

CITY OF SEATTLE
ORDINANCE 127184
COUNCIL BILL 120939

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a license agreement with Theatre Puget Sound to manage and operate space in the Seattle Center Armory for use by non-profit arts organizations and individual artists.

WHEREAS, The City of Seattle and Theatre Puget Sound have operated under license agreements for the purposes of managing and operating space in the Seattle Center Armory for use by non-profit arts organizations and individual artists since 2000; and

WHEREAS, the most recent license agreement expired and was extended temporarily while a new license agreement was negotiated; and

WHEREAS, the license agreements have been beneficial to both The City of Seattle and Theatre Puget Sound by fostering cultural enrichment and supporting arts in the community, and both parties have mutually agreed on the terms of a new license agreement;


NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director or designee is authorized to execute, for and on behalf of The City of Seattle, an agreement with Theatre Puget Sound substantially in the form of Attachment 1 to this ordinance, under which Theatre Puget Sound will operate and manage certain spaces in the Seattle Center Armory for use by non-profit arts organizations and individual artists, for a term of five years with an option for one five-year extension.


Section 2. This ordinance shall take effect as provided by Seattle Municipal Code
Sections 1.04.020 and 1.04.070.

Passed by the City Council the 18th day of February, 2025,
and signed by me in open session in authentication of its passage this 18th day of
February, 2025.




President _____ of the City Council

☒ Approved / ☐ returned unsigned / ☐ vetoed this 20th day of February, 2025.



Bruce A. Harrell, Mayor

Filed by me this 20th day of February, 2025.



Scheereen Dedman, City Clerk

(Seal)

Attachments:
Attachment 1 – License Agreement Between Seattle Center and Theatre Puget Sound

**LICENSE AGREEMENT
BETWEEN
SEATTLE CENTER AND THEATRE PUGET SOUND**

I. PARTIES

This License Agreement ("Agreement") is entered into by **The City of Seattle** (the "City"), a First-Class City of the State of Washington, acting by and through the Seattle Center Department ("Seattle Center"), and **Theatre Puget Sound**, a Washington nonprofit corporation ("Licensee"). This Agreement shall be effective as of January 1, 2025.

II. LICENSE, TERM, PURPOSE, AND PREMISES DESCRIPTION

- A. License. Seattle Center hereby grants to Licensee a license to manage and operate certain Seattle Center Armory fourth floor rooms, including the multi-purpose room commonly known as "Theatre 4," and the first floor Center Theatre complex, including the Black Box, dressing rooms and lobby area (as may be subsequently modified pursuant to this Agreement and as further described below, the "Premises").
- B. Term.
- 1.) Initial Term. The initial term of this Agreement is January 1, 2025 through December 31, 2029 (the "Initial Term").
 - 2.) Option to Extend. Licensee shall have one (1) option to extend this Agreement for an additional term of five (5) years on the same terms and conditions set forth herein (the "Extended Term"). The Initial Term and the Extended Term are referred to in this Agreement as the "Term".
 - 3.) Notification of Option. Licensee must notify Seattle Center in writing of Licensee's desire for an Extended Term at least one hundred eighty (180) days prior to the expiration of the Initial Term.
- C. Purpose. Licensee shall sublicense all or portions of the Premises as affordable rental space for rehearsal, performance, storage, meeting, shop, or marketing purposes for use by non-profit organizations, individual artists, theatrical production organizations, educational organizations, music and artistic groups, including, without limitation, Resident Companies, Seattle Center events and festivals, and any other third parties (the foregoing are collectively referred to as "Clients"). As used in this Agreement, "Resident Companies" means those resident performing arts organizations that have contracted with Licensee to regularly utilize a portion of the Premises and receive other benefits from Licensee as further described in their contract with Licensee.
- Licensee may request to use the Premises other than as described above. To do so, Licensee must submit a written request to Seattle Center. Seattle Center shall either approve or deny the request in writing within ten (10) business days after the Licensee submits its request.
- D. Premises. The Premises are located on the first and fourth floors of the Seattle Center building commonly known as the "Seattle Center Armory." They are depicted on the Floor Plans attached hereto as **Exhibit A** and are identified as follows:

- 1.) Armory Fourth Floor. Studios A, B, C, D, E, F, G and I, Theatre 4 (Studio H), the Mini-Studio (located between Studios D and E), Studio K, and certain storage areas indicated on Exhibit A.
- 2.) Armory First Floor. Center Theatre complex, including the Entry, Lobby, Theatre, Conference Room, Black Box, Vestibule and storage areas indicated on Exhibit A.
- 3.) Inclusion of Additional Space During Term. Should additional spaces of the Center Theatre complex known as the Offices, Box Office, Costume Storage and Costume, Scene and Paint Shop, or other spaces currently leased by the Seattle Shakespeare Company become available during the Term, Seattle Center will, by written notice to Licensee, include all or a portion of such additional space to be managed and operated by Licensee under the terms of this Agreement. Any such additional space added during the Term shall constitute part of the "Premises" under this Agreement.
- 4.) Seattle Center Alteration or Reconfiguration of Premises. Seattle Center reserves the right to otherwise alter or reconfigure the Premises in any way, including removing any portion of the Premises from the purview of this Agreement, upon six (6) months' notice to Licensee.
- 5.) Licensee Improvements to Premises. Seattle Center acknowledges that Licensee may raise funds, including by applying for and receiving grant funding, with the intent to make improvements to the Premises. Licensee shall not apply for grants, solicit charitable donations, or otherwise raise funds for any particular improvement to the Premises without the prior approval from Seattle Center. Licensee shall not make any alterations, additions, or improvements in or to the Premises without first submitting to Seattle Center professionally prepared plans and specifications for the work and obtaining the consent of Seattle Center prior to undertaking any work. All alterations, additions or improvements to the Premises made by Licensee shall become the property of the City upon the expiration or termination of this Agreement and shall not be removed, excluding furniture, fixtures or equipment installed at the expense of Licensee and which are movable without defacing or damaging the Premises, unless the City requests their removal. Seattle Center shall have the right to approve or disapprove Licensee's plans, or to condition approval of the plans in Seattle Center's sole discretion. Any expenditure in connection with any alteration, addition, improvement, or equipment installation commenced by Licensee prior to the approval of Seattle Center shall be at the sole risk and expense of Licensee. In carrying out any alterations, additions, or improvements to the Premises, Licensee shall comply with Seattle Center's standard requirements applicable to tenants or licensees undertaking construction.

