

**USE, OCCUPANCY AND MAINTENANCE AGREEMENT**

**Between**  
**THE CITY OF SEATTLE**  
**Department of Parks and Recreation**  
**and**  
**SEATTLE PUBLIC THEATER**  
**for**  
**THE GREEN LAKE BATHHOUSE**

**AGREEMENT NUMBER:** \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between **THE CITY OF SEATTLE**, a Washington municipal corporation ("City"), acting by and through the Seattle Department of Parks and Recreation ("SPR"), and the **SEATTLE PUBLIC THEATER** ("SPT") a not-for-profit corporation organized under the laws of the State of Washington.

**RECITALS**

WHEREAS, since 1988, SPT has been responsible for the presentation of public theater in the greater Seattle area; and

WHEREAS, SPT has been a leader in artistic programming and community outreach to a diverse population; and

WHEREAS, SPR has recognized its relationship with SPT as a partnership that helps SPR fulfill its park and recreation mission; and

WHEREAS, SPR wishes to continue this relationship with SPT to maintain the delivery of services to the public at the Green Lake Park Bathhouse Facility;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions, and performances described herein, the parties agree as follows:

**ARTICLE 1. DEFINITIONS AND TERMS OF AGREEMENT**

**1.1 Definitions.**

1.1.1 "Agreement" means this temporary Use, Occupancy and Maintenance Agreement, including all exhibits, attachments and addenda appended hereto, as now existing or hereinafter amended.

1.1.2 "City" means The City of Seattle.

1.1.3 "Commencement Date" means the date on which SPT's authorized use and occupancy of the Premises under this Agreement commence.

1.1.4 "Public Benefit Offset" means the value of ~~the low cost (the difference between the full cost and price paid by participants) or~~ free performances, programs and services, and scholarships provided for the public and approved by SPR for use by SPT to partially offset the actual payment of ~~rent~~ Use Fee due to the City under this Agreement.

1.1.5 "SPR" means the City of Seattle Department of Parks and Recreation.

1.1.6 "Managing Director" means the Managing Director of SPT.

1.1.7 "Premises" means the Green Lake Park Bathhouse currently in use by SPT.

1.1.8 "Superintendent" means the Superintendent of the City of Seattle Department of Parks and Recreation.

1.1.9 "SPT" means the Seattle Public Theater.

1.1.10 "SPT Programming" means the performances, programs and services offered by SPT that create a wide community-based participation opportunity for SPR users, as determined by the Superintendent.

1.2 Term of Agreement.

This Agreement will commence on July 1, 2017 (the "Commencement Date"), and will expire June 30, 2027 (the "Initial Term"), unless it is terminated earlier as described herein. If SPT is not in default with respect to any material provision of this Agreement, SPT may extend this Agreement for an additional term of five (5) years (the "Extended Term") on the same terms and conditions except for the amount of the Use Fee, which shall be calculated as described in Section 4.1.3. SPT shall exercise its option by sending the City a written notice to that effect either (a) 30 days following SPT's receipt of the Superintendent's fair rental value determination under Section 4.1.3 below or (b) 90 days before the expiration of the Initial Term. Unless the context clearly indicates otherwise, when used in this Agreement, the word "Term" includes both the Initial and the Extended Terms.

**ARTICLE 2. PREMISES**

The premises that SPT is authorized to use and occupy during the Term consists of the Bathhouse Theater and adjacent rooms located within the existing Green Lake Park Bathhouse Facility, depicted on the attached Exhibit "A" and having a street address of 7312 West Green Lake Drive North, Seattle, Washington 98103-4816 (the "Premises"). The Premises are

located on a portion of real property legally described as the NE1/4 of the NW1/4 of the SE1/4 of Section 6, Township 25 North, Range 4, East, W.M., in King County, Washington.

There is no reserved parking for the Premises. SPT may utilize the parking area adjacent to the Premises in common with and upon the same terms and conditions as other users of Green Lake Park.

### **ARTICLE 3. USE, OCCUPANCY AND SERVICES**

#### **3.1 Purposes Authorized.**

SPT shall use the Premises solely as a performing arts venue for public performances and for purposes incidental thereto, such as rehearsals, classes, occasional fundraising activities, meetings, and administrative offices.

#### **3.2 Sale of Merchandise and Food.**

SPT may only sell general merchandise and food if such sales solely benefit SPT. All merchandise and food must comply with all applicable requirements, such as those pertaining to health, serving and selling alcoholic beverages, fire, and building safety. Sales of tobacco products are forbidden. Serving and sales of alcoholic beverages are prohibited unless specifically approved by the Superintendent in writing, and SPT obtains all required permits and complies with all applicable laws regarding the serving and sales of alcoholic beverages.

#### **3.3 Board Attendance.**

SPR shall be entitled to designate one person who may, upon request of either SPR or SPT, attend meetings of SPT's Board of Trustees, including subcommittee meetings.

#### **3.4 Hours of Operation, Scheduling and Closures.**

##### **3.4.1 Hours of Operation.**

Except as provided below in Section 3.4.2, SPT shall keep the Premises open for business and shall conduct programming at least thirty-two weeks (32) of every fifty-two week (52) Cycle. Programming shall be sufficient if it consists of any combination of SPT performances, rehearsals, classes, community programs, and co-production performances.

3.4.2 Closure of Premises.

SPT may close the Premises or any portion thereof for a reasonable period for repairs or remodeling, for taking inventory, etc., subject to the Superintendent's prior written approval. SPT shall post written notice of such impending closure in a conspicuous place on the Premises at least two (2) weeks before the closure date.

