follows:

1. Appendix 2 is amended to read as follows, thereby replacing the original Appendix 2:

As consideration for any use of the Old Premises by SRT and all other persons and entities (other than City and third parties authorized by City to use the Old Premises Production Areas pursuant to Section 5 of this Agreement), from and after the Commencement Date of this Agreement through May 31, 2009, SRT shall pay to City the following rent:

In 1996: \$ 6,835.29 per month.

Effective January 1, 1997, and each January 1st thereafter during the term hereof, the monthly rent shall be increased by the percentage increase (if any) in the Consumer Price Index ("CPI") for All Urban Consumer Items, Seattle, Tacoma, Bremerton Area (using the base 1982-84 = 100) as published by the US Department of Labor, Bureau of Labor Statistics, or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of any change in the index base (1982-84 =100) or other modification of such index, the parties hereto shall apply whatever conversion factor(s) are necessary to establish the true percentage change in the CPI for any year(s) in which such modification(s) occur, and in the event such index is discontinued, the parties hereto shall select and use for such rent adjustment purpose, another, similar index that reflects consumer price changes.

(To illustrate the parties' intentions under this Agreement, if the CPI index for January 1996 = 156.79, and the CPI index for January 1997 = 162.59, the percentage increase in the CPI occurring during 1996 = +3.7%. That percentage, when applied to the 1996 monthly rent of \$6,835.29, would result in an increase of \$252.91, and thus make the revised monthly rent payable for 1997 = \$7,088.20.)

Effective on January 1, 2005, the 2005 revised monthly rent of \$8,617.48 shall be reduced by \$1,729.12, which is an amount equal to the average monthly cost incurred by the Seattle Center Department during 2002, 2003 and 2004 in providing cooling service to the Old Premises pursuant to Subsection 14.A of the Agreement. Until the SRT Managing Director's receipt of notice of the revised reduced monthly rent, SRT shall continue to pay in a timely manner the revised monthly rent last specified by the Director as provided herein.

2. Section 6.A.(4)(c) is amended to read as follows, thereby replacing the original Section 6.A (4)(c):

The cost of cooling services provided by the Seattle Center to the New Premises from and after the date of issuance by City of a Certificate of Occupancy for the New Premises, and to the Old Premises, all at the rate of \$.21 per ton hour increased by the ratio of the current cost of a kilowatt-hour divided by the 1986 cost of a kilowatt-hour: \$.0265;

3. The last sentence of Section 14. A. is amended to read as follows, thereby replacing the last sentence of Section 14. A.:

The total cost of cooling services provided to the Premises shall be divided in the following manner: Sixty-five percent (65%) shall be attributed to the Old Premises, and the remainder shall be attributed to the New Premises.

4. Section D.2 of Exhibit 9 is amended to read as follows, thereby replacing the original Section D.2 of Exhibit 9:

The evidence specified in Subsection D.1 hereof shall be delivered as follows:

Director
Seattle Center Department
The City of Seattle
305 Harrison Street
Seattle, WA 98109

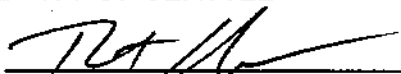
Risk Manager
Finance Department
The City of Seattle
600 Fourth Avenue
Seattle, WA 98104

or to such other official(s) and address(es) as City may hereafter specify.

5. All of the terms and conditions of the Facility Use and Occupancy Agreement shall remain in full force and effect except as provided in or as modified by this Amendment. The additions, deletions, and modifications made herein shall be effective as of the date this Agreement is fully executed.


IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by having an authorized representative of each such party affix his/her signature in the space below:

THE CITY OF SEATTLE

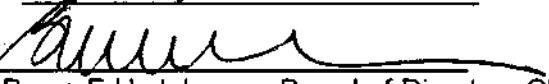
By: 
Virginia Anderson, Director

Date: 7/7/05

SEATTLE REPERTORY THEATRE

By: 
Benjamin Moore, Managing Director

Date: 7-15-05

By: 
Bruce E.H. Johnson, Board of Directors Chair

Date: 8-8-05

**SECOND AMENDMENT
TO FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATRE
AND
THE CITY OF SEATTLE**

This SECOND AMENDMENT AGREEMENT is entered into by the CITY OF SEATTLE (hereinafter referred to as "City"), acting by and through its Seattle Center Department, and the SEATTLE REPERTORY THEATRE (hereinafter referred to as "SRT"), a not-for-profit corporation organized under the laws of the State of Washington.

