

AMENDED AND RESTATED LICENSED USER AGREEMENT

THIS AMENDED AND RESTATED LICENSED USER AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2024 (“Effective Date”), by and between JOHN GORE THEATRICAL GROUP, INC. (f/k/a KEY BRAND Theatrical Group, Inc., f/k/a PACE Theatrical Group, Inc.) (“Licensee”) and the CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”).

WITNESSETH:

In consideration of the mutual promises and the covenants set forth herein, the parties hereby agree as follows:

ARTICLE I. GRANT OF LICENSE TO USE AND BOOK.

Section 1.01. City hereby grants to Licensee the exclusive right to book the Facility for all Programs (whether presented singly or as part of a series) which are to commence Performances on or after the Effective Date in accordance with this Agreement. At all times during the Term as set forth in Article III, City shall grant Licensee the exclusive right not only to book, but also to produce, present and/or arrange for production and presentation of all Programs at the Facility. City hereby grants permission to the Licensee to use, during the dates and times submitted by Licensee to City from time to time and on the terms and conditions set forth in this Agreement, all of the Facility described in Section 2.01(c). Licensee shall have the right to use entire Facility other than the Specifically Excluded Areas. Subject to Licensee’s exclusive right to book, produce and present and/or arrange for production or presentation of the Programs in the Facility, the grant of permission made in Section shall otherwise constitute a non-exclusive license with respect to the Facility, and nothing in this Agreement shall be deemed to give Licensee a property interest in the Facility other than a license to use the Facility on the dates and on the terms and conditions set forth herein. Naming rights to the Facility will not be awarded as part of this Agreement. Licensee shall have the right to sell sponsorships in connection with all Programs and/or a series of Programs insofar as the City is concerned, and to reserve areas in the Facility for use by selected ticket holders.

ARTICLE II. DEFINITIONS.

Section 2.01. As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

- (a) “Program” shall mean touring professional Broadway type dramatic and dramatico musical attractions, with or without a storyline, including, but not limited to, attractions such as those presented on Broadway, Off-Broadway, in the West End

London, in Radio City Music Hall, in the theatre at Madison Square Garden and in other Broadway series in North America.

- (b) "Adjusted Gross Weekly Box Office Receipts" shall mean all sums actually received by Licensee from all ticket sales to a Program, less taxes, facility fees, actual credit card expenses and, to the extent shown on face of the ticket, fees such as parking or valet fees which are paid for services other than the Performance of a Program itself.
- (c) "Facility" means the venue, including the marquee, located at 301 W. 13th Street, Kansas City, Missouri 64105, and currently and commonly known as the Kansas City Music Hall. Notwithstanding the foregoing, the Facility does not include the parking areas, the Municipal Arena, the Little Theater, or, except as provided in Section 8.02, the office space in or adjacent to the Music Hall (the "Office Space"), all of which shall hereafter be referred to as the "Specifically Excluded Areas" and all of which shall be under the exclusive control of City, except as otherwise provided for in Section 7.09.
- (d) "State" means the State of Missouri.
- (e) "Ticketing Agent" means the City's ticketing services provider for the Facility. The City and Licensee acknowledge that at the time of this Agreement the Ticketing Agent is Ticketmaster L.L.C., a Virginia limited liability company.
- (f) "Program Week" means the week commencing at 8:00 AM Monday and ending 7:59 AM on the following Monday of the week of a particular Program and shall consist of such number of Performances as shall be determined by Licensee.
- (g) "Director" means the executive director of the City's Convention and Entertainment Facilities Department or his or her designee.
- (h) "Capital Repairs and Improvements" means any repairs, replacements or improvements at or to the Facility that, generally accepted accounting principal ("GAAP"), are properly charges to capital account, including, but not limited to, major components such as seats, chairs, playing surfaces, telecommunication systems, HVAC equipment, heating equipment, generators, and other similar items within or forming a part of the Facility, except that, notwithstanding any provision or requirement of GAAP to the contrary, no repair, replacement or improvement that (A) has a cost less than \$1,000.00, or (B) has a useful life of two (2) years or less, shall be deemed to be Capital Repairs and Improvements hereunder.
- (i) "Performance" means each separate presentation of a Program for which tickets are sold to the public.

ARTICLE III. TERM OF AGREEMENT.

Section 3.01. Initial Term. The initial term of this Agreement shall commence on the Effective Date and continue through August 31, 2027 (the “Initial Term”) as defined in the Fifth Amendment to Kansas City Licensed User Agreement dated as of February 17, 2022, between City and Licensee. The Term shall continue for seven (7) years commencing on September 1, 2027 and continuing through August 31, 2034 (the “Additional Term”) All references in this Agreement to the "Term" shall mean and refer to the Initial Term, the Additional Term and, if Licensee exercises its option to extend under Section 3.02, the Extended Term.

Section 3.02. Option to Extend. Licensee shall have the right to extend the Term, upon the same terms and conditions as the Additional Term for one (1) additional three-year period (the “Extended Term”), through August 31, 2037. If Licensee elects to exercise its right to extend, it will do so by delivering written notice to City not later than February 28, 2033.

Section 3.03. Termination Date. The Term of this Agreement shall terminate upon the expiration of the Additional Term unless Licensee exercises its option for the Extended Term as provided in Section 3.02.

Section 3.04. Negotiation of New Agreement. Given the long-term outlook for programming and the necessity to plan and book shows well in advance, the parties will endeavor to negotiate in good faith for any new agreement to book the Facility for Programs, or to present and/or arrange for presentation of Programs at the Facility following the expiration of the Additional Term, or the Extended Term, if any, commencing on that date that is thirty-six (36) months prior to the expiration of the Additional Term or, if Licensee has exercised its option to extend under Section 3.02, the Extended Term. City and Licensee shall negotiate in good faith for mutually agreeable deal terms for any such new agreement for a one hundred and twenty (120) day period. If the parties reach agreement upon mutually agreeable deal terms, then the parties shall, subject to City Council approval within an additional ninety (90) days, unless such dates shall be extended in writing by mutual agreement of the parties, enter into such new agreement.

Section 3.05. Termination for Convenience. This Agreement shall be subject to termination by either party upon the following terms and conditions:

- (a) The party wishing to terminate this Agreement shall deliver written notice to the other party in accordance with the provisions of Section 12.13 of this Agreement;
- (b) The effective date of the termination of this Agreement shall be the earliest August 31 that is more than thirty-six (36) months after the date of the written notice of termination;
- (c) No termination of this Agreement shall be effective prior to August 31, 2032; and
- (d) If and to the extent that Licensee has:

- (i) commenced negotiations with a party having the ability to enter into an agreement to present a Program that Licensee wishes to present at the Facility, and
- (ii) placed a hold on dates for such Program to be presented at the Facility;

prior to Licensee's receipt of written notice of termination, then Licensee shall retain the right to cause such Program to be presented at the Facility in accordance with the terms and provisions set forth in this Agreement, notwithstanding that the Program is presented after the effective date of the termination of this Agreement as provided herein.