The City reserves the right to close the Premises or any portion thereof, without liability to SPT of any kind, for maintenance or repairs provided the City gives SPT ninety (90) days prior notice of such impending closure except in cases of emergency, when the City may close the Premises without notice of any kind.

3.5 Operation and Services.

3.5.1 Keys.

SPT shall provide SPR staff with one set of keys to the Premises and such additional sets as SPR may from time to time reasonably request.

3.5.2 Locked Storage

SPT shall provide SPR with a locked storage unit that meets requirements set by SPR in an accessible and secure location on the Premises. SPR may use the storage unit in connection with its aquatic or other programs.

3.5.3 Programming Goals.

SPT shall provide a theatrical and performing public arts program addressing the following community interests:

- A mainstage season of plays for general audiences.
- Matinee performances for young audiences.
- Programming that appeals to and is accessible to diverse populations.
- Summer performing arts programs for youth.
- Weekend, evening and after-school classes/workshops/performances for youth and adults.
- Special performing arts events.
- Accessible classes for all skill levels and experience.

3.5.4 Scholarship and Program Reports.

By September 1 of each year during the Term, SPT shall provide SPR with a written report detailing, for SPT's preceding fiscal year ending June 30:

- a. the number and dollar value of scholarships awarded,
- b. the number and dollar value of fee discounts and ticket price reductions, and
- c. the number and dollar value of stewardship activities and other public benefits provided. With respect to scholarships and other public benefits, the report shall explain the reasons for any significant change from previous years in the amount of scholarship awards, stewardship activities and other public benefits provided. The report shall clearly state the criteria used for awarding scholarships or providing fee discounts and reduced price tickets.

3.5.5 Special Programs.

SPT shall use its reasonable best efforts to provide low-income and disadvantaged residents with access to SPT through free and/or discounted performances, classes, and workshops or scholarships or other means.

3.5.6 Staff.

SPT shall provide qualified personnel or assign volunteers in sufficient numbers to meet SPT's program staffing needs. SPT shall review the conduct of any of its employees whose activities may be inconsistent with the proper administration of the Premises and take such action as is necessary to remedy the situation. SPT shall engage a licensed agency or company to perform background checks of all staff who will work with youth under 18 before they are hired. SPT shall provide SPR with a written listing of the names and addresses of the members of its Board of Trustees and staff at the beginning of each calendar year and notify SPR of changes throughout the year.

3.6 SPR Use of Premises.

SPR reserves the right to exclusive use of the dressing rooms and lifeguard offices as depicted on the attached Exhibit "A" from June 1 through September 30 ("Swim Season"). Outside of Swim Season, SPR retains the right upon at least ten (10) working days' notice to SPT, to exclusive use of the locker rooms and lifeguard offices. Upon receipt of such notice SPT shall have ten (10) working days to remove any items owned by SPT from the designated areas. During the Swim Season, SPT shall be guaranteed access to the electrical panel located in the lifeguard offices. SPR shall have access to the Premises at no charge for community meetings and other SPR programs on an as-available basis by contacting the SPT Managing Director one (1) week in advance of the proposed use date. SPR shall provide staffing or pay reasonable opening and closing charges if its use of the Premises is on a day or during a time that SPT does not normally open the Premises and Department staff are not available to do so.

**ARTICLE 4. USE FEES; SPR APPROVED CREDITS AND ADJUSTMENTS HERETO; TAXES**

4.1 Use Fee.

4.1.1 Use Fee.

Subject to all the provisions of this Article 4 and beginning on the Commencement Date, for SPT's use and occupancy of the Premises during the term of this Agreement, SPT shall pay the City on the tenth (10) day of each month a Use Fee of Three Thousand Sixty-Nine Dollars (\$3,069.00) except as may be adjusted pursuant to Section 4.1.2, Section 4.1.3 and Section 4.2.

4.1.2 Fair Market Value Assessment.

During the term of this Agreement, SPR will assess the fair market rent value of the Premises. The assessment will evaluate the appropriate rent value of the Premises. A state-certified real estate appraiser will conduct the assessment and provide a fair market rent for comparable spaces. This assessment may be used to adjust the current Use Fee during the term of this Agreement.

4.1.3 Consumer Price Index Adjustment to Use Fee.

On each Commencement Date anniversary during the Initial Term, the Use Fee will be adjusted by the percentage increase that occurred in the Consumer Price Index

for all Urban Consumers (CPI-U I 1982-84 = 100), All Items, for the Seattle-Tacoma-Bremerton Metropolitan Area, as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor ("the Index") during the preceding calendar year ("the CPI Increase"); provided, however, that the adjustment to the Use Fee shall not exceed 4% in any one year.

Should any year's CPI percentage change be less than zero, the Use Fee shall not change from that of the prior year. If there is any change in the Index base (1984-82=100) or other modification of the Index, or if the CPI is discontinued, SPR shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority.

#### 4.1.4 Use Fee During Extended Term.

Six months before the expiration of the Initial Term, SPR shall notify SPT of SPR's determination of the then current fair rental value of the Premises. If SPT thereafter exercises its option to extend this Agreement, then the base Use Fee for the initial year of the Extended Term shall be the greater of the then-current Use Fee or the monthly fair rental value. The CPI adjustment to the Use Fee process described in Subsection 4.1.2 shall apply for the balance of the Extended Term.

#### 4.2 Use Fee Offsets

4.2.1 Public Benefit Offset. Subject to the provisions of Subsection 4.2.3, and for the duration of this Agreement, SPT shall be entitled to an offset against the Use Fee for the value of the public benefit of SPT's program. SPT shall calculate the offset annually, based upon the value of SPT's free tickets and events, scholarships, public benefit programming and stewardship activities, and shall include its valuation estimate in the program report required pursuant to Subsection 3.5.4 [and Exhibit C, Public Benefits and Reporting Requirements](#). The Public Benefit Offset shall not be diminished by any closure of the Premises pursuant to Section 3.4.2.