WHEREAS, the Seattle Repertory Theatre was founded in 1963 and began operations in the Seattle Center Playhouse, making it one of the longest standing resident organizations at Seattle Center; and

WHEREAS, Ordinance 109853 passed by the City Council in 1981, authorized an agreement between the City and SRT regarding the design and construction of a theatre on the Seattle Center campus to be the new home for the Seattle Repertory Theatre and authorized a licensing agreement for use of the new theatre by SRT from the inaugural season of 1983-4 through the 2008-9 season, with the agreement expiring May 31, 2009; and

WHEREAS, the new theatre at Seattle Center was completed in 1983 at a cost of \$10 million, \$5.6 million in 1977 bond funds from the City, and \$4.4 million from SRT, with the new theatre being named the Bagley Wright Theatre (BWT) in recognition of substantial donations to the project by anonymous private donors in honor of Bagley Wright; and

WHEREAS, in May 1996, authorized by Ordinance 118109, the City and SRT executed a 30-year Facility Use and Occupancy Agreement ("1996 Agreement") which incorporated the new, second stage addition to the BWT now known as the Leo Kreielsheimer Theatre and extended the term for use of the BWT by 17 years, from 2009 to 2026; and

WHEREAS, one of the goals of the 1996 Agreement, as stated in Ordinance 118109, was for SRT to assume greater financial responsibility for costs of its operations; and

WHEREAS, under the 1996 Agreement, by June 1, 2009, SRT would assume full responsibility for operating and maintenance costs and building systems of the BWT, except for the roof and exterior shell, consistent with the structure of more recent agreements between Seattle Center and resident arts organizations; and

WHEREAS, the severe economic downturn which began in 2008 had a dramatic impact on SRT, reducing the value of its endowment and ultimately resulting in a one-third reduction in SRT's operating budget, including layoffs, furloughs and a four-day work week for full-time staff; and

WHEREAS, due to the impact of the economic downturn, SRT was not able to assume the financial obligations of the 1996 Agreement by June 1, 2009 and initiated discussions with the City on revisions to and/or postponement of terms of the 1996 Agreement; and

WHEREAS, the City and SRT have negotiated a five-year interim agreement which recognizes the ongoing economic challenges while still making progress towards the goals of the 1996 Agreement; and

WHEREAS, SRT remains committed to assuming financial responsibility for the operating and maintenance expenses of the BWT per the 1996 Agreement, and at the end of this five-year interim agreement, the terms of the 1996 Agreement shall be in effect; NOW THEREFORE,

The parties agree as follows:

The ending date of the 1996 Agreement is changed from May 31, 2026 to June 30, 2026 in order to be in alignment with SRT's fiscal year, which runs from July 1 to June 30. The term of the 5-year interim agreement begins June 1, 2009 and ends June 30, 2014.

Year 1 of the interim agreement begins June 1, 2009 and ends June 30, 2010. Years 2 through 5 begin July 1 and end the following June 30.

During the term of this 5-year interim agreement, provisions of the 1996 Agreement are amended as follows:

- SRT foregoes its 2009 and 2010 contributions to SRT's Replacement Trust Fund.
- SRT makes annual contributions to the SRT Replacement Trust Fund after 2010 as follows:
 - 2011 – 1/3 of the 2011 amount in Exhibit 8 of the 1996 Agreement
 - 2012 – 2/3 of the 2012 amount in Exhibit 8 of the 1996 Agreement
 - 2013 and beyond – 100% of the amount in Exhibit 8 of the 1996 Agreement
- SRT rent continues under the pre-June 1, 2009 terms of the 1996 Agreement and first amendment.
- Seattle Center continues to provide janitorial services at the BWT at no additional cost to SRT.
- Seattle Center maintenance staff (trades and laborers) continues to provide routine maintenance and repair (O&M) services and supplies at the BWT. These routine and repair services are paid for as follows:
 - Year 1 – City pays 100% of routine O&M expenses at the BWT, same as under the pre-June 1, 2009 arrangement in the 1996 Agreement, with funding from the Seattle Center Operating Budget.
 - Year 2 – City pays 1/2 from the Seattle Center Operating Budget and 1/2 from the City's Bagley Wright Theatre Maintenance, Repair and Replacement Fund.
 - Year 3 – SRT pays 2/3 from the SRT Replacement Trust Fund; City pays 1/3 from the City's Bagley Wright Theatre Maintenance, Repair and Replacement Fund.

