

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado (“City”), and **THE DENVER CENTER FOR THE PERFORMING ARTS**, a Colorado nonprofit corporation, whose address is 1101 13th Street, Denver, Colorado 80204 (“Lessee”). The City and Lessee shall each be referred to as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City is the owner of the Denver Performing Arts Complex (“DPAC”), including but not limited to Space 1-B at 1385 Curtis Street, Denver, Colorado, and

WHEREAS, Lessee is desirous of leasing certain real property located within DPAC, including Space 1-B at 1385 Curtis Street, Denver, Colorado (the “Leased Premises”) from the City; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: None.
2. **LEASED PREMISES**: Subject to the terms of this Lease, the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises defined as the “Leased Premises” located at Space 1-B at 1385 Curtis Street, Denver, Colorado 80203, as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein, containing building space of approximately 7,000 square feet. The Lessee shall also occupy approximately 1,000 square feet of office space (the “Office Space”) in that portion of Space 3-E as defined in **Exhibit A-1**. Lessee may utilize the portion of the Leased Premises marked as “Patio” on **Exhibit A** hereto, but such space is not included within the Leased Premises. The City may require removal of any and all furnishings located on the Patio and/or revoke the Lessee’s use of the Patio upon thirty (30) days written notice to the Lessee. The depiction contained on **Exhibit A** may be modified upon the written authorization of the Director of Real Estate (the “Director”) to correct minor, technical errors.
3. **TERM**: The term of this Lease shall begin on January 1, 2018 (the “Delivery Date”), and it shall terminate on June 30, 2022 (the “Term”). Notwithstanding the forgoing,

Lessee may terminate the Lease with six (6) months written notice to the City, upon the confirmed demolition of the DPAC garage.

4. **RENT:** Rent shall be paid by Lessee monthly to the City on the first business day of each month, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Rent payable monthly by Lessee shall be:

Monthly Rent in 2018	\$9,900.00
Monthly Rent in 2019	\$10,400.00
Monthly Rent in 2020	\$10,900.00
Monthly Rent in 2021	\$11,400.00
Monthly Rent in 2022	\$11,900.00
Total Contract Amount	\$582,600.00.

If the Lease prematurely terminates pursuant to Section 3 above, then the monthly rent shall be due only through the termination date (i.e. the “Total Contract Amount” listed above shall not be due in full). If this Lease expires on a date that is not the last day of the month then the rent shall be pro-rated accordingly.

In addition to the foregoing, at such time that the City Assessor assesses a Possessory Interest or other related tax to the Leased Premises, Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the Term, upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, resulting from Lessee's occupation or subletting of the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises. Such taxes include any Possessory Interest taxes resulting from this Lease or a sublease of the Leased Premises.

5. **USE:** The Leased Premises are to be used and occupied by Lessee solely as a cabaret theatre and retail outlet, and for no other purpose, unless the Director agrees in writing to another use, which consent shall not be unreasonably withheld. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of

Colorado, or the Charter, ordinances or Executive Orders of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors. The Lessee and the City will work in good faith to coordinate food and beverage offerings by the Garner Galleria Theatre, the Limelight Supper Club and the Glasstop Bar, which are all located within DPAC.

6. **“AS IS” CONDITION:** Lessee acknowledges that it has occupied the Leased Premises of the building in which the Leased Premises exists. Therefore, Lessee has operated and is familiar with the Leased Premises and its current condition. The Leased Premises are accepted by Lessee in an “AS IS, WHERE IS” condition, with all faults and defects. No additional work will be performed by the City and Lessee hereby accepts the Leased Premises in its as-is condition. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

7. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited and performs all of Lessee's covenants and agreements herein contained.

8. **PREMISES/CONSTRUCTION:**

(a) **By City:** Unless otherwise expressly stipulated herein, the City shall not be required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease, except repairs as are necessary for normal maintenance operations of the Leased Premises, including exterior, foundation, and structural soundness.

