

CITY AND COUNTY OF DENVER - ARTS & VENUES USER AGREEMENT
DENVER PERFORMING ARTS COMPLEX
BOETTCHER CONCERT HALL

This User Agreement (this “**Agreement**”) is made between the City and County of Denver, a municipal corporation of the State of Colorado (the “**City**”), and **Colorado Symphony Association**, a Colorado nonprofit corporation (the “**User**”), located at 1245 Champa Street, Denver CO 80204 (the “**User**” and together with the City, the “**Parties**”).

WITNESSETH:

1. **Coordination and Liaison:** The User shall fully coordinate all services under this Agreement with the Executive Director (the “**Executive Director**”) of Denver Arts & Venues (“**DAV**”) or the Executive Director’s designee, including the Venue Director of the Denver Performing Arts Complex.
2. **Permitted Premises and Term.** For and in consideration of the mutual agreements contained herein and subject to the terms and conditions hereinafter stated, the City hereby leases to the User and the User hereby leases from the City, that portion only of the City’s Denver Arts & Venues facilities, located at SPEER BOULEVARD AND ARAPAHOE STREET, Denver, Colorado, described as follows:

BOETTCHER CONCERT HALL, which includes the Concert Hall, lobby, dressing rooms, loading dock, box office, Guild shop, rehearsal rooms, the Boettcher Donor Lounge (House Right area formerly known as the Wine Room) and certain offices in the back-of-house (the “**Permitted Premises**”). User shall have exclusive use of the areas defined as “Exclusive Use Areas” of the Permitted Premises, as set forth in **Exhibit A** attached hereto and incorporated herein. However, the City reserves the right to use such spaces in conjunction with certain events and the User shall not have access to the Permitted Premises during such events. For the avoidance of doubt, the Permitted Premises does not include use of certain offices and storage as defined in **Exhibit A** unless otherwise provided in a separate writing by the Executive Director and such use shall be subject to the terms set forth in this Agreement solely for the period of time established in Executive Director’s written approval. The City reserves the right to use the lobby bathrooms, box office and lobby spaces in conjunction with events in the Galleria and Sculpture Park.

The term of this Agreement is from January 1, 2018 through and including June 30, 2021 (the “**Term**”) for the days specified pursuant to the following procedure:

- a) For the Term of this Agreement, the days of use shall be as reflected in DAV’s Booking Calendar.
- b) On or before February 16 of each year during the term hereof, the Parties shall exchange their respective schedules identifying every load-in, load-out, rehearsal and performance date and time for the upcoming September 1 to August 31 time frame. Once approved by the Parties, the schedule will be signed by the Executive Director and the User’s authorized representative, and will determine the days and times of permitted use by User and the City and the availability of the Permitted Premises for alternative use and

users. Except as described in the following sentence, any changes to the approved schedule, including but not limited to additions to the schedule, must be communicated to the other Party in writing not less than 48 hours prior to the date of the proposed change and agreed to by the other Party also in writing. The Party requesting the change shall provide to the other Party ninety (90) days written notice prior to any change in the concert schedule and thirty (30) days written notice prior to any change in the rehearsal schedule. The Parties agree to respond in writing to any request regarding a change to the schedule within 48 hours. The User acknowledges there are other annual/historic events (i.e. high school graduations) that occur at the Permitted Premises and that the City shall notify the User of these dates in conjunction with the User's annual schedule submittal. The City shall have a preference for annual/historic events that occur at the Permitted Premises and the Parties will negotiate in good faith to resolve any schedule conflicts. The City shall notify the User of dates when the box office or any other portion of the Permitted Premises is unavailable to the User, which shall not be a date upon which the User has a performance listed in DAV's Booking Calendar. City shall notify User of any requests to use the Permitted Premises prior to any booking.

- c) The User may present events by other organizations in the Permitted Premises. User shall include all CSA Commercial Events in DAV's Booking Calendar and the City will require that all Non-CSA Users enter into a standard booking agreement with the City. A non-CSA User shall be required to use City's ticket services agent, AXS Digital, LLC ("**AXS**"), for ticketing sales and related services for each and every CSA Commercial Event.

"CSA Commercial Event" is defined as an event that is clearly a commercial presentation that is not directly tied to the User's mission of perpetuating live music or an educational initiative of the Colorado Symphony Association.

"Non-CSA User" is defined as any organization other than the User and its artistic affiliates, such as the Symphony Fund, Symphony Chorus, and Symphony Guild.

3. **Force majeure; Cancellation.** If the Permitted Premises are damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control and without the fault or negligence of the City including, but not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, failure of public utilities or unusually severe weather, prevents occupancy and use, or either, as granted in this permit, the City is hereby released from any damage so caused to the User thereby. The City is hereby released from any damage so caused to the User thereby, provided, however, that if any such causes prevents occupancy and use of the Permitted Premises, the User shall be relieved of any rent for the period for which such occupancy and use is prevented.
4. **Occupancy.** The User shall have the right to occupy and use the Permitted Premises for the purposes described below. The City retains the right to permit use of the Permitted Premises and ancillary support areas by other users, and agrees to notify User of the dates and times of such alternative use as provided above.