III. LICENSE FEE AND REPORTING

A. Requirement to Charge; Fee Schedule.

- 1.) Requirement to Charge. Licensee shall charge Clients, in advance, a reasonable fee for the use of the Premises, subject to Section V of this

Agreement. Rental rates shall not exceed an amount equal to 90% of Seattle's then-current prevailing market rate for rental of rehearsal, performance, short-term studio or non-profit business space. Licensee may establish dynamic pricing, setting different rates for designated peak and non-peak times. Pricing may be established for 30-minute, hourly, daily, weekly, or monthly increments.

- 2.) Fee Schedule. Upon execution of this Agreement, Licensee shall prepare an initial fee schedule and provide a copy to Seattle Center for Seattle Center's review and approval. The fee schedule shall at a minimum include: (i) the fees Licensee proposes to charge Clients; (ii) if Licensee proposes dynamic pricing, the peak and non-peak times and the proposed rates for such times; (iii) if applicable, the proposed reduced rates and a summary of other use benefits provided to Resident Companies or other Clients; and (iv) proposed Maintenance Fund and Capacity Fund fees as described in Section III.D.2 of this Agreement. All fees charged by Licensee must be consistent with the rates identified in the fee schedule approved by Seattle Center.

B. Modifications to Fee Schedule; Free or Discounted Rates; Facility Surcharges.

- 1.) Modifications. Licensee may modify the fee schedule from time to time, provided, however, that the schedule may not be modified more than two (2) times annually. Licensee shall provide at least thirty (30) days' written notice to Seattle Center prior to the proposed effective date of any modifications to the fee schedule. Within twenty (20) days of Seattle Center's receipt of Licensee's written notice, Seattle Center shall notify Licensee of its approval or disapproval of the proposed modifications. If Seattle Center does not approve of the proposed modifications, Licensee shall submit a revised proposal acceptable to Seattle Center in its reasonable discretion. In the event Seattle Center does not notify the Licensee of disapproval within twenty (20) days, Licensee may assume approval and implement changes on the proposed effective date. Where Licensee proposes to increase rental rates, Licensee must provide such documentation to Seattle Center as Seattle Center may reasonably request to support the basis for the increase, including market rate research.
- 2.) Free or Discounted Rates. Licensee will not permit or allow any use of the Premises by Clients or any other third party for free or at discounted rates, except as indicated in Section V, without prior written approval from Seattle Center.
- 3.) Facility Surcharges. Licensee agrees that facility surcharges Licensee charges shall be consistent with the Seattle Center Fee Range Schedule described in SMC 17.16.015, as adopted from time to time by ordinance.

- C. Definition of "Gross Receipts". As used in this Agreement, "Gross Receipts" means the total revenue realized by Licensee from the sublicense of the Premises to Clients, except that "Gross Receipts" shall not include: (i) the amount of money refunded to and not merely credited to the account of Clients (including deposits); (ii) Washington State sales tax and any other tax imposed by any government agency directly on sales; (iii) admission taxes collected by

Licensee; (iv) any fees Licensee receives from Clients for theater technical support or services; (v) Capacity Fund and Maintenance Fund collections; (vi) receipts from vending concessions; and (vii) fees or revenue Licensee anticipates receiving but has not yet received. For the avoidance of doubt, business and occupation taxes are not taxes imposed directly on sales and shall not be deducted from the amount of "Gross Receipts" reported to the City.

D. Revenue Sharing Terms and Other Financial Obligations to the City.

1.) License Fee.

During the Term, Licensee shall pay to the City on a semiannual basis an amount equal to fifty percent (50%) of Gross Receipts for the preceding six-month use period, minus an amount equal to the lesser of: (i) Licensee's Operational Costs for the same six-month use period, OR (ii) the applicable Maximum Operational Cost identified in the table below (such amount is the "License Fee"). As used in this Agreement, "Operational Costs" means the following necessary costs and expenses incurred by Licensee in the course of operating, maintaining, and administering the rental of all or a portion of the Premises to Clients pursuant to this Agreement: (a) regular wages, salaries, benefits, and taxes of personnel and Licensee's accounting contractor whose time is dedicated to the rental program; (b) certain other administrative costs directly related to administering the rental program at Seattle Center, including costs of maintaining Licensee's website, insurance, licenses and permits, phones and internet, software and equipment, and merchant fees and (c) costs for improvements made to the premises that are agreed upon by Seattle Center. Operational Costs may not exceed the amounts set forth below (the "Maximum Operational Costs"). The License Fee shall be paid according to the schedule in Section IV.