4.2.2 The Superintendent, acting reasonably, shall approve or revise SPT's Public Benefit Offset calculation following receipt of each annual report. On or before September 1 of each year, SPT shall provide the Superintendent with its Public Benefit Offset

calculation report for the period from July 1 of the previous year through June 30 of the current year. SPT may use the approved value of such public benefits to offset the base rent due in 12 equal monthly installments during the 12 months following the period in which such public benefits were conferred.

4.2.3 Major Maintenance Offset. With SPR's prior written approval, SPT may arrange and pay for major maintenance for the Premises and apply the cost as an offset to the monthly Use Fee.

4.2.4 Limitation on Offsets. Notwithstanding anything in this Agreement to the contrary, in no event shall SPT's monthly Use Fee payment to the City including the Public Benefit Offset be reduced to less than Five Hundred Dollars (\$500.00) per month. The monthly Use Fee payment to the City shall never be less than Five Hundred Dollars (\$500.00).

#### 4.3 Taxes.

The Use Fee does not include any state tax that may be levied or assessed as a consequence of this Agreement or any activity of SPT. SPT shall pay, before delinquency, any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed upon SPT's personal property installed or located in the Premises or upon its interest in this Agreement or the Premises, including Washington State Leasehold Excise Tax (Ch. 82.29A RCW) on the Use Fee. Any reduction of the Use Fee under Subsection 4.2 shall have no effect on the amount of Washington State Leasehold Excise Tax due and payable hereunder.

### **ARTICLE 5. FINANCES AND PAYMENT PROCESSES**

#### 5.1 Payment of Monthly Use Fees and Tax.

The monthly Use Fee and applicable Washington State Leasehold Excise Tax shall be delinquent if not paid on or before the tenth (10th) day of each month during the Term.

Payment should be made to the City of Seattle, and sent to:

Seattle Parks and Recreation  
Contracts Administration and Support Office  
ATTN: Contract Manager  
800 Maynard Avenue South, #300  
Seattle, WA 98134

or such other address as SPR may provide.



5.2 Administrative Charges Due to Late and Refused Payments.

SPT shall pay a twenty-dollar (\$20) late charge if SPR does not receive any payment due hereunder within ten (10) days from the due date.

5.3 Interest Charges for Overdue Payments.

If any payment due hereunder is not paid within thirty (30) days after the due date, a late charge of one percent (1%) of the amount due and unpaid shall be added to the payment and the total sum shall become immediately due and payable in accordance with Ordinance 117969.

**ARTICLE 6. UTILITIES AND RELATED CHARGES**

6.1 Utility Accounts.

SPT shall secure and pay for all necessary utilities, excluding water and sewage during the Term.

6.2 Prorated Utility Charge.

SPR shall pay to SPT the prorated share of 1/30th of the average monthly utility charge for each day or part thereof of use that SPR conducts any program activity on the Premises.

6.3 City Not Liable for Utility Service Failures.

The City shall not be liable, and SPT hereby waives any claim against the City, for the failure, for any reason whatsoever, of any utility service for the Premises.

**ARTICLE 7. CARE OF PREMISES**

7.1 Routine Maintenance and Repair.

SPT shall arrange and pay all costs for routine maintenance and minor repairs to the Premises and all building systems therefor, including but not limited to electrical and mechanical systems, glass, heating and plumbing systems, furniture, fixtures, and equipment; provided, however, that SPT shall not be obligated to perform any of the Major Maintenance items referenced in Section 7.2 below. All work shall comply with all applicable laws, rules, and regulations.

7.2 Major Maintenance and Repair.

SPR shall provide and be responsible for, subject to funding availability and SPR agreement, all Major Maintenance of the Premises, including but not limited to electrical and mechanical systems, all at no cost to SPT. SPR shall make all necessary maintenance and repairs and replacements to the roof, exterior shell, and exterior doors of the facility and any maintenance or repairs or replacements necessary as a result of failure of the roof, exterior shell and exterior doors of the Premises. "Major Maintenance" includes, without limitation:

1. Electrical and mechanical (including heating, ventilating and plumbing) systems.
2. All necessary maintenance and repairs to the roof.
3. All necessary maintenance and repairs to the exterior shell.
4. All necessary maintenance and repairs to the exterior doors of the facility.
5. All necessary maintenance and repairs necessary as a result of failure of electrical or mechanical systems or the roof, exterior shell and exterior doors of the Premises.

SPR's responsibilities will be limited to repairs that SPR deems necessary, reasonable and provided for within the existing SPR staffing and budget.

7.3 Custodial/Grounds Maintenance.

7.3.1 SPT Obligations. SPT shall provide all necessary housekeeping and janitorial services for the interior of the Premises to a level consistent with other similar facilities and operations and to SPR's reasonable satisfaction. SPT shall be responsible for proper storage and removal of trash, litter pickup, and recycling consistent with City standards.

7.3.2. SPR Obligations. SPR shall be responsible for the ordinary maintenance of the grounds surrounding the Premises, including Green Lake Park areas, the parking area, and outdoor lighting. Such maintenance shall be at the sole discretion of SPR, but will generally include lawn mowing and trimming, removal of plants when required, control of noxious weeds, and clearing of leaves and other natural debris and shall be kept to the same standard, and generally with the same frequency, as maintenance of grounds at other City parks.

7.4 Fire Alarm Systems.

SPT shall comply with all laws and regulations regarding ventilation, exhaust, and alarm warning systems, and shall have all necessary permits for the operation of any and all equipment on the Premises.