Within thirty (30) days following any written notice of termination as provided herein, Licensee shall deliver to City a schedule setting forth (a) the identity of any Program for which Licensee has commenced negotiations with a party having the ability to enter into an agreement to present a Program that Licensee wishes to present at the Facility, and (B) the dates for which a hold has been placed for such Program to be presented at the Facility, and from and after the delivery of such schedule by Licensee it is agreed that Licensee shall retain the right to cause such Program to be presented at the Facility in accordance with the terms and provisions set forth in this Agreement, notwithstanding that the Program is presented after the effective date of the termination of this Agreement as provided herein.

ARTICLE IV. RESPONSIBILITIES OF LICENSEE.

Section 4.01. Personnel and Equipment. The Licensee shall, at sole cost and expense, provide or cause to be provided, the following personnel and materials required for production and presentation of the Programs at the Facility: actors and actresses, sets and decorations, lighting and audio equipment, stagehands, ticket takers, ushers, stage door personnel, utility technicians, sound system operators, forklift operators, elevator operators, house managers, security personnel and all other performers, personnel and equipment required for the proper presentation of each Program. It is hereby understood and agreed that, without additional compensation to the City, the Licensee shall have the right the use all available in-house equipment at the Facility, as more fully set forth in Section 8.02 hereof. If off duty police officers are hired, they must be licensed Kansas City, Missouri. police officers.

Section 4.02. Permits and Licenses. The Licensee shall, at its sole cost and expense, obtain and keep in full force and effect all government permits, licenses, and authorizations as may be required for the Program, including, but not limited to, business licenses.

Section 4.03. Minimum Annual Program.

- (a) Commencing on September 1, 2024, Licensee must, present and/or arrange for the presentation of an average annual number of forty (40) Performances presented in the Facility on a rolling three-year basis during each annual period from September 1 through August 31 (a "Season") during the Term (collectively, the "Broadway

Touring Minimum”). During the Term, Licensee will have exclusive right to book, market, and present all Programs at the Facility.

- (b) With respect to any of the Seasons during the Term, the determination of the average annual number of Performances presented in the Facility on a rolling three-year basis shall be calculated by dividing (i) the sum of (A) the number of Performances presented in the Facility during such Season, plus (B) the number of Performances presented in the Facility during the immediately preceding Season, plus (C) the number of Performances that are booked for presentation during the upcoming Season by (ii) three.
- (c) Notwithstanding the minimum standard of forty (40) Performances presented in the Facility on a rolling three-year basis as set forth above, it is the intention of both the City and Licensee to manage the bookings of Programs for each Season during the Term in order to maximize the number of weeks of Programs as long as the financial terms for the booking of each Program are financially prudent. If the Broadway Touring Minimum is not achieved as of the end of any Season, the Parties agree to meet within thirty (30) days of the end of such Season and negotiate in good faith on an ongoing basis to determine how best to increase the total number of weeks of Broadway Touring Shows for future Seasons in a financially prudent manner.
- (d) If during any of the Seasons the occurrence of a Force Majeure Event results in (i) the cancellation of any Performances that were booked for presentation in the Facility during such Season or (ii) the Parties being unable to book one or more Performances for presentation at the Facility during any portion of such Season, then the total number of Performances during that Season shall be deemed increased by the number of Performances that were so cancelled or that could have been reasonably booked had such Force Majeure Event not occurred.

Section 4.04. Presentation of Programs. The Licensee agrees to present or arrange for the presentation of all Programs in the Facility on the dates submitted to City from time to time and on the terms and conditions provided in this Agreement. The extent, date and time of each Program shall be presented by the Licensee to the City and, commencing with the date thirty months prior to the commencement of each Season, the Licensee shall have the right to hold all dates subject, however, to any previously scheduled convention that includes the use of the Facility. All date holds shall be confined in writing but may be changed subject to availability or canceled by the Licensee. All reserved dates that Licensee does not intend to use shall be released no later than the date four months prior to the commencement of the applicable Season. In addition, Licensee shall work in good faith with the City to accommodate reasonable scheduling requests by other local amateur user groups for the use of the Facility. The Facility is to be used by the Licensee for and during the Term of this Agreement only for purposes of or in connection with presenting the Programs, which purposes shall be deemed to include, without limitation, Performances, rehearsals, press and publicity interviews and events and the shooting of B roll and other press, publicity and/or marketing related audio and/or video and/or photography and/or other future image and likeness technology of any kind.

Section 4.05. Backstage or Tour Catering. Licensee may provide or cause to provide backstage catering of and beverage as a service to the performers and workers associated with the Program. Licensee shall be responsible to procure all necessary permits needed to provide such services.

Section 4.06. Labor Agreements. The City hereby represents and warrants that it is not a party to, and that there are not in effect any, collective bargaining agreements which would affect any rights of Licensee hereunder or result in any adverse financial impact on Licensee, including, without limitation, Licensee's right to present or arrange for the production or presentation of, any Program. If City desires, during the Term of this Agreement, to enter into any collective bargaining agreements that would relate to any activities carried out by Licensee in the Facility under this Agreement, including without limitation any requirement that would obligate Licensee to engage workers that are subject to a collective bargaining agreement to perform any services under this Agreement, City will provide Licensee with written notice, at least ninety (90) days prior to the advising Licensee of such desire. Following such notice, City and Licensee will negotiate in good faith during such 90-day period to address any financial or operational ramifications, including any increased costs in the presentation of the Program, resulting from the City's decision to enter into any collective bargaining agreement. As part of such negotiation, City and Licensee will consult to address and ameliorate any adverse impacts of the proposed collective bargaining requirements upon Licensee's ability to present the Program in an efficient and cost-effective manner.

Section 4.07. Copyrights. The Licensee shall assume all costs arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of the Program. The Licensee agrees to indemnify and hold harmless City from all actions, claims, damages, penalties, liabilities, costs and expenses, including without limitation attorneys' fees, for or on the account of the use of any patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights furnished or used by the Licensee in connection with this Agreement. In this regard, the Licensee's attention is particularly directed to the use of copyrighted music.

Section 4.08. Ticketing. Licensee intends to provide ticketing services for the Programs pursuant to a ticketing arrangement to which Licensee is a party with ticketing services provider ("Licensee's Ticketing Agreement"). If at any time Licensee elects not to provide ticketing services for the Programs, Licensee will negotiate an agreement with Ticketing Agent for the terms and conditions upon which Ticketing Agent will provide such ticketing services.

Section 4.09. Compliance with Rules and Regulations. Licensee shall comply, and shall use reasonable efforts to cause its servants, agents, employees, patrons and guests to comply with all present and future laws, ordinances, orders, rules, and regulations of all federal, state, county and municipal governmental authorities and with any lawful direction or order of public officer which shall impose any duty upon Facility or Licensee.