User's Permitted Uses:

- Symphonic concerts
- Rehearsals
- Load-ins, Load-outs
- Record and broadcast/stream content, as set forth in Section 6, below
- Commercial Events (ticketed commercial events requiring the CSA to use AXS)
- Board and committee meetings
- Development/Advancement activities
- Box office and merchandise sales, including Colorado Symphony Guild
- Production and administrative functions, including officing, library and storage
- CSA scheduled educational activities, such as field trips, group instruction, etc.
- The Executive Director, or his designee, may consent to other uses of the Permitted Premises in writing and such consent will not be unreasonably withheld

City's Permitted Uses:

The City shall continue to rent the Permitted Premises utilizing its standard booking procedure of offering the facility to any Non-CSA User inquiring about the space. The City's standard booking procedure does not and shall not include proactively offering the Permitted Premises to any symphonic Non-CSA User.

- Grandfathered Users and activities (CO Children's Chorale, DYAO, Denver Film Society, graduations, swearing-in ceremonies)
- Commercial Events
- Private Events (weddings, corporate)
- Other City-related events
- Front-of-House, Boettcher Donor Lounge uses in conjunction with Galleria and Sculpture Park events
- Scheduled and emergent maintenance activities
- House Crew offices and training activities

Non-Permitted Use by User, except with the written permission of the Executive Director:

- Private music lessons
- Non-symphonic movie events
- Overnight use between 12:00m-6:00a unless approved prior by the Executive Director
- Events deemed illegal, indecent, or obscene or not in alignment with the mission of Denver Arts & Venues and the City & County of Denver
- Extended booking holds for non-performance use

5. **Rental Rate; Incidental Expenses; Event Reconciliation; Cancellation.** The User shall pay to the City the following amounts on the basis and terms as follows (**Make all checks payable to the Manager of Finance**):

- a) The rental rate is a flat rate of \$15,000.00 for each month during the Term. Monthly rental rate shall be payable on the first day of each month during the Term.

- b) For CSA Commercial Events, the City agrees to waive all rent.
- c) Reserved.
- d) The City levies a Facilities Development Admissions (“**FDA**”) Tax of 10%. The tax is to be computed on the admission price, and separately stated on the ticket. The tax is due within fifteen (15) days after the end of each the month during the Term, unless exception is granted by the City’s Manager of Finance. **Only the Manager of Finance may grant exemptions to this tax.** The FDA Tax shall be collected and paid directly to the Manager of Finance. Complimentary tickets shall be marked as such on both portions of the ticket stub. Any tickets not marked accordingly will be counted as “sold” and the FDA Tax will be collected. The FDA Tax Return Form and the FDA Tax Payment may be remitted to: The City and County of Denver – Department of Finance, Treasury Division, P.O. Box 660860, Dallas, Texas 75266-0860.
- e) The City agrees to furnish at no extra charge to the User, the following services as may be required for the use of the Permitted Premises for the event: general house lighting, heat, ventilation, and services of the permanent staff. The User shall be responsible for and shall reimburse the City for any and all City or City-contracted labor utilized (other than the permanent staff and janitorial staff) for the event. The City shall determine the minimum number of, and use of, ushers, doorkeepers, or other employees who will be employed to handle and govern the conduct of all in attendance at the event. One half of said ushers shall be regular members of the City’s staff or under contract with the City, to be paid at the User’s expense and the remaining one half of such expenses shall be paid by the City. The User agrees that if it becomes necessary or desirable for the User to hire employees, help, or laborers other than specified herein, that all such employment must first be approved by the Executive Director. The User shall be responsible for the cost of all janitorial services in the office space portion of the Permitted Premises. The User may request that the City provide such service for a fee. The Executive Director and the User shall agree upon the division of any supplemental security costs by a separate writing, to be executed by the Executive Director and the User.
- f) The User also shall pay to the City, on demand, such other and further sums as may become due the City on account of special facilities, equipment and material, or extra services furnished or to be furnished by the City at the request of the User, or necessitated by the User’s occupancy of the Permitted Premises, the compensation for which is not included in the rent or rents specified above. Such extra services or facilities to be paid include, but are not limited to, extraordinary janitorial services, labor required for the User’s use of facilities such as stagehands, public address operators, ticket takers, guards, administrative charges on labor, and service charges (if used) for special equipment required in the setting up, operation and striking of the event.
- g) The User shall keep an accurate account of all monies received from its operation of the event or events. The User acknowledges and agrees that the City will have access to all financial ticketing information for each event. Any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the

final payment under this Agreement, have access to and the right to examine any such account and ticketing information, and any records pertaining thereto.