7.5 Joint Annual Inspection of Premises.

SPT shall participate in an annual inspection of the Premises with SPR and shall take any and all action that is consistent with the terms of this Lease that SPR may specify as necessary to maintain and operate the Premises in a clean and safe manner.

7.6 City Remedy for Failure to Maintain Premises.

If SPT fails to maintain the Premises, within a reasonable time after delivery of a written notice of non-compliance, SPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice SPT for the costs. SPR shall have no liability to SPT for any damage, inconvenience, or interference with SPT's use of the Premises as a result of the City's performing any such work.

7.7 Security.

SPT shall be responsible for security for the Premises. During Swim Season, and at other times when SPR has use of the locker rooms and lifeguard offices, SPR shall be responsible for security for the portion of the Premises it is using.

**ARTICLE 8. INDEMNIFICATION, HOLD HARMLESS AND INSURANCE**

8.1 Indemnification and Hold Harmless.

To the fullest extent permitted by law, SPT, its officers, agents, employees, volunteers and contractors, shall indemnify and hold harmless the City, its elected officials, officers, agents, employees, volunteers and contractors, from and against any and all liability, claims, suits, actions, damages, costs or expenses (including reasonable attorney's fees and costs and all other litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) for bodily injury or damage to property, to the extent caused

by the negligent or intentional acts or omissions of SPT or any of its officers, agents, employees, volunteers, invitees, licensees, or contractors, on or about the Premises, or from any violation of law. If any such claim, suit or action is brought against the City, its elected officials, officers, agents, employees, volunteers or contractors, SPT, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and, in accordance with the previous sentence, shall promptly satisfy any final judgment adverse to the City or to the City and SPT jointly.

8.2 Survival of Indemnification Obligation.

The indemnification and hold harmless obligations of SPT hereunder shall survive the expiration or earlier termination of this Agreement.

8.3 Insurance to be secured by SPT.

At all times during the Term, SPT shall maintain, at no expense to the City, a policy or policies of insurance as described in Exhibit “B”.

**ARTICLE 9. CITY CONTROL OF PREMISES AND VICINITY**

Green Lake Park and the parking areas surrounding the Premises are under the City's exclusive control and management. Accordingly, the City may do any and all of the following (among other activities in support of Seattle Parks and Recreation or other municipal objectives), all without incurring any liability whatsoever to SPT:

- Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, and parking areas in the vicinity of the Premises.
- Traffic Regulation. Regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of SPT and its invitees, employees, and patrons.
- Display of Promotional Materials. Erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to the Premises.

- Promulgation of Rules. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any SPR property, including but not limited to the Premises.
- SPR Use. SPR shall have access to the Premises at no charge for small community hearings and other SPR staff meetings on an as-available basis by contacting SPT at least one (1) week in advance of the proposed use date. SPR shall provide qualified staffing or pay for opening and closing charges if the use of the facility is on a day or during a time that SPT does not open the facility and SPR staff are not available to do so.

#### **ARTICLE 10. ALTERATIONS OR IMPROVEMENTS**

SPT shall not make any major alteration, addition, renovation, or improvement in or to the Premises without the Superintendent's prior written approval of plans and specifications therefor. SPR may impose restrictions or conditions on any proposed work, including requiring payment and performance bonds in the amount of the work. All SPR-approved alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of SPT and shall (a) remain in and be surrendered with the Premises at the expiration or earlier termination of this Agreement, or (b) be removed from the Premises at the expiration or earlier termination of this Agreement, unless SPR otherwise agrees in writing. At the time SPT proposes to make a capital improvement, SPT may request SPR to notify SPT whether such improvement may or must be removed upon expiration or termination of this Agreement.

#### **ARTICLE 11. DAMAGE OR DESTRUCTION**

If the Premises are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, the City at its sole discretion may elect to repair, restore, or rebuild the Premises or any portion thereof, in which event the City shall promptly commence such repairs as will restore the Premises to the condition immediately preceding the casualty as nearly as reasonably possible.

Notwithstanding the foregoing, if (i) more than fifty percent (50%) of the Premises are damaged as a result of the casualty; or (ii) repair and restoration cannot reasonably be completed within eighteen (18) months from the date of the casualty; (iii) the casualty

occurs during the final two (2) years of the Term; or (iv) the insurance proceeds plus the deductible and any funds contributed by SPT are insufficient to restore the Premises; or (v) the City fails to notify SPT of the City's election to restore the Premises within 30 days after such casualty, then either SPT or the City may terminate this Agreement upon 30 days' written notice to other specifying the effective date of such termination, and in such event, SPT shall promptly deliver to the City all insurance proceeds payable on account of the damage to the building in which the Premises are located.

From the date of the casualty through completion of repairs (or termination of this Agreement, if applicable), the Use Fee shall be abated in the same proportion that the unusable portion bears to the whole of the Premises, as the City may reasonably determine, unless SPT's negligence or that of its agents, invitees, or guests, or SPT's breach of this Agreement caused or contributed to the casualty, in which event there shall be no abatement.

The City shall not be liable to SPT for damages, compensation, or other sums for inconvenience, loss of business, or disruption resulting from any repairs to or restoration of any portion of the Premises. In no event shall the City be required to repair or replace any equipment, inventory, fixture, or other personal property located on the Premises and owned or maintained by STP or other users of the Premises.