Section 4.10. Damage to the Premises. Licensee shall not injure, mar, nor in any manner deface the Facility, Office Space, dressing rooms or lobbies or appurtenances or any equipment contained therein, and shall not cause or permit anything to be done whereby the Facility or equipment shall

be in any manner injured, marred or defaced, and will not, except to the extent usual and customary in the touring theatrical industry in the United States, drive or permit to be driven nails, hooks, tacks or screws into any part of the Facility or equipment contained therein, and will not, except to the extent usual and customary in the touring theatrical industry in the United States, make or allow to be made any alterations of any kind to building or equipment contained therein, and will not, except to the extent usual and customary in the touring theatrical industry in the United States, affix or permit to be affixed by adhesives any signs, posters, notices, or graphics of any description without prior consent of the Director. Licensee agrees that if the Facility is damaged by act, default, or negligence of Licensee, or its servants, agents or employees, or any Program or the servants, agents or employees of any Program, it shall pay to the City upon demand such sum as shall be necessary to restore the Facility to its original condition, ordinary wear and tear excepted, provided, however, that any such restoration repayment shall be subject to the prior reasonable approval of Licensee.

Section 4.11. Broadcasting and Recording. Licensee agrees that other than recordings contemplated by Section 4.04 hereof, as well as recordings made by authorized news and similar outlets, whether or not commercial, for purposes of advertising any Program, or reporting the news, or reviewing any Program or in connection with any publicity for any Program (the "Permitted Recordings"), no recording for commercial use, audio or visual will be made of any Program without the Director's written approval. City reserves the right to require payment for such privilege other than the Permitted Recordings. The City reserves all rights and privileges for outgoing commercial television broadcasts other than the Permitted Recordings originating from City's Facility during Term of this Agreement. Should City grant to Licensee such broadcast privileges, City has the right to require advance payment of any estimated related cost to City, and may also require payments in addition to rental fee.

Section 4.12. Door Opening Times. Licensee must open doors to the Program as advertised unless otherwise agreed upon in advance by the Director and Licensee.

Section 4.13. Authorized Ticket Selling Locations. If at any time during the Term Licensee is not providing ticketing services for the Program pursuant to Licensee's Ticketing Agreement in accordance with Sections 4.08 of the Agreement, Licensee agrees that all ticket sales relating to the presentation of the Programs shall be made only by City's ticket office and all locations selected by City, including those of any third party ticket sales service that is contracted by City, provided, however, that it is specifically understood and agreed that Licensee shall have the right, even if Licensee is not providing ticketing services for the Program pursuant to Licensee's Ticketing Agreement in accordance with Sections 4.08 of the Agreement, to sell groups, subscriptions, member sales, ticket clubs and patron clubs in its discretion throughout the Term of this Agreement ("Permitted Licensee Ticketing"). If at any time during the Term Licensee is not providing ticketing services for the Programs pursuant to Licensee's Ticketing Agreement in accordance with Section 4.08 of this Agreement, there shall be no consignment of tickets without the prior written consent of Director and payment to City of full face price of such tickets at the time of consignment. Permitted Licensee Ticketing shall not be considered consignment sales. Additionally, if at any time during the Term Licensee is not providing ticketing services for the Program pursuant to Licensee's Ticketing Agreement in accordance with Sections 4.08 of the Agreement, the following provisions shall be applicable:

- (a) The Licensee shall reimburse City for documented out of pocket expenses incurred by the City for (i) credit card expenses for tickets sold at the Facility box office, and (ii) \$0.05 for each non-complimentary ticket sold at the Facility box office.
- (b) Licensee will coordinate with the Ticketing Agent to build the ticketing set up for each Program. Licensee will notify the City of the date on which the ticketing set up for each Program is to be made available for general public ticket sales at the Facility box office.
- (c) In the event the Licensee approves ticket refunds and the City has sold tickets and transferred the related funding to Licensee, the Licensee shall return to City any ticket revenues received by the Licensee, in accordance with Article V herein, for the tickets refunded.
- (d) Tickets to the Program, except for Permitted Licensee Ticketing, are subject to the convenience charges and/or surcharges imposed by the Ticketing Agent pursuant to the ticketing services agreement between the City and the Ticketing Agent.

Section 4.14. Complimentary/House Seats. Licensee shall use reasonable efforts to provide City, at all times subject to availability and the approval of each Program, with a total of thirty-two (32) complimentary tickets in the orchestra section on opening night of each Program. To the extent that such tickets are unavailable on a complimentary basis, City shall have the right, without obligation, to purchase such seats at the usual and customary price for such tickets subject to Licensee's house seat notification and release policies.

ARTICLE V. BOX OFFICE SETTLEMENT.

Section 5.01. Payment of Box Office Receipts. All box office receipts after taxes from all sources, including telephone sales, internet sales and outlet sales except for those sales by Licensee (as outlined in Section 4.13 above), shall be paid to Licensee on a weekly basis, less only those reasonably anticipated expenses as set forth in Article VIII.

Section 5.02. Taxes. City shall remit, out of the box office receipts, to applicable governmental authorities, on the Licensee's behalf, all applicable sales, entertainment, admission, or other taxes relating to the Program.

Section 5.03. Box Office Statement; Settlement. At the intermission of each Performance on a daily basis, City shall furnish the Licensee with a box office statement. At intermission of the final Performance of each Program Week the parties will mutually determine the amount payable to the City pursuant to Article V, VII and Section 4.13(a) and all remaining ticketing revenues, if any, shall be paid to Licensee and all such actual monies due to either party under the Agreement shall be reconciled and adjusted in order to account for any variances from the previously estimated amounts retained by the City pursuant to Section 5.01 above. The Licensee agrees to examine such

statement and to the extent possible to immediately notify City of any errors in accounting or of any objection to any charge. If no errors are found and no notification is given within five (5) business days from the last Program Week settlement of a particular Program, such statement shall be deemed to be a true and correct statement of the account between City and the Licensee and shall be final and conclusive. The Licensee agrees to pay City promptly any amounts shown to be due to City on such statement which are not paid by the application of box office receipts, subject to Licensee's right to contest any such statements.

Section 5.04. No General Admission. All events where tickets are sold to the public will be on a reserved paid basis. There will be no general admission events except when approved by the Director; provided, however, that nothing herein shall be deemed to restrict or limit the ability of Licensee to conduct open houses, season announcement events or other similar activities, other than a Performance, in which members of the public are invited into the Facility without a designated seat.

Section 5.05. Seating Capacity of Facility. Licensee shall not permit attendance or sale of tickets in excess of the seating capacity of the Facility.

ARTICLE VI. ADVERTISING, PROMOTION AND PUBLICITY.

Section 6.01. Advertising Rights. The Licensee shall conduct, or arrange for, at its sole cost and expense, the entire advertising, publicity and promotion campaign for the Program, including, without limitation to the extent Licensee elects, in its sole discretion, to utilize any of the following means of advertising, the preparation and furnishing of advertising layouts and commercial mats for all media (including without limitation radio commercials and television reels), and printing all outdoor advertising paper, heralds, mailing circulars and other promotion material. The Licensee shall defend, Indemnify and hold harmless the "City's Indemnified Parties" from and against any and all claims arising out of or in any way related to any acts or omissions of persons who are at the Program to record, transcribe or broadcast the Program.