Maximum Operational Costs (per six-month period):
Initial Term:

2025 – \$95,000
2026 – \$100,000
2027 – \$105,000
2028 – \$110,500
2029 – \$114,000

Extended Term:

The Maximum Operational Costs during the Extended Term shall be increased annually, effective each January of the Extended Term, in an amount equal to the lesser of (x) three percent (3%), or (y) the positive (but not negative) percentage change of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (Seattle-Tacoma-Bremerton Local Area) for the preceding calendar year.

2.) Maintenance Fund and Capacity Fund.

- a) Maintenance Fund. Licensee shall collect a reasonable fee from all Clients for each performance rental. Licensee shall deposit these funds in a separate interest-bearing account at a depository approved by Seattle Center in writing (such account is the "Maintenance Fund"). Funds in the Maintenance Fund shall accrue and be used solely to maintain, repair, and replace theatrical equipment, for expendable Premises goods, for new equipment or equipment upgrades, and to generally maintain and make improvements to the Premises. Proposed uses of the funds in the Maintenance Fund shall be approved by the Resident Company Operating Board in advance. Licensee's proposed Maintenance Fund fee shall be included in the fee schedule described in Section III.A.
 - b) Capacity Fund. In addition to the Maintenance Fund, Licensee shall collect an amount equal to two percent (2%) of the ticket price for each ticket sold by Clients for every performance rental. Licensee shall deposit these funds in a separate interest-bearing account at a depository approved by Seattle Center in writing (such account is the "Capacity Fund"). Use of funds in the Capacity Fund must be approved by the Resident Company Operating Board in advance.
 - c) Minimum Balance Requirement. In no event shall the balance of the Maintenance Fund fall below \$10,000.00 or the balance of the Capacity Fund fall below \$5,000.00 without the prior written approval of Seattle Center. If the balance of either Fund falls below the minimum amounts specified in this paragraph, further spending of these accounts will be suspended until funds are replenished by collection of fees as described above.
 - d) Expenditures from Funds. Seattle Center and Licensee's designated representatives shall meet from time to time, but no less frequently than once per year, to discuss and mutually agree upon the expenses that will be paid for from the Maintenance Fund and the Capacity Fund. No expenditure from the Maintenance Fund over \$1,000 shall be made without the approval of Seattle Center, which approval shall not be unreasonably withheld. Licensee shall remit the balance of the Maintenance Fund and the Capacity Fund to Seattle Center on or before the expiration or termination of this Agreement. All theatrical equipment located or installed in the Premises and purchased with Maintenance Fund dollars during the term of this Agreement shall become the property of the City upon installation.
- E. Record-Keeping. Licensee shall maintain, for at least three (3) years after the expiration or earlier termination of this Agreement, all books, records, and other information necessary to document Licensee's businesses activities hereunder, including all records of Gross Receipts, Operational Costs, individual space rentals, space usage, and equipment and other purchases. Licensee shall also maintain all written quotes, bids, estimates, or proposals submitted to Licensee by all businesses seeking to participate as contractors or suppliers under this Agreement.

- F. Semi-Annual and Annual Reporting. On or before July 31st of each calendar year during the Term, Licensee shall provide to Seattle Center a mid-year report containing: 1) a financial accounting of all Gross Receipts earned between January 1 to June 30 of the same calendar year, and 2) a financial accounting of actual Operational Costs between January 1 and June 30, as well as an estimate of projected Operational Costs for the subsequent six-month use period. On or before January 31st of every calendar year, Licensee shall provide an annual report to Seattle Center. The annual report shall contain a five-year revenue history and a summary describing the previous year's rental statistics. The summary of the previous year's rental statistics must include: 1) the number of people/Clients served, 2) the activity type and discipline performed, 3) a list of all organizations and individuals who rented space in the previous calendar year, 4) a financial accounting of all Gross Receipts for the preceding calendar year, 5) a financial accounting of all Operational Costs incurred for the preceding calendar year, and 6) an accounting of the total value of Licensee's use of the Premises permitted by Section V.C.
- G. Reconciliation of License Fee. If the financial accounting contained in any semi-annual or annual report shows that the actual amount of Gross Receipts or Operational Costs for a particular use period differs from the amounts on which Licensee based its License Fee calculation for that same use period, then: (i) if the difference resulted in an underpayment to the City, Licensee shall promptly pay to the City an amount equal to the amount of the underpayment, or (ii) if the difference resulted in an overpayment to the City, the City shall promptly, at its option, refund or issue as a credit against a future License Fee payable by Licensee an amount equal to the amount of the overpayment. If requested by the City, Licensee shall promptly provide any documentation that Licensee used in preparing its financial accounting.
- H. Audit Rights. Licensee shall permit the City, from time to time as Seattle Center deems necessary, to inspect and audit in King County, Washington, at any and all times, all pertinent books and records of Licensee to verify the accuracy of accounting records; and shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof, upon Seattle Center's request. Licensee shall ensure that the City's rights under this Section III.H, including inspection, audit, and copying, is a condition of any agreement between Licensee and Clients.
- I. Executive Director Vacancy. Licensee acknowledges and agrees that any vacancy in its executive director position may adversely impact the administration of the sublicense program described in this Agreement. Accordingly, Licensee shall promptly notify Seattle Center of any vacancy in its executive director position and shall use its best efforts to fill such vacancy within 180 days.