## **ARTICLE 12. CONDEMNATION**

If any part of the Premises is taken or condemned, and a part thereof remains susceptible of occupation hereunder, this Agreement shall, as to the part so taken, terminate as of that date and title shall vest in the City. The Use Fee payable by SPT to the City shall be adjusted so that SPT shall pay only for that useable portion of square feet remaining after the condemnation, but in such event the City shall have the option to terminate this Agreement by notice to SPT within thirty (30) days of the date when title to the part so condemned vests in the City. If part or all of the Premises is taken or condemned, all compensation awarded upon such condemnation or taking shall go to the City, and SPT shall have no claim, and shall irrevocably assign and transfer to the City any right to compensation or damages payable by reason of the condemnation.

**ARTICLE 13. COMPLIANCE WITH LAW**

13.1 General Requirements.

SPT shall comply with all applicable laws of the United States and the State of Washington; the Charter and Ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers thereof now existing or hereafter enacted or promulgated. Whenever SPT is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any of its officers, employees, contractors, subcontractors, agents, or invitees, SPT shall immediately desist from and/or prevent or correct such violation.

13.2 Licenses and Other Authorizations.

SPT, at no cost to the 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. SPT shall submit to SPR such evidence as may be required by SPR prior to the modification of the Premises. SPT shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

13.3 Equality of Treatment.

SPT shall conduct its business in a manner that assures fair, equal, and nondiscriminatory treatment at all times, in all respects, to all persons in accordance with all applicable laws, ordinances, resolutions, rules, and regulations. Any failure to comply with this provision shall be a material breach of this Agreement.

13.4 Nondiscrimination.

SPT 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 but not limited to Chapters 14.04, 14.10, 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.

13.5 Americans with Disabilities Act Compliance.

In its programs and services, SPT, at no cost to the City, shall comply with all requirements of the Americans with Disabilities Act for existing buildings, as now or hereafter amended, and all rules and regulations implementing the same.

13.6 Prevailing Wages.

SPT agrees that the undertaking of any construction, alteration, improvement, enlargement, repair, demolition, maintenance, and the performance of janitorial service activity by janitors, rug shampooers, floor waxers, and window cleaners is subject to the requirements of RC.W. Ch. 39.12 (Prevailing Wages on Public Works), as amended or supplemented. SPT agrees to meet all such requirements of RCW 39.12.

13.7 Environmental Standards.

13.7.1 General. SPT shall not commit or suffer any waste to be dumped upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Seattle Municipal Code, or any City department rule or regulation as now existing or hereafter amended or any activity that is inconsistent with the use authorized or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises.

13.7.2 Hazardous Materials. SPT 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 substances, as defined by any State or Federal law, except in compliance with all applicable Laws and Regulations. If requested, SPT shall maintain and provide the City with a (USEPA) waste generator number, and with copies of all Material Safety Data Sheets (MSDS), and annual dangerous waste reports, environmentally related regulatory permits or approvals and any correspondence SPT receives from, or provides to, any governmental unit or agency in



connection with the handling of hazardous substances or the presence, or possible presence, of any hazardous substance.

13.7.3 Environmental Testing. SPT shall permit the City access to the Premises upon reasonable notice for the purpose of conducting annual inspections and environmental testing at the City's expense. SPT shall not conduct, or permit others to conduct, environmental testing on the Premises without the Superintendent's prior written approval. SPT shall provide a copy of all test results to the City upon receipt.

13.7.4 Violation of Environmental Standards; City's Remedial Rights. If SPT violates any of the conditions concerning the presence or use of hazardous substances or the handling or storing of hazardous wastes, SPT shall promptly take such action as is necessary to mitigate and correct the violation. If SPT does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to come onto the Premises and to take such action as deemed necessary to ensure compliance or to mitigate the violation. In addition, the City shall be entitled to full reimbursement from SPT for any costs resulting from the violation including, but not limited to, costs of clean-up or other remedial activities, fines, penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the Premises due to its environmental condition as the result of SPT's violation (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

#### **ARTICLE 14. LIENS AND ENCUMBRANCES**

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

#### **ARTICLE 15. RECORDS, BOOKS AND DOCUMENTS/REPORTING**

15.1 Accounting Books and Records.

SPT shall maintain books, records, documents and other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by SPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

15.2 Annual Financial Report.

At SPR's request, SPT shall submit to SPR an annual financial report of operations prepared by a reputable accounting firm or bookkeeper within ninety (90) days after the end of each of its fiscal years during the Term. Such annual report shall cover SPT's fiscal year (the period from July 1 through June 30), and include all tests, findings and financial reports in accordance with generally accepted accounting procedures (GAAP). If SPR in its sole discretion is not satisfied in any way with the financial report provided by SPT, SPR may require, by not less than ninety (90) days prior notice to SPT, that such financial report be compiled by an independent certified public accountant.

15.3 Over and Under-payments.

If, through an audit or otherwise, SPT is found to have made any overpayment or underpayment hereunder, the Superintendent shall notify SPT of the amount of the overpayment or underpayment. Any overpayment shall be a credit against any fees and charges subsequently due or shall be refunded to SPT, at its option; underpayments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice.

15.4 Retention of Records.

SPT shall retain all books, records, documents, and other material relevant for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by persons authorized under this Agreement at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 16. ENTRY & INSPECTION OF PREMISES**

SPR or its agents shall have the right to inspect and to show the Premises to other prospective users at all reasonable times, and to enter the same for purposes of cleaning, repairing, altering, or improving the Premises but this right shall impose no obligation on SPR to make any inspection, repair, or improvement.

**ARTICLE 17. SIGNS AND ADVERTISING**

17.1 Signs, Generally.

Except for existing signs and except on one or more existing exterior bulletin boards, SPT shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises without the Superintendent's prior written consent. SPT shall remove all signage at the expiration or earlier termination of this Agreement and repair any resulting damage or injury to the Premises.