Section 6.02. City Marketing Services. In the event the Licensee purchases advertising through City's marketing department, the Licensee agrees to pay City for such time or space at the then current rate card price for the applicable station, newspaper or outdoor advertiser.

Section 6.03. Promotional Material. The Licensee agrees that any promotional material, whether created television, newspaper, outdoor advertising, handbills or otherwise, prepared by or for the Licensee containing reference to the Facility must use the Facility's established logo-type, trademark or service mark, and the name of the Facility, all of which shall be provided by City.

Section 6.04. City Publicity and Promotion. City agrees to publicize and promote the Program within the Facility, to the extent City determines that it is reasonable and feasible, at no cost to the Licensee, through City's in-house promotional outlets such as its public-address system, outdoor marquee, display cases, etc. as reasonably approved by Licensee. City also may publicize and promote future events at the Facility in the lobby display cases.

ARTICLE VII. RESPONSIBILITIES OF THE CITY.

Section 7.01. Facility Space. The City will provide the Facility as a first-class theatre in working order in all respects, and shall maintain the Facility as such throughout the Term of this Agreement. Without limiting the foregoing, the City shall be solely responsible for all routine maintenance and repairs and for all capital repairs, replacements and/or improvements, consistent with the operation of a first-class theatre at all times. It is specifically understood that Licensee shall have no responsibility for capital expenditures or costs related to the physical Facility itself, except for the specific contribution set forth in Article IX. Licensee shall have exclusive use of the Facility other than the Specifically Excluded Areas, and non-exclusive use of common areas, loading dock and related areas (including rehearsal rooms adjacent thereto), dressing rooms, box office and other areas customarily available in conjunction with Programs at the Facility. No other use of any of the foregoing areas will be permitted to any third party or shall be used by City in a manner which will interfere with Licensee's use of any such space in connection with the Programs or otherwise frustrate Licensee's right to enjoy the rights and benefits of this Agreement.

Section 7.02. Non-Exclusive Use. The City shall at all times during the Term of this Agreement have possession and control of the Facility, and the City and its officers, directors, servants, employees, agents, and concessionaires, and concessionaires' servants, employees and agents, shall have the right to enter the Facility at all times for the purposes of inspecting the same, or making or causing to be made, necessary repairs thereto upon presentation of usual passes issued to them by the City, including when the Licensee is using the Facility as provided herein. In a non-emergency situation, the City's right of entry not take place during rehearsal, Performance or during the hour and a half before or after any Performance. The City will bear any incremental expense borne by Licensee or any Program producer for any damage or liability that occurs while exercising this right of entry. The Licensee acknowledges that besides the use of the Facility as contemplated by this Agreement, the Facility and various parts thereof and areas therein may or will be used for the installation, holding or presentation and removal of activities, events and engagements other than the Program. In order to protect the Licensee with respect to any other users, the City shall provide, at its sole expense, all necessary staffing to restrict access by others to all Programs and to prevent any disruption to Licensee's use of the Facility. In order for the Facility to operate as efficiently as practicable, it may or will be necessary for the use or availability of services of the Facility, including without limitation, entrances, exits, truck ramps, receiving areas, marshaling areas, storage areas, passenger or freight elevators, and concession areas, to be scheduled or shared. The Licensee shall have no claim for damages due to any restrictions on the Licensee's use of the Facility as a result of such scheduling or sharing, provided such other events do not interfere with Licensee's use of the Facility, or the presentation of any Program hereunder, and does not frustrate Licensee's enjoyment of its rights and benefits under this Agreement. Subject to the foregoing, the Licensee agrees that City shall have full, complete and absolute authority to establish the schedules for the use and availability of such services and Facility and to determine when and the extent to which the sharing of such services and Facility is necessary or desirable, and the Licensee agrees to comply with any schedules so established and to cooperate in any sharing arrangements so determined provided such sharing does not interfere with Licensee's use

of the Facility. In no event shall the Licensee enter or use any Specifically Excluded Area without first obtaining Director's consent and approval. Notwithstanding the foregoing, no other use of any of the foregoing areas will be permitted to any third party or shall be used by City in a manner which will interfere with Licensee's use of any such space in connection with the Programs or otherwise frustrate Licensee's rights and benefits under this Agreement.

Section 7.03. Event Coordination. At no additional expense to Licensee, City agrees to provide a trained professional event manager to represent the City on Performance days for not less than one (1) hour before the published Performance time through and including not less than one-half hour following the departure of the last member of the public. On non-Performance move-in days, City agrees to provide the event coordinator from one-half hour before the beginning of move-in until the conclusion of the move-in call or the end of the business day, whichever comes first, provided event coordinator shall remain accessible to Licensee throughout move-in of show. On all other non-Performance days on which Licensee uses or occupies the Facility and during move-out following the final Performance of a Program, City agrees to provide the event coordinator only as and when required by Licensee; provided event coordinator shall remain accessible to Licensee in case of emergencies.

Section 7.04. Condition of Facility. The City maintain a clean Facility and will furnish cleaning service for uncarpeted aisles, uncarpeted open spaces, and restrooms during show hours. In addition, City shall perform a general cleaning of the Facility (including dressing rooms) after each evening Performance so that actors and the public shall have the benefit of a clean Facility at all times. City shall provide cleaning necessitated by move-in/out activities; however, discardable materials arising from the Programs must be broken down by Licensee to a 3' x 3' unit size for acceptance by City's trash compactor. Licensee shall be responsible for clean-up and removal of materials created specifically by and for any Program, requiring special handling such as wood, scrap lumber, Oily materials, etc. City agrees to keep and maintain the sidewalk and means of access to and from the Facility (including maintaining loading docking conditions) in good order so as not to interfere with access to and from the theater.

Section 7.05. Debris Removal and Utilities. The City agrees to provide trash pickup on a daily basis and a thorough cleaning (including vacuuming of all carpeted areas and sweeping and mopping non-carpeted floors) on a daily basis throughout the Term. Normal heating and A/C will be provided in the Facility during Programs and at all other times Licensee is using the Facility hereunder.

Section 7.06. Exclusive Rights to Concessions and Merchandise Sales. The City reserves the right to sell non-show related food and beverages prior to the Performance, during intermission and immediately following the Performance. The City shall also have the right to operate checkrooms and to sell parking privileges. Each Program shall have the right to sell show merchandise in the Facility lobbies prior to, during and immediately following each Performance. City agrees to negotiate in good faith directly with each Program, its merchandiser or booking agent, for City's compensation for such sales. Licensee shall have no obligations related to such understanding between any Program and the City.

Section 7.07. Program Sales. The City hereby grants Licensee the exclusive right to arrange for patrons to receive a program at each Performance of a Program.

Section 7.08. Facility Non-Event Security. The City shall provide perimeter security and secure all entry/exit doors weekends, holidays, and after hours.

Section 7.09. Office Space. City agrees to make available Office Space to Licensee for lease at the current prevailing market rate. Should Licensee not occupy all of the Office Space, the City reserves the right, subject to the provisions of Section 8.02, to lease the unoccupied portion to another tenant.