(b) **By Lessee:** Lessee may undertake construction of a typical cabaret theatre and retail outlets within the Leased Premises (“Tenant Improvements”) according to the construction plans and specifications submitted to and approved by the Director, in his reasonable discretion. Such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Lessee has established to the Director’s reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.

(i) Before the commencement of such work, (A) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (B) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments and authorities and, when required, each affected public utility company, and (C) all work shall be fully coordinated with scheduled DPAC events and with the construction, remodeling, repair and other work being performed by others at the DPAC.

(ii) Before the commencement of such work, Lessee shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.

(iii) Lessee shall be governed and controlled by all limitations and provisions that are imposed for payment of prevailing wages set forth in Sections 20-76 through 20-79, Denver Revised Municipal Code (“DRMC”), as the same may be amended or re-codified from time to time.

(iv) Lessee shall obtain insurance as required by the City’s Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 8. The City’s Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate insurance of the Lessee and/or Lessee’s General Contractors. Insurance requirements may include, without limitation, Builders’ Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 20, all subcontractors and subconsultants are required to procure and maintain the same coverage required of the Lessee, as applicable to the scope of work. All coverage related to the subject work shall be kept in full force at all times during the work and warranty period. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the

obtaining of such insurance shall relieve or lessen Lessee's indemnification of City, except to the extent of payment under policies of such insurance.

(v) Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.

(vi) Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Lessee shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.

(vii) The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Lessee and Lessee shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section.

(viii) For all work to be performed by the Lessee under this subsection (b), as applicable, the Lessee shall secure, pay for, and keep current all necessary licenses, fees and taxes for all construction, installations, and repairs, as required by law. The Lessee shall obtain, pay for, and keep current any and all site development permits, building permits, zoning permits, sign permits, and any other necessary approvals prior to the commencement of each applicable component of construction, installation, or repair, and shall comply with and abide by the applicable provisions of the Charter, ordinances, rules and regulations, and executive orders of the City as well as applicable state and federal laws.

(c) Cost of Tenant Improvements. Each of the City and the Lessee shall make certain Tenant Improvements during the term of the Lease. The City and the Lessee each agree to pay up to \$108,000.00.

9. **ENTRY BY CITY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises after receiving reasonable prior notice from the City to inspect the same, except in the case of emergencies, in which case the City will attempt to contact Lessee and if the City is unable to contact Lessee and the emergency is imminent, in the City's sole

discretion, the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of Rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

10. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination of this Lease, Lessee shall deliver the Leased Premises, including the Tenant Improvements performed by Lessee pursuant to Section 8 of this Lease, to the City in good condition, ordinary wear and tear excepted. Notwithstanding anything to the contrary contained in this Lease, upon the expiration or earlier termination of this Lease, Lessee shall be permitted to remove any and all equipment, signs and related trade fixtures, so as to completely de-identify the Leased Premises. All moveable furniture and other effects that are not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all reasonable expenses incurred in connection with removal of such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease.

11. **UTILITIES, JANITORIAL SERVICE AND MAINTENANCE EXPENSE:**

(a) **City's Responsibilities.** Subject to the billing and payment provisions contained subparagraph 11(b) below, the City shall provide the following utilities, separately metered, for the Leased Premises, as may be reasonable and necessary for normal intended use of Leased Premises: water, sewer, and electricity and steam. Further, City shall, at its expense, maintain the building's structure and exterior, including snow and ice removal. The City shall pay for all water, sewer, and steam services allocable to the Leased Premises, as well as electricity for the portion of the Premises in **Exhibit A-1**. The City intends to use the space in Exhibit A marked "office space excluded from lease", and Rent has been reduced by \$100 per month as an offset for electricity usage in this space.

(b) **Lessee's Responsibilities.**

(i) All past due payments shall accrue interest at the rate of 12% per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with (i) telephone and other communication services to the Leased Premises, (ii) janitorial services, and (iii) trash hauling. Lessee shall be governed and

controlled by all limitations and provisions that are imposed for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC, as the same may be amended or re-codified from time to time.