IV. TIME AND PLACE OF PAYMENT

- A. Due Date. Licensee shall pay the City the License Fee semiannually according to the following schedule:

<u>Use Period</u>	<u>Due Date</u>
January 1st - June 30th	July 15th

July 1st - December 31st January 15th

If the due date falls on a weekend or holiday, then Licensee shall pay the License Fee to the City on the next business day after the weekend or Holiday.

- B. Place of Payment. All payments shall be delivered to The City of Seattle, Seattle Center Accounting Office, 305 Harrison Street, Seattle, Washington, 98109, or to such other address as Seattle Center shall specify by written notice to Licensee.
- C. Delinquencies. 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 of any delinquency, Licensee shall pay the City an invoicing service charge of Fifty Dollars (\$50.00) plus interest on such delinquent sum at the rate of one and one-half percent (1½%) per month, or such larger percentage as may be established by ordinance, from the date due to the date of payment.

V. USE OF PREMISES

Notwithstanding any provision of this Agreement to the contrary, the City and Licensee shall have the right to use and to allow others to use the following portions of the Premises at the times and for the purposes indicated, without any fee being assessed:

A. Seattle Center Festivals.

- 1.) Armory First Floor. Each year the dates for the festivals ("Festivals") set forth below shall be scheduled at least nine (9) months in advance, to the extent that they are known, and prior to any Client's dates being scheduled. In addition to the estimated Festival dates set forth below, each Festival's operator shall be entitled to use the Armory first floor on two (2) consecutive days prior to each Festival for "load-in," and one (1) day immediately following the Festival for "load-out." Set-up and restoration of the Armory first floor will be the responsibility of each Festival.

- a) Northwest Folklife, May 23 - May 26, 2025
- b) Bumbershoot, August 30 - August 31, 2025
- c) 2026-2029 comparable dates, each year

- 2.) Armory Fourth Floor. Each year the dates for the Festival set forth below shall be scheduled at least nine (9) months in advance, to the extent that they are known, and prior to any Client's dates being scheduled. In addition to the estimated Festival dates set forth below, the Festival's operator shall be entitled to use one large room on the Armory's fourth floor on three (3) consecutive days prior to each Festival for "load-in," and two (2) days immediately following the Festival for "load-out." Set-up and restoration of room for all listed activities shall be the responsibility of Seattle Center personnel.

- a) Northwest Folklife, May 23 - May 26, 2025
- b) 2026-2029 comparable dates, each year

B. Seattle Center.

- 1.) Miscellaneous Use. The City shall have the right to schedule in advance with at least forty-eight (48) hours' notice, and use for its own purposes, without a fee being assessed, any room in the Premises not already rented to a third party ("Miscellaneous Use"). The value of the total use by the City in a calendar year shall not exceed \$4,000, calculated pursuant to the fee schedule then in effect. Set-up and restoration of the Premises are the responsibility of Seattle Center personnel.
- 2.) 48 Hours' Notice. In addition to the Miscellaneous Use, throughout the Term of this Agreement and upon not more than forty-eight (48) hours' notice, Seattle Center shall have the right to schedule and use for its own purposes, without a fee being assessed, any room in the Premises not already rented to a third party. Set-up and restoration of the Premises are the responsibility of Seattle Center personnel.
- 3.) Use of Event Space. The City agrees to provide Licensee one (1) day of "Banquet Package" rental of one mutually agreed upon Armory Loft room, based on availability, for the Unified Auditions Auditor's luncheon. The date shall be determined three (3) months in advance. The permitted use described in this subsection is not transferrable to another event. Any additional labor, materials or equipment not included in the "Banquet Package" rental will be billed to Licensee at the current rental rates.

C. Licensee.

- 1.) Miscellaneous Use. Licensee shall have the right to schedule in advance with at least forty-eight (48) hours' advance notice, and use for its own purposes, without a fee being assessed, any room in the Premises not already rented to a third party. The value of the total use by Licensee in a calendar year shall not exceed \$10,000, calculated pursuant to the fee schedule then in effect. Set-up and restoration of the Premises are the responsibility of the Licensee.
- 2.) 48 Hours' Notice. In addition to the Miscellaneous Use, throughout the Term of this Agreement and upon not more than forty-eight (48) hours' notice, the Licensee shall have the right to schedule and use for its own purposes, without a fee being assessed, any room in the Premises not already rented to a third party. Set-up and restoration of the Premises are the responsibility of the Licensee.

D. Other Allowed Uses at Discounted Rates. Licensee may offer a reasonable discount for the use of rooms within the Premises to Clients who:

- 1.) clean or provide other agreed-upon maintenance services to the Premises in connection with such use. The total discounts offered in any calendar year may not exceed six thousand dollars (\$6,000).

- 2.) provide other volunteer services as agreed to by Seattle Center. Total Discounts in any calendar year may not exceed seven thousand dollars (\$7,000).