ARTICLE VIII. PAYMENT TO THE CITY.

Section 8.01. Payment. In consideration for use of the Facility and other warranties, promises and representations made and/or given by the City, Licensee agrees to pay the City:

(a) A base rent as follows:

(i) During the Initial Term:

<u>Calendar Period</u>	<u>Monthly Base Rent</u>
September 1, 2023 – August 31, 2024	\$32,783
September 1, 2024 – August 31, 2025	\$34,094
September 1, 2025 – August 31, 2026	\$35,458
September 1, 2026 – August 31, 2027	\$36,877

(ii) During the Additional Term:

<u>Calendar Period</u>	<u>Monthly Base Rent</u>
September 1, 2027 – August 31, 2028	\$38,536
September 1, 2028 – August 31, 2029	\$40,270
September 1, 2029 – August 31, 2030	\$42,082
September 1, 2030 – August 31, 2031	\$43,976
September 1, 2031 – August 31, 2032	\$45,955
September 1, 2032 – August 31, 2033	\$48,023
September 1, 2033 – August 31, 2034	\$50,184

(iii) During the Extended Term, if applicable, a base rent as follows:

<u>Calendar Period</u>	<u>Monthly Base Rent</u>
September 1, 2034 – August 31, 2035	\$52,442
September 1, 2035 – August 31, 2036	\$54,802
September 1, 2036 – August 31, 2037	\$57,268

Licensee will pay the City additional rent during the Initial Term of five percent (5%) of Adjusted Gross Weekly Box Office Receipts in excess of \$700,000, and, during the Additional Term, and the Extended Term, if any, additional rent of six percent (6%) of Adjusted Gross Weekly Box Office Receipts in excess of \$700,000 ("Percentage Rent Threshold") per Program Week; provided, however, that no additional rent shall be payable with respect to any amounts of Adjusted Gross Weekly Box Office Receipts in excess of \$1,300,000 during the Additional Term or the Extended Term, if any (the "Additional Rent Cap"). For each Program Week that has less or greater than eight (8) Performances, the base rent due to the City and the Percentage Rent Threshold and the Additional Rent Cap shall be pro-rated downwards or upwards by a percentage based on the actual number of Performances in the applicable Program Week as compared to an eight Performance week. Licensee will be responsible to pay all applicable sales tax for all tickets sold by Licensee that Licensee has processed. Balances for each Program Week will be due at the time of the box office settlement of the final Performance of each Program Week. Each quarter, there shall be a reconciliation of settlements for the immediately preceding quarter to take into account all ticket refunds, etc. If there has been an overpayment of rent, City shall promptly refund difference to Licensee and if there has been an underpayment, Licensee shall promptly pay the difference to City. If payment is not received within thirty (30) days from date of invoice, interest of (1%) per month will be charged on unpaid balance for every month or portion thereof that the balance remains unpaid. If payments are not paid as specified, any box office receipts in the possession of the Ticketing Agent may be applied to the payment of fees due, and Licensee waives all rights to that portion of the box office receipts necessary to pay delinquent fees.

- (b) A user fee payable on each paid ticket as required by the City Code of Ordinances, Section 2-605 and as amended from time to time. Parties acknowledge that such user fee at the time of this Agreement is equal to \$3.00 per paid ticket.
- (c) An additional user (the "Additional User Fee") on each paid ticket in the amount \$1.00 per paid ticket at all times during the Term, if any, which amount shall be deposited in the Capital Maintenance Reserve Account. City agrees and acknowledges that funds in the Capital Maintenance Reserve Account may be used solely for capital repairs, maintenance and improvements in the Facility.
- (d) During any period in which Licensee elects to provide ticketing services for the Programs pursuant to Licensee's Ticketing Agreement in accordance with Section 4.08 of this Agreement, a surcharge equal to \$5.00 per paid ticket during the Initial

Term (From 9/1/2023 through 8/31/2027), and \$6.00 per paid ticket during the Additional Term (From 9/1/2027 through 8/31/2034) and the Extended Term (From 9/1/2034 through 8/31/2037), if any, for Programs at the Facility sold by the ticketing service provider at ticketing outlets, internet sales, telephone sales or by other means, excluding Permitted Licensee Ticketing, complimentary tickets and tickets sold from the Facility box office. Payment of such surcharge shall be made to the City within five (5) business days of the last Performance of each such Program.

Section 8.02. Facility and Equipment Included in Rent. Rent will include time for move-in, move-out and rehearsal on all Performance days, Facility box office services, use of the sound system and lights (including follow spotlights), use of the Facility marquee, sign boxes and poster displays attached to the building (such building attachments subject to Director's approval, not to be unreasonably withheld) and electronic message center, use of the Facility box office for day of show ticket sales and all Facility equipment including but not limited to, risers, orchestra pit cover (excluding labor costs to install or remove) and all existing electrical hookups, all box office personnel, all Facility cleaning and maintenance personnel and all other personnel not specifically set forth herein as responsibility of the Licensee. The City presently provides, and agrees to continue to provide, as part of the Facility, the use of two (2) administrative offices in the Facility for each Program Week.

Section 8.03. Move In/Out Schedule. The City grants to Licensee one (1) complimentary move-in day and one (1) complimentary move-out day per Program Week. Other than the complimentary days covered by the first sentence of this Section 8.03, "dark" days outside of Program Weeks and all "dark" days inside Program Weeks of less than seven Performances will be charged one fourteenth (1/14) of the weekly Rent for a Program Week. Delivery of freight or other properties shall take place only upon the dates and at the time specified in this Agreement; provided move-out of properties and materials may extend into the following day of each engagement, provided all such work is completed not later than 7:59 AM of that following day and this schedule would be subject to any previously existing booking which might require an earlier move-out; provided that City agrees to use good faith efforts to avoid entering into any booking of the Facility that would require an earlier move-out. Licensee will use commercially reasonable efforts to arrange move-in and move-out activity to take place between 6:00 AM and 12:00 midnight, and to provide information regarding such schedules to City in a timely manner. Licensee will be responsible for the removal of all belongings from dressing rooms after each engagement.

ARTICLE IX. INDEMNIFICATION

Section 9.01. General Indemnification.

(a) General Indemnification.

For purposes of this Section 9.01 only, the following terms shall have the meanings listed:

1. Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation, arising out of Licensee's use of the Facility pursuant to the terms of this Agreement.
 2. Licensee's Agents means Licensee's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 3. City means City, its Agencies, its agents, officials, officers and employees.
- (b) Licensee's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of the City, shall be limited to the coverage and limits of insurance that Licensee is required to procure and maintain under this Agreement. Licensee affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Agreement in its contract price.
- (c) Licensee shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Agreement caused in whole or in part by Licensee or Licensee's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Licensee is not obligated under this Section to indemnify City for the sole negligence of City.
- (d) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or bylaws.

ARTICLE X. INSURANCE

Section 10.01. Insurance.