(ii) The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

(iii) The Lessee shall maintain any non-structural portions of exterior patio space for which it has obtained and complies with all required permits and/or licenses and is actively in use by Lessee, its employees and customers.

12. **INDEMNITY**: The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. Subject to compliance with the provisions of Section 18 below, the Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

13. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. Likewise, Lessee shall not be liable or responsible to

City for any loss or damage to the Leased Premises occasioned by theft, vandalism, fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. In case of partial destruction of the Leased Premises by fire, or other casualty, the City at its discretion may repair the Leased Premises with reasonable dispatch after notice of said partial destruction. If the Leased Premises are made untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where City, within a reasonable time, decides not to rebuild or repair the Leased Premises, then this Lease shall terminate and any Rent shall be prorated and payable only up until the time of the partial or full destruction of the Leased Premises.

14. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises, or if the Leased Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance"

includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

15. **HOLDING OVER:** If after the expiration of the Term and any extensions of the Term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent equivalent to 125% of the then current monthly installment of rent due hereunder, payable in advance on the first day of each calendar month thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

16. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

(a) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the rate of twelve percent (12%) per annum from the due date; (iii) the balance of the Rent for the remainder of the term less any Rents the City receives for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid taxes or assessments and (vi) any other sum of money in damages owed by Lessee to City as a result of its use and occupancy of the Leased Premises.

(b) Before exercising any remedy or right herein or in law or equity, the City shall supply written notice of such default to the Lessee and provide fifteen (15) days from the date of such notice to cure the noted default.

17. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the

performance of work under this Lease, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

18. **LESSEE'S INSURANCE:**

(a) **General Conditions:** Lessee agrees to secure, at or before the time of execution of this Lease, the following insurance covering all operations, goods or services provided pursuant to this Lease. Lessee shall keep the required insurance coverage in force at all times during the term of the Lease, or any extension thereof, during any warranty period, and for three (3) years after termination of the Lease. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Lease. Such notice shall reference the City contract number listed on the signature page of this Lease. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Lessee. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.

(b) **Proof of Insurance:** Lessee shall provide a copy of this Lease to its insurance agent or broker. Lessee may not commence services or work relating to the Lease prior to placement of coverages required under this Lease. Lessee certifies that the certificate of

insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Lessee and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) Waiver of Subrogation: For all coverages required under this Lease, Lessee's insurer shall waive subrogation rights against the City.

(e) Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Lease) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Lessee agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

(f) Workers' Compensation/Employer's Liability Insurance: Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Lease, that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Lease, and that any such rejections previously effected, have been revoked as of the date Lessee executes this Lease.

(g) Commercial General Liability: Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) Business Automobile Liability: Lessee shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Lease.

(i) Additional Provisions:

a. For Commercial General Liability, the policy must provide the following:

- i. That this Lease is an Insured Contract under the policy;
- ii. Defense costs are outside the limits of liability;
- iii. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- iv. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

b. For claims-made coverage:

- i. The retroactive date must be on or before the Lease date or the first date when any goods or services were provided to the City, whichever is earlier.

c. Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Lessee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

(j) Property Insurance: Lessee shall maintain All-Risk/Special Cause of Loss Form Property Insurance on a replacement cost basis including coverage for Lessee's tenant improvements, betterments and contents. Coverage to include business interruption, including rental value, leasehold interest and extra expense. The City and County of Denver shall be named Loss Payee as its interest may appear.

19. VENUE, GOVERNING LAW: This Lease shall be construed and enforced in

accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

20. **ASSIGNMENT AND RIGHT TO SUBLEASE**: The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent will not be unreasonably withheld.

21. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS**: The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

22. **EXAMINATION OF RECORDS**: The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

23. **AMENDMENT**: No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Lease, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

24. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

25. **BINDING EFFECT**: This Lease when executed and when effective, shall inure

to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto.