17.2 On-Premises Signs.

SPT may install permanent exterior signage provided the Superintendent approves them in advance.

17.3 Temporary Signs or Banners.

Temporary signs or banners not more than 24 square feet in size may be displayed on or about the Premises to advertise a special event or semester beginning two weeks immediately before the event advertised, through the conclusion of such event.

17.4 Recognition.

When applicable, SPT shall include a statement in its printed materials stating "We would like to thank Seattle Parks and Recreation for providing a location for Seattle Public Theater." SPT shall also list SPR and the SPR logo in the "Thanks to our sponsors" section of its quarterly or other class schedule(s).

**ARTICLE 18.      INSOLVENCY**

If (i) SPT becomes insolvent and a receiver takes possession of all or any part of SPT's assets, or (ii) SPT makes a general assignment for the benefit of creditors, or (iii) SPT takes any action under any insolvency or bankruptcy act, and, if such action continues for a period of thirty (30) days, SPT shall be in breach of this Agreement, and SPR may, at its election and without notice, terminate this Agreement. In that event, SPR shall be entitled to immediate possession of the Premises.

**ARTICLE 19.      MORTGAGING, TRANSFERRING, SUBLEASING,  
ASSIGNMENT OR SALE OF INTEREST**

19.1   Interests not Transferable.

SPT shall not transfer, assign, mortgage, hypothecate or convey this Agreement or any interest therein, in whole or in part, nor lease or license use or occupancy of the Premises or any part thereof to any other person, firm or corporation (except rentals for productions and programs permitted under this Lease) without the Superintendent's prior written approval, which approval may be granted, withheld, or conditioned in each instance in SPR's discretion. Any sublessee, assignee or transferee approved by SPR must accept and assume, in writing, all the terms and conditions of this Agreement. Any transfer of this Agreement by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment hereunder.

19.2   No Waiver.

The Superintendent's consent to any assignment or transfer shall not waive the need for consent to any subsequent assignment or transfer.

19.3 Administrative Costs.

Each time this Agreement is assigned or transferred, or the Premises or any portion thereof are occupied by any approved person or entity other than SPT (except rentals for productions and programs permitted under this Lease), SPT shall pay the City an administrative fee equal to twenty-three and one-half percent (23.5%) of the monthly Use Fees (without any offset) to defray the City's cost of processing documents and other administrative expenses.

**ARTICLE 20. TERMINATION**

20.1 Process for Termination of Agreement.

20.1.1 For Cause. Either party may terminate this Agreement if the other party has materially breached the Agreement and such breach has not been corrected to the reasonable satisfaction of the dissatisfied party within the time stated in this Agreement or, if no time is stated, then within thirty (30) days after notice of breach has been provided to such other party. If, however, the nature of the party's obligation is such that more than thirty (30) days are required for performance, then said party shall not be in default if it commences performance within the thirty (30) day period and diligently seeks to remedy the default or deficiency.

20.1.2 For Reasons beyond the Control of the Parties. Either party may terminate this Agreement without recourse by the other party where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to: acts of nature; war or warlike operations; civil commotion; riots; labor disputes including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

20.1.3 For SPR's Convenience. In the event that SPR determines that, at any time during the term of this Agreement, that it desires to terminate this Agreement regardless of cause or fault, this Agreement shall be subject to termination upon twelve (12) months' prior written notice by SPR to SPT.

20.1.4 For SPT's Convenience. If SPT determines, at any time, that the Premises are no longer required for its use, it may terminate Agreement upon ninety (90) days' written notice to SPR.

20.2 Notice of Termination.

Notice of termination, other than pursuant to Subsection 20.1.3 and 20.1.4 above, shall be given in writing by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination.

20.3 City Remedies for Material Breach.

If the City terminates this Agreement for cause, SPR, in addition to other rights or remedies that it may have, shall have the right to re-enter said Premises and to make necessary alterations and repairs to restore the Premises to the condition desired by SPR, and authorize others to temporarily use and occupy the Premises, all at SPT's cost and expense. No temporary use or relating of the Premises following SPT's material breach of this Agreement shall relieve SPT from liability for the Use Fees SPT is required to pay hereunder unless SPR determines otherwise.

**ARTICLE 21. VACATING OF PREMISES**

Upon the expiration or earlier termination of this Agreement, SPT shall return the Premises, together with all SPR-approved capital improvements made thereto and fixtures installed therein, in good condition, except for normal wear and tear, unless the City consents otherwise. All rights, title and interest of SPT in the Premises including but not limited to the leasehold improvements installed therein shall vest in the City without the need for any action by either party hereto except that SPT shall provide the City with a deed or bill of sale for the same at the City's request.

SPT shall remove any portable personal property that is easily removed and confirmed as SPT property and if there is damage to the Premises as a result of the removal, then SPT shall restore them to their pre-existing condition. If SPT fails to remove its personal property from the Premises, SPR shall have the right, but not the obligation, to remove the same and may store it in any place selected by SPR, including but not limited to a public warehouse, at SPT's sole expense and risk and such property shall be subject to sale, without notice to SPT, after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost

of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from SPT to the City. The balance, if any, shall be paid to SPT.