- (a) Licensee shall procure and maintain in effect throughout the Term insurance coverage not less than the types and amounts specified in this Section. In the event that additional insurance, not specified herein, is required during the term of this Agreement, Licensee shall supply such insurance at Licensee's cost.

Policies containing a Self-Insured Retention are unacceptable to City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds.
 - b. Contractual Liability.

- c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - d. No contractual Liability Limitation Endorsement.
 - e. Additional Insured Endorsement, ISO form CG20 10, or Its equivalent.
 - f. If children are involved: Sexual abuse/molestation coverage be included under general liability or obtained in separate policies in an amount of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate on an occurrence basis.
2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with of:
- a. Workers' Compensation Statutory Employers Liability \$100,000 accident of:
 - (i) \$500,000 disease-policy limit
 - (ii) \$100,000 disease-each employee
3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Licensee.
- a. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement. Licensee shall provide to City at execution of this Agreement a certificate of Insurance showing all required endorsements and additional insureds.
4. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Licensee

in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

5. Technology Professional Liability Errors and Omissions Insurance appropriate to Licensee's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Licensee in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
- (b) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Licensee shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
- (c) All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- (d) Regardless of any approval by City, it is the responsibility of Licensee to maintain the required insurance coverage in force at all times; Its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Licensee's failure to maintain the required insurance in effect, City may order Licensee to immediately stop work, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.
- (e) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity,

governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

ARTICLE XI TERMINATION

Section 11.01. Termination for Cause.

- (a) This Agreement may be terminated by either party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other party. The occurrence of any of the following events by Licensee or the City continued for thirty (30) days after receipts by the defaulting party of written notice thereof and defaulting party's failure to cure, or to diligently commence the cure of, the same, shall deem that party in material default of this Agreement:
 - (i) Failure to comply with any of the material provisions required of either party under this Agreement; or
 - (ii) Except with respect to permitted assignments pursuant to Section 10.11 hereof, if, by operation of the law or otherwise, the right, title, or interest of Licensee or City in this Agreement is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of the other party, or
 - (iii) Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Licensee's or City's performance under this Agreement, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 - (iv) Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Licensee or City from performing under this Agreement; or
 - (v) Nonpayment by Licensee or City of any sums required to be paid or remitted herein; or
 - (vi) Exposure of substantial part of either party's property to any levy, seizure, assignment or sale for, or by, a creditor or governmental agency.
- (b) This Agreement may be terminated by Licensee in the event any act by City threatens to cause any infringement of any Licensee intellectual property or other property right, including without limitation, any copyright, license right or trade secret right, and City fails to refrain from so acting within ten (10) business days' written notice from Licensee.

Section 11.02. Termination Upon Management Change. If City shall, at any time after the Effective Date, engage any third-party manager to manage the Facility, Licensee may, at any time following the appointment of such third-party manager, terminate this Agreement upon thirty (30) days written notice to City specifying the effective date of termination.

Section 11.03. Effect of Termination. Upon the effective date of any termination or expiration of this Agreement, provisions regarding ownership of intellectual property rights, representations and warranties, confidentiality, indemnification, limitation of liability, non-solicitation, jurisdiction and venue shall remain in full force and effect; each party shall immediately cease the use of the other party's intellectual property; and each party shall return, or at the other party's request, destroy all copies of Confidential Information, and all other property belonging to and/or received from the other party.

ARTICLE XII MISCELLANEOUS TERMS AND CONDITIONS.

Section 12.01. Intellectual Property. Each party shall retain all right, title, and interest in and to its respective trademarks, service marks, and trade names worldwide subject to a limited non-exclusive, non-transferable license to the extent necessary to perform this Agreement.

Section 12.02. Approvals. All materials submitted to either party for approval must be submitted in writing to the extent possible to the location and person(s) as indicated by such party from time to time.

Section 12.03. Representations and Warranties.

- (a) Each party represents warrants and covenants to the other that:
 - (i) It is duly organized and in good under the laws of the State indicated as its state of organization in the first paragraph of this Agreement and has the requisite power to enter into and perform this Agreement;
 - (ii) This Agreement has been duly authorized, executed and delivered on behalf of such party and constitutes the legal, valid, and binding Agreement of such party, enforceable in accordance with its terms;
 - (iii) The entering into and performance of this Agreement will not violate any judgment, order, law, regulation or agreement applicable to such party or any provision of such party's charter or bylaws, or violate the rights of any third party, or result in any breach of, constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of such party (or, in the case of City, result in any such encumbrance upon any aspect of Licensee), pursuant to any instrument to which such party is a party or by which it or its assets may be bound; and it

owns or controls the rights granted or licensed to the other party in this Agreement.

- (b) Licensee represents, warrants and covenants to City that:
 - (i) Licensee's services, if any, shall be performed by competent personnel of a professional quality consistent with generally accepted industry standards for the performance of such services so that the deliverables shall comply with functional specifications, if any, agreed upon by the parties in writing.
 - (ii) Licensee shall at all times retain the decision-making control as to the selection and scheduling of Programs at the Facility, and Licensee shall not assign, transfer, or subcontract such control without the prior written consent of the City, not to be unreasonably withheld.
- (c) City represents, warrants and covenants to Licensee that:
 - (i) Licensee is the sole and exclusive operator of the Facility for Programs and/or has the sole and exclusive right and authority to enter into this Agreement and to schedule and present the Programs at the Facility; and
 - (ii) No agreement or understanding between City and any third party (including, without limitation, the promoter or sponsor of any Program or the act or event itself) with respect to rights to conduct events contains or shall contain any provision inconsistent with any provision, or the purpose or intent, of this Agreement.

Section 12.04. Confidential Information.

- (a) Nothing in this section shall be deemed to prevent the City from complying with a request made under Missouri's Sunshine Law.
- (b) The parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose information regarding their business, products, software technology, intellectual and other information (including without limitation the Proprietary Information) that is confidential and of substantial value to the other party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). The provisions of this Agreement shall be deemed to be Confidential Information.
- (c) Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in this Agreement by the receiving party, (ii) is or has been independently acquired or developed by the receiving party without violating any of the confidentiality obligations in this Agreement, (iii) was within the receiving party's possession prior to it being furnished to the receiving party by or

on behalf of the disclosing party, or (iv) is received from a source other than the disclosing party; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving party to be bound by a confidentiality obligation to the disclosing party or any other party with respect to such information.