VI. **SPECIAL CONDITIONS**

- A. **Program and Novelties.** Licensee is authorized to sell and to permit Clients to sell programs, novelty items, or other merchandise during occupancy of the Premises by such Clients.
- B. **Food and Beverage Concessions.** Licensee is authorized to serve and/or sell, and to permit Clients of the Premises to serve and/or sell, concession food or beverages, including alcohol, provided the Licensee or Clients meet all insurance requirements contained herein and have all necessary permits.
- C. **Utilities, Custodial and Maintenance Services.**

1.) **Armory First Floor.**

- a) **Utilities.** The City shall provide electricity, heating, and plumbing, to the first floor Premises, and carpentry services necessary to provide safe access to the first floor Premises.
- b) **Custodial.** The City shall provide recycling, food waste, and trash receptacles for Center Theatre complex and shall pick-up and remove recycling, food waste and trash from lobby area receptacles on a daily basis. Licensee shall be responsible for collecting, sorting and separating waste materials pursuant to Section XII.E and for removing recycling, food waste and trash from auditorium, backstage areas, dressing rooms, costume shop, and any other back of house spaces. Licensee will make its best efforts to maximize recycling and food waste composting in support of Seattle Center's goal to divert as much waste from going to the landfill as possible. The City shall also provide janitorial services for the Center Theatre lobby, auditorium and dressing rooms on not more than 12 occurrences annually in each location, as determined by mutual agreement with Licensee and Seattle Center staff and usually associated with a Client's opening night.
- c) **Maintenance.** The City shall maintain windows, doors, walls, flooring, ceilings, and non-theatrical lighting in the Center Theatre complex.

2.) **Armory Fourth Floor.**

- a) **Utilities.** The City shall provide electricity, heating, and plumbing to the fourth floor Premises, and carpentry services necessary to provide safe access to the fourth floor Premises. Costs for all other services, such as telephones and internet, beyond those provided by the City are to be paid by Licensee.
- b) **Custodial.** The City shall provide and service recycling, food waste, and waste receptacles in the fourth floor facilities. Licensee shall be

responsible for collecting, sorting, and separating waste materials pursuant to Section XII.E. Licensee will make its best efforts to maximize recycling and food waste composting in support of Seattle Center's goal to divert as much waste from going to the landfill as possible. Licensee shall be responsible for day-to-day cleaning of fourth floor facilities which shall include but not be limited to sweeping, dust mopping, wet mopping or scrubbing of floors, and cleaning soft goods, mirrors and furnishings. The City may elect, but shall not be obligated, to provide additional custodial services for the Premises. Costs for all other beyond those provided by the City are to be paid by Licensee.

- c) Maintenance. The City shall maintain windows, doors, walls, ceilings, non-theatrical lighting, electrical service and heat devices in the fourth-floor rooms. The licensee shall maintain and replace, as needed, dance floors and other installed furnishings and fixtures which shall include, but not be limited to, mirrors and soft goods. The City may elect, but shall not be obligated, to provide additional custodial services for the Premises.
- D. Parking. The City shall provide Licensee at no charge with one (1) Seattle Center parking pass for Seattle Center parking facilities; however, possession of a parking pass does not guarantee a parking space will be available on any given day.
- E. Hours of Operation. No members of the general public shall be permitted on the Premises outside the official hours of operation for the Seattle Center Armory except in accordance with procedures approved by Seattle Center in advance. It is not feasible for the Licensee to provide the Seattle Center Emergency Service Unit with a roster of those who will be in the building after hours. It is understood that fourth floor Clients will be exiting the building after hours and are to be instructed to use the far-right north doors to do so. First floor employees, artists, and technicians are to use the back door under the Monorail Bridge for after-hours access and egress. The general public leaving performances after hours are to be directed to exit via the east doors. The general public is to be restricted from entering all other areas of the Armory through the use of signage and rope barriers. Armory 1st floor east public restrooms shall remain open and accessible to audience members through the end of the performances in Center Theatre and BlackBox and other 1st floor renters until the end of their rentals with a 15 minute grace period to allow for use of the restrooms.

VII. INDEMNIFICATION

The Licensee shall indemnify and hold the City harmless from any and all losses, claims, actions, or damages suffered by any person or entity by reason of or resulting from any act or omission of Licensee or any of its agents, employees, patrons or Clients in connection with their use or occupancy of the Premises, including trademark, patent, and copyright infringement; and in the event any suit or action is brought against the City, the Licensee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Licensee jointly. Nothing contained in this section shall be

construed as requiring the Licensee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of the City or its officers, employees or agents. For purposes of this Agreement and for the benefit of the City only, Licensee hereby waives its immunity under Title 51 RCW or other employee benefit act. Licensee's indemnification obligations under this Section shall survive the expiration or earlier termination of this Agreement. The City and the Licensee acknowledge that they specifically negotiated and agreed upon this indemnification provision.