- Years 4 and 5 – SRT pays 100% from the SRT Replacement Trust Fund and/or the SRT Operating Budget.
- SRT and City shall work together to commission an assessment of building and theatrical systems in the BWT and the projected costs for maintaining and/or replacing such systems, with the cost of such assessment to be paid from the City's Bagley Wright Theatre Maintenance, Repair and Replacement Fund.
- There will be a moratorium on spending from the City's Bagley Wright Theatre Maintenance, Repair and Replacement Fund and SRT's Replacement Trust Fund, except as agreed upon between the parties in writing, until the building and theatrical systems assessment is completed.
- If a major capital expense need arises that is beyond the resources of the City's Bagley Wright Theatre Maintenance, Repair and Replacement Fund and SRT's Replacement Trust Fund, taking into consideration other obligations of these two Funds, SRT will take the lead in addressing how to fund this need.
- The \$1 million SRT capital contribution required under the 1996 Agreement by September 1, 2010, in connection with SRT rent for the BWT being reduced to \$1, is delayed by five years to September 1, 2015. In order to preserve the value of this capital contribution, the \$1 million capital contribution amount will have annual CPI adjustments from 2010 to 2015. For example, if the CPI adjustment were 3% per year, the required capital contribution by September 1, 2015 would be approximately \$1,160,000. Actual CPI adjustments will be calculated in the same manner as for CPI adjustments to SRT rent for the BWT.
- Seattle Center and SRT will review the current mutual reporting requirements of the 1996 Agreement and agree on revisions for this interim period that can reasonably be met by both parties.

Except to the extent otherwise modified herein, the 1996 Agreement remains in full force and effect. The amendments and modifications to the 1996 Agreement shall terminate as of July 1, 2014 and the Parties will be thereafter bound by the full Agreement unless otherwise agreed, provided that the parties agree that the ending date of the 1996 Agreement is changed from May 31, 2026 to June 30, 2026 to align with the end of SRT's fiscal year.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by having their authorized representative(s) affix their signatures in the spaces below:

SEATTLE REPERTORY THEATRE

By  _____

Benjamin Moore
Managing Director

Date: 02.29.2012

THE CITY OF SEATTLE

By  _____

Robert Nellams, Director
Seattle Center Department

Date: 2/22/12

**THIRD AMENDMENT
TO
FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATER
AND
THE CITY OF SEATTLE**

This THIRD AMENDMENT TO FACILITY USE AND OCCUPANCY AGREEMENT (this "Amendment") is effective as of the date of the last signature below (the "Effective Date") and is entered into by the CITY OF SEATTLE (hereinafter referred to as "City"), a Washington municipal corporation, acting by and through its Seattle Center Department, and the SEATTLE REPERTORY THEATER (hereinafter referred to as "SRT"), a not-for-profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, SRT was founded in 1963 and began operations in the Seattle Center Playhouse before moving to the Bagley Wright Theatre, making it one of the longest standing resident organizations at Seattle Center; and

WHEREAS, the City and SRT are parties to that certain Facility Use and Occupancy Agreement (the "1996 Agreement"), authorized by Ordinance 118109, which governs SRT's use, occupancy and financial obligations with respect to the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to establish and maintain the SRT Replacement Trust Fund (the "Fund"), to be used exclusively for the replacement, maintenance and repair of the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to make annual contributions to the Fund each year during the term in the amounts set forth in Exhibit 8 to the 1996 Agreement, including contributions of \$170,571 for the 2019 SRT fiscal year and \$174,836 for the 2020 SRT fiscal year; and

WHEREAS, the COVID-19 pandemic has had a dramatic impact on SRT's financial situation, resulting in a reduction to SRT's operating budget by two-thirds as of Q3 2020 as well as layoffs, furloughs, and reliance on a federal Paycheck Protection Program (PPP) loan, and has caused uncertainty as to SRT's ability to bring patrons to the theater before a vaccine becomes available; and

WHEREAS, in light of the COVID-19 pandemic, SRT initiated discussions with Seattle Center in March 2020 seeking temporary relief from certain financial obligations under the 1996 Agreement; and

WHEREAS, Seattle Center and SRT have reached a nonbinding agreement to amend certain terms of the 1996 Agreement and now wish to formalize the terms of that agreement in this Amendment;

NOW, THEREFORE, the parties agree to amend the 1996 Agreement as follows:

AGREEMENT

Notwithstanding Subsection 13.F of the 1996 Agreement, the City and SRT agree to the following exceptions concerning the Fund to allow SRT to respond to the financial stress created by the COVID-19 pandemic:

1. SRT shall not be required to make the following minimum annual deposits to the Fund:
 - A. The contribution for the 2019 SRT fiscal year in the amount of \$170,571; and
 - B. The contribution for the 2020 SRT fiscal year in the amount of \$174,836.
2. In the event SRT requires additional financial relief beyond forbearing from making the above contributions, then from the Effective Date of this Amendment through June 30, 2022, or such later date as may be necessary to provide SRT with financial relief due to the economic impact of COVID-19, which date shall be mutually agreed upon in writing (such period, the "Interim Period"), SRT shall be allowed to draw on funds currently deposited in the Fund in order to finance SRT's Operating Expenses (the "Permitted Withdrawals"); provided, however, that SRT shall at all times maintain a minimum balance of \$160,000 in the Fund.

"Operating Expenses", for purposes of this Amendment only, shall be defined as all necessary costs and expenses incurred by SRT in the course of operating and maintaining the Premises for its authorized use as set forth in Section 4 of the 1996 Agreement. Operating Expenses include, but are not limited to, the following:


- A. Costs of producing and presenting live theater, music, and dance rehearsals, productions and performances, film screenings, meetings, classes and other educational programs;
 - B. All regular wages, salaries and other labor costs, including taxes and insurance, and retirement, medical and other employee benefits;
 - C. Training costs, consulting fees, legal fees (other than fees arising from a dispute between the City and SRT), accounting fees, and fees of all other independent contractors engaged by SRT in connection with the ordinary course of business;
 - D. All local and state taxes;
 - E. Costs of maintaining the minimum insurance required under Section 18.A of the 1996 Agreement and any other insurance policy SRT deems advisable or necessary; and
 - F. All expenses reasonably and necessarily incurred in connection with providing ordinary maintenance of the Premises.
3. SRT and the City agree to work toward a collaborative review and re-assessment of the schedule described in Exhibit 8 of the 1996 Agreement, and within twelve (12) months following the end of the Interim Period, to produce a final approved copy of the updated plan for the remainder of the term of the 1996 Agreement.
 4. On or prior to the expiration of the 1996 Agreement, and insofar as the money is

needed for maintenance and repair, SRT shall reimburse the Fund for its Permitted Withdrawals by depositing into the Fund an amount equal to the sum of all Permitted Withdrawals, if any, made by SRT pursuant to this Amendment. If, upon expiration of the 1996 Agreement, SRT is unable to fully reimburse the Fund for its Permitted Withdrawals due to SRT's then-existing financial condition, then SRT shall reimburse the Fund in such lower amount as its financial condition permits, which amount shall be determined in consultation with the Seattle Center Director and mutually agreed upon by the parties. The parties acknowledge and agree that such lower amount may be zero. In the event the parties elect to enter into a new occupancy agreement or other replacement agreement upon expiration of the 1996 Agreement, the parties agree to work in good faith to negotiate an equitable schedule of maintenance contributions to be made by SRT under such agreement, taking into account the then-existing maintenance and repair needs of the Premises, and the total amount, if any, of the Permitted Withdrawals for which SRT was unable to reimburse the Fund.

5. Except to the extent modified by this Amendment, all terms of the 1996 Agreement shall remain in full force and effect.
6. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the 1996 Agreement.
7. While preparing this Amendment, it was discovered that SRT's name was incorrectly stated in the 1996 Agreement as "Seattle Repertory Theatre"; however, pursuant to SRT's Articles of Incorporation which were filed with the Washington Secretary of State on June 14, 1963, the legal name of SRT is "Seattle Repertory Theater". Additionally, SRT has undergone a rebranding effort and is now primarily known by the name "Seattle Rep" or "The Rep". Accordingly, all references to "Seattle Repertory Theatre", "Seattle Repertory Theater", "Seattle Rep" and "The Rep" in the 1996 Agreement and in all amendments to the 1996 Agreement are references to SRT.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by having their authorized representatives affix their signatures in the spaces below.

SEATTLE REPERTORY THEATER

By  _____

Jeffrey Herrmann
Managing Director

Date 1-14-21

THE CITY OF SEATTLE

By  _____

Robert Nellams, Director
Seattle Center Department

Date 1-11-2021