- (d) Subject to the Missouri Sunshine Law, each party agrees that it will keep the Confidential Information strictly confidential and will not use in any way for its own account or the account of any third party nor disclose to any third party, any Confidential Information revealed to it by the other party without the other party's prior written consent, except to the extent expressly permitted by this Agreement; provided, however, that the receiving party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entitles who need to know such information to perform such party's obligations under this Agreement and who agree to treat the Confidential Information in accordance with the confidential obligations in this Agreement. Each party shall use the same degree of care to avoid disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance and represents that it has adequate procedures to the secrecy of such Confidential Information including without limitation the requirement that employees have executed non-disclosure Agreements which have the effect of adequately protecting Confidential Information.
- (e) In the event that either party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, document request, notice of deposition, applicable law, governmental regulation or rule or requirement of a self-regulatory agency (having jurisdiction over City or Licensee), court order, governmental decree or demand, interrogatories, civil investigative demand or other legal proceeding (collectively, a "Required Disclosure"), such party may disclose such Confidential Information solely to the extent required in the opinion of its counsel. If either party is required to disclose Confidential Information pursuant to a Required Disclosure, it will use commercially reasonable efforts to protect such Confidential Information from public disclosure, including, where applicable, by obtaining a protective order limiting disclosure or otherwise contesting the disclosure or other appropriate remedy. Regardless of whether or not such protective order or other appropriate remedy is obtained, such party will furnish only that portion of the Confidential Information that, in the opinion of its counsel, it is required by law to disclose or furnish, and it will do so in accordance with any such protective order.

Section 12.05. Governing Law/Jurisdiction. This Agreement shall be interpreted and governed by the laws of the State of Missouri, without reference to conflict of laws principles. Each of the parties hereto agrees that the state courts, and the United States federal courts, that are located in the State of Missouri shall each have subject matter jurisdiction hereunder and personal jurisdiction over each of the parties hereto. Each such party hereby consents thereto, and hereby waives any

right it may have to assert the doctrine of forum non-convenience or to object to venue to the extent that any proceeding is conducted in accordance with the foregoing provision.

Section 12.06. Waiver of Jury Trial. In the event the parties are required for any reason to submit any dispute hereunder to trial, the parties expressly agree to waive the right to a jury trial, because the parties hereto, all of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.

Section 12.07. Entire Agreement; Modification. This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all previous oral or written communications, proposals, agreements, and commitments. Without limiting the foregoing, City and Licensee agree and acknowledge that this Agreement is an amendment and restatement of that certain Licensed User Agreement, dated as of August 20, 2006, between City and Licensee's predecessor in interest (said agreement, as amended, modified and extended, is hereinafter referred to as the "Existing Agreement"). City and Licensee hereby agrees that this Agreement subsumes and replaces the Existing Agreement in its entirety, and that from and after the Effective Date the Existing Agreement shall be terminated.

No modification to this Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. A party's delay in enforcing its rights hereunder shall not be construed as a waiver of such rights or remedies.

Section 12.08. Assignment or Subcontracting.

- (a) **Assignability.** Licensee shall not assign or transfer any part or all of Licensee's obligation or interest in this Agreement without prior written approval of City.
- (b) **Subcontracting.** Licensee shall have the right to subcontract its duties and obligations under this Agreement, provided, however, that no such subcontracting shall release or relieve Licensee of responsibility to City for the performance of its duties and obligations hereunder.
- (c) **Transactions Not Constituting Assignment or Transfer.** None of the foregoing shall constitute an assignment or a transfer hereunder:
 - (i) a transfer of Manager's rights and obligations to an Affiliate; or
 - (ii) any merger, consolidation or sale or other transfer of all or substantially all of the assets of Licensee; or
 - (iii) any transfer or assignment of any shares of stock or other ownership interest in Licensee; or

(iv) any transfer or assignment by Licensee of Licensee's rights to receive payments and revenues under this Agreement to any lender as security for any indebtedness.

Section 12.09. Independent Contractor. Licensee is an independent contractor and/or agent as specifically provided herein with respect to all services performed under this Agreement. Licensee and City accept full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Licensee or City respectively on work performed under the terms of this Agreement. Licensee and City shall defend, indemnify and save harmless one another from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or Licensee, shall be deemed or construed to create any third-party beneficiary or City and agent association or relationship with City. Licensee is not the City's agent and Licensee has no authority to take any action or execute any documents on the behalf of City.

Section 12.10. Headings and Construction of Agreement. The headings of each session of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. In the event of any conflict between this Agreement and any incorporated Attachments, the provisions of this Agreement shall control.

Section 12.11. Merger. This Agreement, including any referenced Attachments, constitutes the entire agreement between City and Licensee with respect to this subject matter, and supersedes all prior agreements between City and Licensee with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement

Section 12.12. Severability. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and Inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Section 12.13. Notices. All notices to be given hereunder shall be in writing and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Agreement from and after the second day next following the date postmarked on the envelope containing such notice. Notice

given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the City:

Kimiko Gilmore, Assistant City Manager/ Director of Kansas City's Convention
and Entertainment Facilities
301 W. 13th Street, Suite 100
Kansas City, Missouri 64105
Kimiko.Gilmore@kcmo.org
Telephone: 816.513.5050

With copies to:

Matthew Gigliotti, Esq., City Attorney
Law Department of Kansas City, Missouri
414 East 12th Street, 23rd Floor
Kansas City, Missouri 64106
Telephone: 816 .513.-3127

If to the Licensee:

John Gore Theatrical Group, Inc.
1619 Broadway, 9th Floor
New York, NY 10019
Attention: General Counsel

With a copy to:

Stinson LLP
1201 Walnut, Suite 2600
Kansas City, Missouri 64106
Attention: David Frantze

Section 12.14. Binding Agreement/Counterparts. The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement shall not be binding until executed by each of the parties. This Agreement may be executed in multiple counterparts which when taken together constitute a single instrument.

Section 12.15. Legal Review. Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. The parties expressly agree that the construction and interpretation of this Agreement shall not be strictly construed against the drafter.

Section 12.16. Compliance with Laws. Each party shall comply with all federal, state and local laws, ordinances and regulations applicable to its obligations pursuant to this Agreement. Licensee and City, each at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for fulfillment of its obligations under this Agreement. All references in this Agreement to the "Code" shall mean City's Code of Ordinances, including any amendments thereto or re-modification thereof.

Section 12.17. Minority and Women's Business Enterprises. City is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent possible in the performance of City contracts. Licensee agrees to comply with all applicable requirements of City's Minority and Women's Business Enterprise Program as enacted in City's Code Sections 3-421 through 3-469 and as hereinafter amended with respect to its activities in carrying out the performance of this Agreement at the Facility. Licensee shall make its good faith efforts in carrying out this policy by implementing its Contractor Utilization Plan, which is attached as an Attachment. If Licensee fails to achieve the M/WBE goals stated in its contractor utilization plan, as amended, the City will be entitled to exercise the rights and remedies provided for in City's Code Sections 3-421 through 3-469. Licensee's compliance with this provision is a material part of this Agreement.

Section 12.18. Affirmative Action. If this Agreement exceeds \$300,000 and Licensee employs fifty (50) or more people in the City, Licensee shall comply with City's Affirmative Action requirements in accordance with the provisions of Section 3-403 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Agreement subject to said provisions, Licensee warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Agreement. Licensee shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

A. Submit, in print or electronic format, a copy of Licensee's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department ("CREO") prior to receiving the first payment under the Agreement, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Licensee does not possess a current certification of compliance, Licensee shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Agreement, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.