**ARTICLE 22. VISUAL ARTIST RIGHTS ACT**

22.1. 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 Premises Without Superintendent's Prior Express Written Consent. The City reserves to and for itself the right to approve or disapprove of the installation or integration on or into 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 on or into the Premises of a work of visual art. SPT shall not, without the prior, express, written consent of the Superintendent, install on or integrate into, or permit any other person or entity to install on or integrate into, any portion of the Premises any "work of visual art." The Superintendent's consent to the installation of any such artwork may be granted, granted upon one or more conditions, or withheld in the Superintendent's discretion.

b. SPT's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. If the Superintendent has not given such official's consent to the installation or integration of any work of visual art on or into the Premises, SPT 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 the installation or integration during the term of this Agreement of that work of visual art on or into any portion of the Premises. This Indemnification obligation shall exist regardless of whether SPT has consented to or has prior knowledge of such installation or integration. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 23. NOTICES**

All communications between the parties under this Agreement shall be in writing and shall be sufficiently given if either personally served upon the other party or sent via facsimile or the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to SPT:

Seattle Public  
Theater  
ATTN: Managing Director  
7312 W. Green Lake Drive N.  
Seattle, WA 98103  
Telephone: 206-524-1300

If to the City:  
Seattle Parks and Recreation  
Contracts Administration and Support Office  
ATTN: Contract Manager  
800 Maynard Avenue South, #300  
Seattle, WA 98134  
Telephone: 206-684-8001 / Fax: 206-233-3949

or to such other address as either party hereto may specify, in writing.

**ARTICLE 24. MISCELLANEOUS**

24.1 Captions.

The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

24.2 Binding Effect.

The provisions, covenants, and conditions contained in this Agreement inure to the benefit of the parties hereto and their successors and assigns.

24.3 Applicable Law.

This Agreement shall be construed and interpreted under Washington law.



24.4 Jurisdiction and Venue.

The jurisdiction and venue for any litigation between the parties regarding this Agreement shall be in the King County Superior Court of the State of Washington.

24.5 No Partnership or Joint Venture Created.

The City does not by this Agreement, in any way or for any purpose, become a partner or enter a joint venture with SPT.

24.6 City's Remedies Cumulative.

The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

24.7 Amendments.

No modification of this Agreement shall be binding unless produced in writing and signed by an authorized representative of each of the parties hereto.

24.8 Force Majeure.

Neither party shall be in default hereunder if and to the extent a party's non-performance is the result of events not reasonably foreseeable by and beyond the reasonable control of the affected party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of nature; acts of war or public rebellion; fire or other casualty for which SPT is not responsible.

24.9 No Third Party Rights.

No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto.

24.10 Effectiveness of Agreement.

This Agreement shall become effective only when approved by the Seattle City Council and executed by an authorized representative of each party.

24.11 No Waivers.

No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by SPT, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City'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.

24.12 Exhibits.

The following documents, whether or not attached hereto, are hereby incorporated into this Agreement as if set forth in full herein:

- Exhibit A: Land and Building Assignment Map
- Exhibit B: Insurance Requirements
- [Exhibit C: Public Benefit and Reporting Requirements](#)
- ~~Exhibit C: Public Benefit and Reporting Requirements~~

Formatted: Indent: Left: 0.58", First line: 0.42"

24.13 Severability.

Should any term, provision, condition or other portion of this Agreement be held invalid, such invalidity shall not affect the other provisions of this Agreement, which shall otherwise continue in full force and effect.

24.14 Entire Agreement.

This Agreement, and all attachments and exhibits pertaining to it, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties on the subject. The parties acknowledge that this 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 the Agreement are not to be construed against either party based on drafting.

IN WITNESS WHEREOF, the parties hereto have caused this Use and Occupancy Agreement to be executed by their respective representative:

**CITY:**

**THE CITY OF SEATTLE**  
Department of Parks and Recreation

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Jesús Aguirre

Title: Superintendent

Department of Parks and Recreation

**LESSEE:**

**SEATTLE PUBLIC THEATER**  
A Washington nonprofit corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Seattle Public Theater

**NOTARY – SEATTLE PUBLIC THEATER**

STATE OF WASHINGTON        )  
                                  ) ss:  
COUNTY OF KING         )

I certify that I know of or have satisfactory evidence that \_\_\_\_\_ signed this instrument, on oath stated he/she was authorized to execute the instrument and acknowledged it as the Director of Seattle Public Theater to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name)

Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**NOTARY - THE CITY OF SEATTLE**  
Department of Parks and Recreation

Jesús Aguirre, Superintendent, Parks and Recreation

STATE OF WASHINGTON        )  
                                  ) ss:  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Jesús Aguirre signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Superintendent of the Department of Parks and Recreation of the City of Seattle to be the free and voluntary act of The City of Seattle for the uses and purposes mentioned in this instrument.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed name)

Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



EXHIBIT B  
INSURANCE

**1. Furnished Coverages and Limits of Liability:** Lessee shall, at no expense to the City, maintain, and cause its subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions below, at all times beginning on the Commencement Date and ending on the Expiration Date of this Lease:

**A. Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal/Advertising Injury Liability  
\$ 1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop  
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Lessee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Lessee regarding this Agreement, nor (2) construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

**B. Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

**C. Workers' Compensation** insurance securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

**D. Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and

Automobile Liability insurance limits of \$5,000,000 Each Occurrence and be no less broad than coverages described above.

- E. Property Insurance** under which the Lessee’s furniture, trade fixtures, equipment and inventory (“Business Personal Property”) and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (earthquake optional), not less broad than provided by the insurance industry standard “Causes of Loss - Special Form” (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee’s business. Coverage shall contain a waiver of coinsurance or agreed amount endorsement(s). City shall be named as a loss payee, as its interest may appear, as respects property insurance covering the alterations, additions and improvements under such policy.
- F.** In the event that the City deems insurance to be inadequate to protect Lessee and the City, Lessee shall increase coverages and/or liability limits as the City shall deem reasonable adequate within sixty (60) days after the date of written notice.