VIII. INSURANCE

- A. **COVERAGES AND LIMITS.** Licensee shall obtain and thereafter maintain continuously throughout the term of this Agreement, at no expense to the City, minimum coverages and limits of insurance as described below:
- 1.) **COMMERCIAL GENERAL LIABILITY (CGL)** insurance including:
- Premises/Operations
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Host Liquor Liability
 - Tenant/Fire Legal
 - Contractual
 - Independent Contractors
 - Stop Gap/Employers Liability
- Such insurance must provide a minimum limit of liability of \$2,000,000 Aggregate (renewing/resetting annually) and \$2,000,000 each Occurrence Combined Single Limit (CSL) Bodily Injury and Property Damage except:
- \$1,000,000.00 each Offense Personal and Advertising Injury
 - \$ 100,000.00 each Occurrence Tenant/Fire Legal Liability
 - \$1,000,000.00 each Accident/Disease Stop Gap/Employers Liability
- 2.) **AUTOMOBILE LIABILITY** insurance for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 each Occurrence CSL Bodily Injury and Property Damage. Automobile liability insurance requirement is not applicable to a Licensee that does not operate motor vehicles upon or in the vicinity of Seattle Center for purposes of loading or unloading occupants or property in connection with the terms of the License.
- 3.) **WORKER'S COMPENSATION** insurance as respects the State of Washington securing liability for industrial injury to employees in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW). If Licensee is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, it shall so certify to the City by submitting a letter signed by a corporate officer, indicating that it is a qualified self-insurer, and setting forth the limits of any policy of excess insurance covering its employees; or any similar coverage required.
- 4.) If alcoholic beverages are sold by other than a non-profit entity possessing a valid license from the Washington State Liquor Control Board, then that entity

shall obtain and maintain LIQUOR LIABILITY insurance with a minimum limit of liability of \$2,000,000 each Common Cause. Certification of Liquor Liability insurance may be provided by the bar caterer provided that such insurance meets all the relevant requirements herein.

- 5.) If pyrotechnics are used for an Event, PYROTECHNIC LIABILITY insurance shall be provided under a CGL insurance with a minimum limit of liability of \$2,000,000 each Occurrence. A permit is required from the Seattle Fire Marshall. Certification of Pyrotechnic Liability insurance may be provided by a pyrotechnic operator provided that such insurance meets all the relevant requirements herein.

B. TERMS AND CONDITIONS.

- 1.) The insurance policy or policies, endorsements thereto, and subsequent renewals shall be subject to approval by the City as to company, form, and coverage. The insurer shall be:
 - a) Licensed to do business in the State of Washington and Rated A- VII or higher in the A.M. Best's Key Rating Guide, or;
 - b) Procured under chapter 48.15 RCW by a Washington State licensed surplus line broker.
- 2.) Such insurance as is provided under Section VIII.A items 1, 2, 4, and 5 above shall include the City of Seattle and its officers, officials, employees, agents and volunteers, as an additional insured for primary and noncontributory limits of liability subject to a "separation of insured's" clause. The limits of liability are minimum limits of liability only and shall not limit the liability of Licensee or any of its insurers; the City shall be an additional insured for all available limits of liability available to Licensee, whether primary, excess, contingent or otherwise.
- 3.) Coverage shall not be cancelled without thirty (30) days prior written notice to the City, except ten (10) days' notice with respect to cancellation for nonpayment of premium.
- 4.) Self-insured retentions in excess of \$25,000 shall be disclosed in writing and are subject to the approval of the City's Risk Management Division. Approved self-insurance may be partially or wholly substituted for required commercial liability insurance coverages.
- 5.) Failure of Licensee to fully comply with these insurance requirements shall constitute a material breach of this Agreement.

C. EVIDENCE OF INSURANCE.

- 1.) Licensee's insurance broker shall issue a certificate of insurance that meets the minimum coverages and limits requirements herein and Licensee shall issue self-insurance certification.

- 2.) THE CERTIFICATION SHALL HAVE ATTACHED A COPY OF THE ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED POLICY WORDING THAT DOCUMENTS THAT THE CITY IS AN ADDITIONAL INSURED UNDER THE CGL INSURANCE.
- 3.) If the CGL insurance is partly or wholly self-insured, Licensee shall state in writing that it will protect the City as an additional insured under the self-insured retention as if a commercial CGL insurance policy were in force.
- 4.) Insurance and/or self-insurance certification shall be delivered to the following:

ORIGINAL TO:
Seattle Center
Attn: Armory Management
305 Harrison Street
Seattle, WA 98109
Email: ellen.norton@seattle.gov

IX. SIGNAGE, ADVERTISING & PUBLICITY

- A. Prohibited Promotion & Other Material. Licensee agrees not to display, post or distribute any material (including posters) on any part of the Seattle Center, excluding the interior Premises that are not visible from the exterior, without Seattle Center's prior written approval therefore, which approval may be given, conditioned or withheld in Seattle Center's reasonable discretion. On or before the expiration or termination of this Agreement, whichever is earlier, or, in the case of unauthorized material, on or before the date specified in Seattle Center's notice to remove the same, Licensee shall remove, at no expense to the City, all materials it has so posted and correct any unsightly condition and repair any damage or injury to City property caused by such material and its removal. If any unauthorized material is not removed from City property by the date required, such material will be subject to removal. All signs and display materials that Licensee is authorized to post or display shall comply with applicable laws and regulations.
- B. Signs. Licensee may install temporary signs in the hallways and rooms of the Premises containing other information related to Licensee or Clients including, without limitation, program information, fundraising information, special announcements, and wayfinding. Temporary signs shall not be affixed to painted surfaces with tape. The design, installation, and location of permanent signs shall be subject to Seattle Center's prior written approval.

X. INSTALLATION OR INTEGRATION OF ANY WORK OF VISUAL ART ON PREMISES

- A. Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on the Premises Without City's Consent.