26. **THIRD PARTIES:** This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

27. **NOTICES:** All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City: Director of Real Estate
201 W. Colfax Ave., Dept. 1010
Denver, CO 80204

With copies to: Denver City Attorney's Office
201 W. Colfax, Department 1207
Denver, Colorado 80202

To Lessee: Denver Center for the Performing Arts
1101 13th Street
Denver, CO 80204
Attn: Chief Financial Officer

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

28. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

29. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

30. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or

employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

31. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

32. **APPROPRIATION:** All obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease and paid into the Treasury of the City.

33. **AUTHORITY TO EXECUTE:** Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

34. **PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

35. **ADA COMPLIANCE:** The Lessee shall not cause or permit any violation of the Americans with Disabilities Act or related federal, state or local law (“ADA”) to occur on or about the Leased Premises by the Lessee or its employees agents, contractors or invitees.

36. **COMPLIANCE WITH LAWS:** The Lessee shall comply with and abide by all Applicable Law, defined below, in connection with this Lease. The Lessee shall use reasonable efforts to ensure that all employees, agents, contractors, invitees, and other parties allowed by the Lessee to enter the Leased Premises to comply with and abide by all Applicable Law. The City shall not be required to take any action which is inconsistent with Applicable Law. “Applicable Law” shall mean any federal, state, or local law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the Denver Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City departments and agencies; and executive orders of the City’s Mayor, as the same may be amended from time to time.

37. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Lessee consents to the use of electronic signatures by the City. The Lease, and any other documents

requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Lease solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: FINAN-201843731-00

Contractor Name: Denver Center for the Performing Arts

By: Victoria Miles

Name: Victoria Miles
(please print)

Title: Chief Financial Officer
(please print)

ATTEST: [if required]

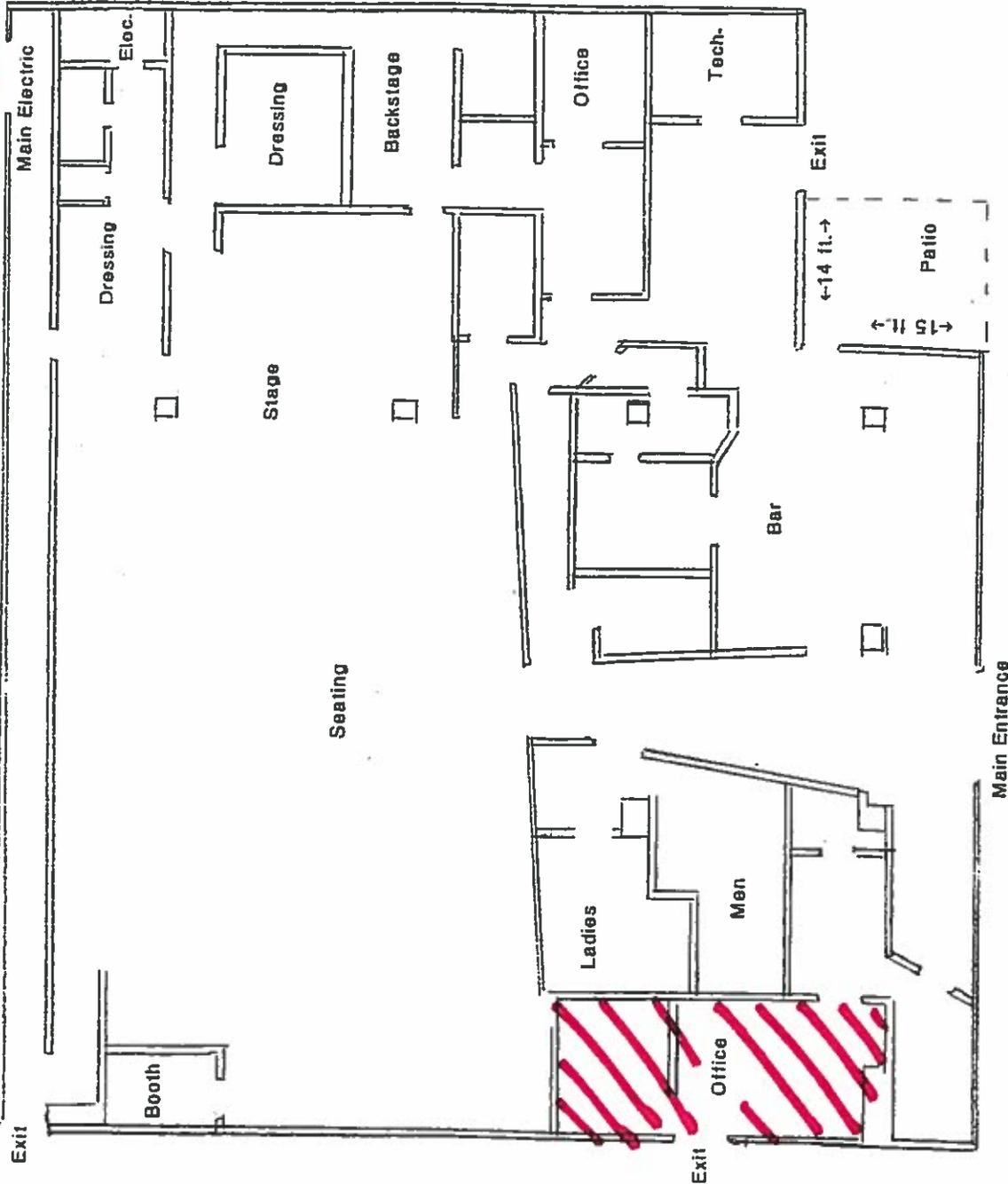
By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A. GARNER GALLERIA THEATRE SITE PLAN