**2. Terms and Conditions for Lessee’s Insurance.**

- A. The City of Seattle as Additional Insured: The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include “The City of Seattle, its officers, officials, employees, agents and volunteers” as additional insureds. Lessee’s insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.
- B. Required Separation of Insured Provision: Cross-Liability Exclusion and other Endorsements Prohibited: Lessee’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. Lessee’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Lessee’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Lessee’s CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer’s Liability exclusion, (e) any “Insured vs. Insured” or “cross-

liability” exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Lessee’s failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Lessee or reduced and/or offset against the Agreement.

- C. Cancellation Notice: Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (b), for both liability and property insurance the City is deemed to be a “mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder.”
- D. Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VIII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).
- E. Deductible or Self-Insured Retention: Any deductible or self-insured retention (“S.I.R.”) must be disclosed to, and shall be subject to reasonable approval by, the City. Lessee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Lessee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Lessee. If a deductible or S.I.R. for CGL or equivalent insurance is not “fronted” by an insurer but is funded and/or administered by Lessee or a contracted third party claims administrator, Lessee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

3. City’s Property Insurance Coverage and Limits.

- A. City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee’s Business Personal Property and Tenant Improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard “Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City’s Property Insurance currently is subject to a \$250,000 deductible for most claims for which Lessee shall be responsible only to the proportional extent to which the loss or damage is attributable to Lessee’s negligent acts that are, or should be, covered by Tenant’s Fire/Tenant Legal Liability insurance.



- B. During such time as Lessee is engaged in the performance of the Improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect “All Risks” Builder’s Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. In the event of a claim under the builder’s risk policy, Lessee or its contractor(s) shall be responsible for paying any deductible under the policy if Lessee or any of its agents, employees, or contractors is responsible for the loss or damage. It shall be Lessee’s responsibility to properly coordinate with the City’s Risk Management Division the placement of Builder’s Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.
- C. The City may change the terms of its insurance in Sections 3.A. and 3.B. at any time based on market conditions, with no compensation due to the Lessee.

4. Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by the City or the Lessee or both as fiduciary. 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

5. Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Lessee:

- A. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
- B. A copy of the policy’s declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
- C. A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;
- D. Pending receipt of the documentation specified in this Exhibit, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to and the certificate holder

shall be:

The City of Seattle c/o Seattle Parks and Recreation  
800 Maynard Avenue South, #300  
Seattle, WA 98134

with an electronic copy to [suzanne.simmons@seattle.gov](mailto:suzanne.simmons@seattle.gov)

6. Assumption of Property Risk. The placement and storage of Lessee's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.
7. Adjustments of Claims: The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement.
8. Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability hereunder. Notwithstanding said insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

### **EXHIBIT C - PUBLIC BENEFIT AND REPORTING REQUIREMENTS**

Annual Reporting. Lessee shall submit to SPR an annual public benefit report describing its programs, activities and educational services for its fiscal year. Seattle Parks and Recreation will provide a template for this report before the end of the lessee's current fiscal for the following year. The Public Benefit report for the fiscal year just ended is due to SPR by the end of the 3<sup>rd</sup> month of the following year for each year during the Term of the Agreement.

Lessee shall also submit to Seattle Parks and Recreation an Annual Statement of Income and Expenses for the Seattle Public Theater for the prior fiscal year, due by the end of the 4<sup>th</sup> month following the end of the fiscal year. Lessee shall submit any other reports as specified in this Agreement.

Public Benefit for the Seattle Public Theater shall include free (and pay-what-you-can) tickets, performances; scholarships; youth programs; community events; volunteer hours, and community outreach to, and programming for, underserved communities. SPR-approved capital improvements by SPT beyond the required minor maintenance and repairs within the facility shall be reported as public benefit.

#### **1) Public Access:**

As this is a theatrical organization with varying hours depending upon the season, SPT is not required to be open for regularly scheduled business hours, but shall provide the public access to the theater through performances, programs, classes/workshops, rentals, events and other activities. SPT shall provide free admittance to the general public for a minimum of 100 youth or adult performances, classes and/or workshops per year, for a minimum value of \$20,000 annually.

#### **2) Youth Programs:**

Provide K-12 students access to the performing arts through classes, theater labs, workshops, performances, and camps. SPT will provide a minimum of 15 classes with a minimum total of 700 participants annually.

#### **3) Scholarships:**

Provide a minimum of \$6,000 in assistance in the form of scholarships for low-income youth and/or adults. Scholarships are provided to enable individuals who otherwise could not afford to participate in classes, workshops and camps.

#### **4) Community Outreach:**

SPT will continue to expand its service area and venues through outreach to underserved schools and communities. The organization will contact or partner with a minimum of 5 schools and reach at least 100 students through programs or activities presented at the schools or in underserved communities.

#### **5) Capital Improvements:**

The value of capital improvements beyond the required maintenance and repair completed by SPT will vary annually. Capital improvements must be reviewed by SPT and mutually agreed to by SPR and SPT in advance of work commencing. SPT and SPR will work cooperatively on capital improvements.

**6) Community Events:**

SPT's participation in, or production of, free community events shall be considered as Public Benefit. SPT shall participate in or produce 1 community event that is free to the general public annually.

**7) Volunteer Opportunities:**

SPT shall provide volunteer opportunities for students and the general public. Volunteer hours shall be reported as Public Benefit at the most current rate for volunteers as listed under the National Value of Volunteer Time on the Independent Sector website: <https://www.independentsector.org/resource/the-value-of-volunteer-time/>. For 2016, the most current rate available at this time, the Estimated Value of Volunteer time is \$24.14. SPT shall provide a minimum of 207 volunteer hours per year, for a minimum value of \$5,000 per year.