The City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that

term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. The Licensee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without the prior, express, written consent of Seattle Center. Seattle Center's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in Seattle Center's discretion; Provided, however, that Seattle Center's consent to the installation by or for the Licensee of any such art work shall not be required under the following three (3) circumstances:

- 1.) If such art work
 - a) weighs less than fifty (50) pounds; and
 - b) is of a size and has such dimensions and material composition that makes its passage through an open 32" x 78" or larger doorway a simple and easy maneuver; and
 - c) is to be installed on the floor, a piece of furniture, or similar surface without further anchoring of any kind or nature, or on a wall using no more than two (2) simple picture hooks and wire; all so that the easy removability from the Premises of such art work without its destruction, distortion, mutilation or other modification by reason of such removal is undeniable; or
- 2.) If the Licensee delivers to Seattle Center a waiver appropriately executed by the art work creator, for the benefit of the City and its successors and assigns as the owner of the Premises, of the creator's right of integrity regarding such art work, in a form of waiver that satisfies both Seattle Center and the requirements of 17 U.S.C. §106A (e), as the same now exists or is hereafter modified; or
- 3.) If Seattle Center executes with the creator of a work of visual art to be installed in the Premises a consent agreement of the type contemplated by 17 U.S.C. §113(d)(1), as the same now exists or is hereafter amended, and in the form and manner specified by Seattle Center.

In the event the creator of any work of visual art installed in the Premises by or for the Licensee has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described herein, the Licensee shall ensure that, prior to removing or allowing the removal from the Premises of any such art work, such creator is given both notice, as contemplated in 17 U.S.C. §113(d)(2), of the intended removal of such art work, and the time required by that statutory provision to respond to such notice, and that the Licensee takes whatever other action(s) may be required by such legislation to ensure that no claim, action or suit alleging a violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended, and arising out of any act or omission of or for the Licensee or any of its officers, employees, or agents, is filed or lodged against the City in its capacity as the Premises owner.

B. Licensee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990.

The Licensee shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages, and expenses (including attorneys' fees and costs) arising as a consequence of

- 1.) the installation or integration of any work of visual art on or into the Premises;
- 2.) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or
- 3.) any breach of Subsection X.A. of this Agreement; or
- 4.) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by the Licensee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether Seattle Center or any other person employed by the City has knowledge of such installation, integration or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

XI. CITY ACCESS TO, INSPECTION & MAINTENANCE OF PREMISES

- A. Access to Premises. Licensee shall provide the City and its agents with access to the Premises at all reasonable times to inspect the same and to make any inspection, repair, or improvement Seattle Center deems necessary, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition or improvement except as specifically provided herein.
- B. Access to Electrical and Mechanical Rooms. The City reserves for itself, and Licensee shall ensure that it has, unrestricted access to and use of the City Electrical and Mechanical Rooms adjacent the Premises at all times throughout the Term.
- C. City's Use of Key to Premises. Licensee shall not change locks or keys or otherwise block Seattle Center from access through any door in, upon, and about the Premises, excluding Licensee's vaults, safes, and files. In cases of emergency, the City may use any and all means that Seattle Center deems proper to open said doors in order to gain entry into the Premises, without liability to Licensee. The City's entry into the Premises pursuant to this section shall not be construed or deemed to be an eviction of Licensee or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.
- D. Inspection for Maintenance Purposes. Seattle Center shall inspect the Premises at least once each year, at the City's expense, and shall provide a written report to Licensee containing findings and recommendations regarding necessary or advisable maintenance and repair. Within such time periods as Seattle Center may reasonably specify, Licensee shall perform such recommended repair and maintenance work as is its responsibility under this Agreement. Seattle Center's inspection shall not relieve Licensee of any responsibility to inspect the Premises

and perform such repair and maintenance work as it is otherwise obligated to perform under this Agreement.

XII. COMPLIANCE WITH LAWS AND REGULATIONS

- A. General Requirements. Licensee, at no cost to City, shall perform and comply with all applicable laws of the United States; the State of Washington; the Charter and Municipal Code of the City of Seattle; and rules, regulations, orders, and directives of administrative agencies and their officers implementing the same. Licensee shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever Licensee or its authorized representative is informed of any violation of any law, ordinance, rule, regulation, license, permit, or authorization committed by it or any person admitted to the Premises, Licensee shall immediately desist from and/or prevent or correct such violation. Licensee, their representatives and clients, shall conduct their events on campus in alignment with Seattle Center Campus Rules.
- B. Licenses & Other Authorizations. Licensee, at no cost to the City, shall obtain and maintain all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof, throughout the Term of this License.
- C. Taxes. Licensee shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on its property, equipment, and improvements on the Premises; and taxes on Licensee's interest in this Agreement and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A; and if the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from Licensee's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, Licensee shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Washington from the City in connection with such taxation. If Licensee is exempt from any tax, a document from the taxing authority demonstrating the organization's exemption must be provided to the Seattle Center Fiscal Services Department.
- D. Nondiscrimination. Licensee will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, 14.16, 14.17, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.
- E. Recycling of Waste Materials. Licensee, at no cost to the City, shall collect, sort, and separate into such categories as may be legally required or required by Seattle Center rule, regulation or policy, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped

or removed from the Seattle Center at such minimum frequency as Seattle Center may specify, at the City's cost. The City reserves the right to refuse to collect or accept from Licensee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Licensee to arrange for the collection of the same at Licensee's sole cost and expense using a contractor satisfactory to the City. Licensee shall pay all costs, fines, penalties, and damages that may be imposed on the City or Licensee as a consequence of Licensee's failure to comply with the provisions of this subsection.