LEGEND

OFFICE
SPACE
EXCLUDED:
FROM
LEASE



EXHIBIT A-1

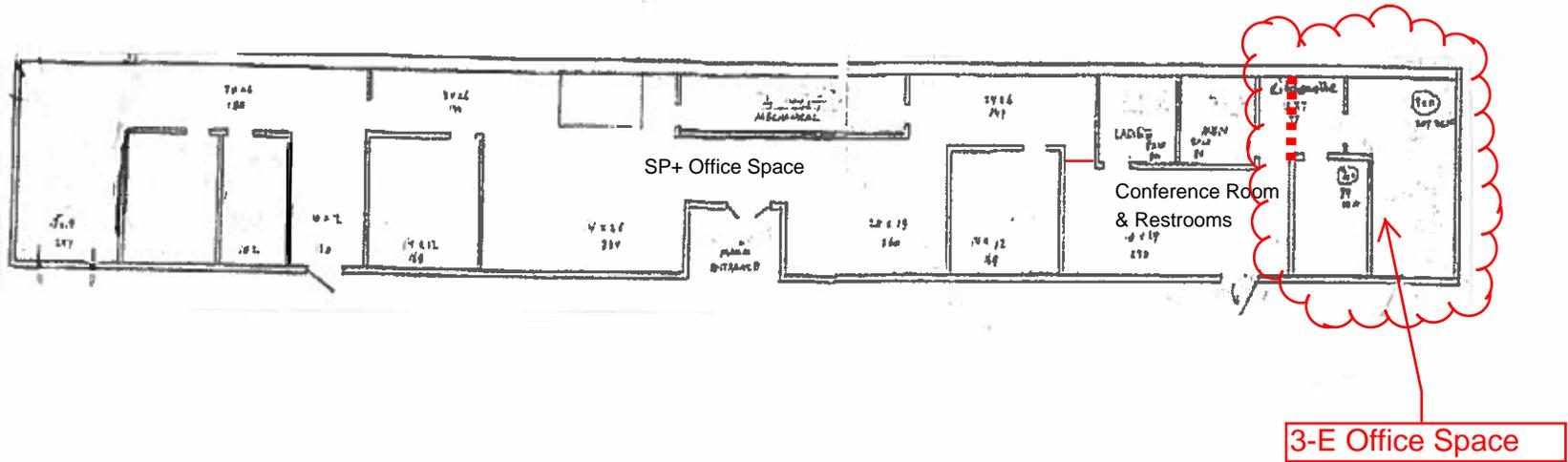


EXHIBIT B
CERTIFICATE OF INSURANCE

(Attached)