B. Require any subcontractor awarded a subcontract exceeding \$300,000 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

C. Obtain from any subcontractor awarded a subcontract exceeding \$300,000 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, subcontractor does not possess a current certificate of compliance, Licensee shall

obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by CREO to enforce this provision. If Licensee fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a breach of this Agreement, City may exercise its rights pursuant to Article XI, and Licensee may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Agreement.

Section 12.19. Force Majeure. Neither the City nor Licensee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of: fire, flood, earthquake, casualty, acts of God, national, state, or local emergencies, acts of terrorism, acts of public enemy, riots, strikes or labor disputes, boycotts, epidemic or pandemic (including, without limitation, COVID-19 and any of its variants, and any restriction or limitation on the normal seating capacity of the Facility imposed by the City of Kansas City, the State of Missouri, or any other governmental agency or authority) or any other cause for which it is not responsible or which are not within its control (collectively, "Force Majeure Event"). If any of the above occurrences arise during the term of this Agreement, then City or Licensee may suspend such obligations until such occurrence has ceased upon written notice to the other. In that event, neither party shall have a claim against the other by reason of such suspension of the Agreement.

Section 12.20 Title VI of the Civil Rights Act of 1964

A. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source.

B. Licensee shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Section 12.21 Non-Discrimination in Employment. Licensee shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of the City Code. Licensee shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Section 12.22. Quality Services Assurance Act. Licensee certifies Licensee will pay all employees who will work on this Agreement in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances, unless City has granted Licensee an exemption.

Section 12.23. Anti-Discrimination Against Israel. Pursuant to Section 34.600, RSMo., Licensee certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Section 12.24. Tax Compliance. Prior to the Effective Date, and thereafter upon request by the City (not more frequently than annually), Licensee shall provide proof of compliance with the City's Business License and Earnings and Profits Tax ordinances (City taxes) from the City's Commissioner of Revenue.

Section 12.25. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity, the City Manager, the City department administering this Agreement and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Agreement and all Agreement amendments and renewals.

B. Licensee shall maintain and retain all Records at its headquarters location for a term of five (5) years that shall begin after the expiration or termination of this Agreement and all Agreement amendments. City shall have a right to examine or audit all Records and Licensee shall provide access to City of all Records at its headquarters location upon thirty (30) days written notice from the City.

C. The books, documents, and records of Licensee in connection with this Agreement shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity and the City department administering this Agreement within thirty (30) days after the written request is made at Licensee's headquarters location.

Section 12.26. Employee Eligibility Verification. Licensee shall execute and submit an affidavit, in a form prescribed by the City for all similarly-situated affiants, affirming that Licensee does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). Licensee shall attach to the affidavit documentation sufficient to establish Licensee's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Licensee may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. Licensee shall provide to City the first and last pages of the E-Verify Memorandum of Understanding that Licensee will obtain upon successfully enrolling in the program, and

provision of such pages shall constitute sufficient documentation for purposes of complying with this section. Licensee shall submit the affidavit and attachments to the City prior to the Effective Date.

Section 12.27. Conflicts of Interest. The provisions of City's Code of Ordinances Sections 2-2001, 2-2002, 2-2020, 2-2021, 2-2022, and 2-2023 prohibiting City officers and employees from having a financial or personal interest in any contract with City, and Code Sections 2-2100 and 2-2101, imposing sanctions for violations, shall apply to this Agreement. Licensee certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Licensee in this Agreement.

Section 12.28. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to City employees, and kickbacks by subcontractors, and Coded Sections 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement.

- (a) *Gratuities.* Licensee certifies that it has not and will not offer or give any City employee or officers a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity In any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- (b) *Kickbacks.* Licensee certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from subcontractor under a contract to Licensee or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Section 12.29. Prohibition Against Contingent Fees. The provisions of the City Code Section 3-305 prohibiting the retention of persons to solicit or secure contracts for a commission, percentage, brokerage or contingent fee, and Code Section 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement. Licensee certifies that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Licensee for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Section 12.30. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to each party herein and any other rights and remedies which each party may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that either party

may have exercised any remedy without terminating this Agreement shall not impair such party's rights thereafter to terminate or to exercise any other remedy herein granted or to which such party may be otherwise entitled.

Section 12.31. Americans with Disabilities Act. Licensee and City, each with respect to its own obligations hereunder (Licensee as presenter of Programs and City as owner and operator of the physical Facility) agree to comply, during the course of this Agreement, with all provisions of the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq., as well as 28 CFR Parts 35 and 36 and 29 CFR Part 1630, as applicable and as amended from time to time (the "ADA"), to the extent, if any, that the ADA is applicable to Licensee in its operation in the Facility. Notwithstanding anything to the contrary herein, if any alterations, additions, changes or modifications to the Facility, whether or not Capital Repairs or Improvements, are required in order to comply with the ADA, all such alterations, additions, changes or modifications shall be the responsibility of the City, and shall be performed and made at the City's sole cost and expense.

Section 12.32. Noise Code. Contractor shall, in its use and operation of the Facility, comply with the provisions of Code Chapter 46, the Noise Control Code, with respect to noise levels at the real property boundary of any property not owned by the City; provided, however, that Licensee shall not be required to make or perform any structural, mechanical or other physical alterations, modifications or additions to the Facility in order to comply with the provisions of Code Chapter 46, the Noise Control Code.

Section 12.33. Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies, and all other articles produced, manufactured, made, or grown within the State of Missouri

Section 12.34. Agreement Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. This Agreement shall be effective upon the execution of counterparts by both parties, notwithstanding that both parties may not sign the same counterpart. The parties' signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Agreement and shall be acceptable in a court of law.

Section 12.35. Annual Review. City and Licensee agree and acknowledge that regular and ongoing communication between the parties is essential to coordinate activities under this License Agreement, to avoid disputes related to misinformation or lack of information, and to maximize the value of the relationship between City and Licensee in attaining their respective goals and objectives under this Agreement. Therefore, City and Licensee commit to regular and consistent communications, specifically including the scheduling of a regular annual meeting following the conclusion of each Season (the "Review Meeting"). The purpose of the Review Meeting will include, without limitation the opportunity for each party to (a) advise the other party of any concerns in the performance by either party of such party's obligations under this Agreement, (b)

provide the other party of updates and information that will be of use to that party relative to this Agreement, and (c) assure that party has accurate information in connection with the other party's activities that could have an impact on this Agreement and each party's performance hereunder. By way of example, and not limitation, at the Review Meeting Licensee would have the opportunity to provide information to the City concerning potential opportunities for Programs that could be presented at the Facility in future years, as well as issues within the entertainment industry that could affect future Seasons.

[Signature page follows]

IN WITNESS WHEREOF, Licensee and City have caused this Amended and Restated Licensed User Agreement to be duly executed as of the date set forth below.

"LICENSEE"

"CITY"

JOHN GORE THEATRICAL GROUP, INC.

CITY OF KANSAS CITY, MISSOURI,
a constitutionally chartered municipal
corporation

By: _____
Title: _____

By: _____
Title: _____

Approved as to form:

Assistant City Attorney