XIII. ENVIRONMENTAL STANDARDS

Licensee shall not, without the City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office and janitorial supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with the City's consent, Licensee shall: promptly, timely, and completely comply with all governmental requirements for reporting and record keeping; submit to the City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after the City's request therefore, provide evidence satisfactory to the City of Licensee's compliance with all applicable governmental rules, regulations, and requirements; and comply with all governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances. Licensee shall provide Seattle Center with Licensee's USEPA Waste Generator Number (if any), and with a copy of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval (including every revision or renewal thereof), and any correspondence Licensee receives from, or provides to, any governmental unit or agency concerning Licensee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on or about the Premises.

If Licensee violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Licensee shall promptly take such action as is necessary to mitigate and correct the violation. If Licensee does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of Licensee (for which purpose Licensee hereby appoints the City as its agent), to come onto the Premises, and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If Seattle Center has a reasonable belief that Licensee is in violation of any law or regulation, or that any action or inaction of Licensee presents a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as Seattle Center deems necessary. All costs and expenses incurred by the City in connection with any such action shall become immediately due and payable by Licensee upon presentation of an invoice therefore.

Any and all costs and expenses the City incurs in connection with the City's inspections of the Premises and the City's monitoring of Licensee's compliance with this Section XIII, including the City's attorneys' fees and costs, shall be due and payable to the City within ten (10) days after the City's demand therefore. Licensee shall be fully and completely liable to the City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal), and costs imposed with respect to Licensee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the

Premises. In addition to all other indemnity provisions of this Agreement, Licensee shall indemnify, defend, and hold the City harmless from any and all costs, fees, penalties, charges, expenses, claims, suits, and liabilities assessed against, or imposed upon the City, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs, and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) as a result of Licensee's use, storage, disposal, transportation, generation and/or sale of Hazardous Substances. This indemnity shall survive termination or expiration of this Agreement.

XIV. ASSIGNMENT AND SUBCONTRACTING

Except as expressly permitted herein with respect to Clients, Licensee shall not assign, transfer, convey or encumber this Agreement or its rights hereunder or sublicense any interest herein without Seattle Center's prior written consent.

XV. TERMINATION

Either party shall have the right to terminate this License agreement for convenience and without recourse to the other party at any time upon ninety (90) days' prior written notice to the other party. In the event of termination, Seattle Center will make good faith efforts to honor Licensee's existing contracts with Resident Companies for use of the Premises; provided, however, that Seattle Center shall have no obligation to honor such contracts with Resident Companies beyond the end of the performing arts season during which termination occurs.

XVI. AMENDMENTS

No alteration or modification of the terms hereof shall be valid unless made in writing and signed by an authorized representative of each party hereto.

XVII. DISPUTES

Any disputes arising under this Agreement that are not disposed of by agreement between the Licensee and the City shall be referred to Seattle Center and the Licensee's designated representatives for resolution. If such persons do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes.

XVIII. EFFECTUATION OF AGREEMENT

Notwithstanding the date of signature below, this Agreement shall become effective as of the date specified above when signed by the authorized representatives of each party.

XIX. ACKNOWLEDGMENT OF NEGOTIATED LICENSE AGREEMENT

The parties to this Agreement acknowledge that it is a negotiated agreement, 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 any party on the basis of such party's draftsmanship thereof.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement by having their authorized representatives sign their name in the spaces below:

THEATRE PUGET SOUND

THE CITY OF SEATTLE

Dr. M. Crystal Yingling
Executive Director

Marshall Foster
Seattle Center Director

Date:_____

Date:_____

BUSINESS ADDRESSES FOR NOTICES:

LICENSEE:

Theatre Puget Sound
305 Harrison St.
Seattle, WA 98109

CITY:

Seattle Center Armory
305 Harrison St.
Seattle, WA 98109

ACKNOWLEDGMENTS

STATE OF WASHINGTON)

COUNTY OF KING)ss (Licensee's Acknowledgment)
)

On this _____ day of _____ personally appeared before me, Dr. M. Crystal Yingling, known to be the Executive Director of Theatre Puget Sound, a Washington nonprofit corporation, who executed the foregoing agreement, and acknowledged the said agreement to be free and voluntary act and deed for uses and purposes therein mentioned and, under oath, stated that they were authorized to execute said agreement.

GIVEN UNDER MY HAND AND OFFICIAL SEAL affixed the day and year in this certificate above written.

Signature

(Print or Type Name)

NOTARY PUBLIC in and for the State of Washington,
Residing in county _____
My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF KING) ss (Acknowledgment for The City of Seattle)
)

On this _____ day of _____ personally appeared before me Marshall Foster, known to be the Director of Seattle Center of the City of Seattle, a Washington municipal corporation, who executed the foregoing agreement, and acknowledged the said agreement to be free and voluntary act and deed for uses and purposes therein mentioned and, under oath, stated that they were authorized to execute said agreement.

GIVEN UNDER MY HAND AND OFFICIAL SEAL affixed the day and year in this certificate above written.

Signature

(Print or Type Name)

NOTARY PUBLIC in and for the State of Washington,
Residing in county _____
My appointment expires: _____

EXHIBIT A

FLOOR PLANS



Exhibit A, pg. 1