- h) Any and all payments due to the City, including but not limited to incidental expenses, will be subject to an 18% per annum interest charge if not paid within thirty (30) days of invoice billing.
- i) The User shall furnish to the City a certified check payable to the Manager of Finance, or irrevocable letter of credit from a Denver bank, or other security acceptable to the Executive Director, in the amount of \$100,000.00 guaranteeing performance of all the provisions of this Agreement, including the anticipated indebtedness of the User to the City, any debts, accounts, and amounts as may accrue beyond the guaranteed minimum rent, costs related to correcting any damage or disrepair resulting from the User's use of the Permitted Premises, and payment of all claims for injuries to persons or property including the personnel, equipment used, damages to police equipment, uniforms, property of concessionaires, advertisers, other users, security and maintenance firms, etc. A letter of credit must be in a form acceptable to the Executive Director and be capable of being drawn for a minimum of ninety (90) days following the last date of tenancy. Said certified check, letter of credit, or other security shall be delivered to the Executive Director at least fifteen (15) days subsequent to the date of execution of this Agreement. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due the City under the terms of this Agreement, should the User damage or cause disrepair to the Permitted Premises, or should there be claims for injuries to persons or property, then the City may apply the proceeds of said certified check or draw upon the letter of credit in settlement thereof.

6. **Broadcasting; Advertising and Sponsorship.** This Agreement does not include rights to broadcast from the Denver Performing Arts Complex (Ellie Caulkins Opera House, Boettcher Concert Hall, Temple Hoyne Buell Theatre, Sculpture Park, and The Galleria). Broadcast is defined as "The dissemination of video, film or radio content via electronic means including but not limited to high definition, standard and cable television, radio, web casting, web streaming, down loads, and/or other forms of digital transmission, digital broadcast or digital distribution effectuated by means of the internet in all forms of television media now and hereafter known." All such rights are expressly granted to and/or reserved by the City.

User may submit a written request to broadcast from the Denver Performing Arts Complex to the Executive Director. If such request is granted the City authorizes the User's right to broadcast the event as described in the User's request. User shall warrant to the City that User has obtained or shall obtain full releases and permissions to be filmed from all participants or their parents or guardians if applicable. User is fully responsible for any fees to license selected music and User agrees to indemnify and hold the City harmless in respect of selected music or images. User warrants to the City that User has complied and shall continue to comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. User further warrants that it has not utilized and shall not utilize in connection with the production any protected patent, trademark or copyright in performance unless User has obtained proper permission, licenses, and all

releases and other necessary documents. In the event that any City held trademark is utilized in the final film cut of the broadcast, User shall insert a credit stating “Marks of the City and County of Denver are used with permission. All rights reserved.”

The User and the City further reserve the rights to make photographs, audio and video recordings in the Permitted Premises at its option to use for customary advertising and publicity and other non-commercial uses. User warrants to the City that User has obtained or shall obtain full releases and permissions to be filmed from all participants or their parents or guardians if applicable. User is fully responsible for any fees to license recorded music and User agrees to indemnify and hold the City harmless in respect of recorded music. User warrants to the City that User has complied and shall continue to comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. User further warrants that it has not utilized and shall not utilize in connection with the recording any protected patent, trademark or copyright unless User has obtained proper permission, licenses, and all releases and other necessary documents. In the event that any City held trademark is utilized in the final video recording, User shall insert a credit stating “Marks of the City and County of Denver are used with permission. All rights reserved.” The City shall not permit any display on the Permitted Premises of an objectionable nature, in the sole and absolute discretion of the Executive Director.

In all advertising for this event, User shall include the phrase, “AT THE DENVER PERFORMING ARTS COMPLEX.”

7. **Reserved.**
8. **Filing Event Information.** The User shall file with the Executive Director, at least ten (10) days prior to holding each event identified on DAV’s Booking Calendar, a full and detailed outline of all facilities required, all stage requirements, the chair set up and such other information required by the Executive Director.
9. **Compliance with All Laws, Policies and Procedures.** The User shall use and occupy the Permitted Premises in a safe and careful manner and shall comply with all applicable Municipal, State, and Federal laws, and rules and regulations pertaining to the Permitted Premises promulgated by the City, including the rules, regulations policies, and procedures prescribed by DAV, the Fire and Police Departments, and other governmental authorities, as may be in force and effect during the term of this Agreement. The User shall not use the Permitted Premises or any part thereof for the possession, storage, or sale of liquor (except with the permission of the Executive Director and according to law), or for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Permitted Premises. The User shall not do any act or suffer any act to be done during the term of this Agreement which will in any way mar, deface, alter or injure any part of the Permitted Premises. User shall comply with DAV’s applicable Ticketing and Seating Protocols and any other rules, regulations, policies and procedures related to compliance with the Americans with Disabilities Act and related local, state and federal laws.

Parties agree that the Rules and Regulations of the DAV shall be and are a part of this Agreement as though they were set out in full herein, and are specifically incorporated as a part hereof by reference upon delivery to the User no later than September 30, 2018.

If at any time, in the judgment of the Executive Director, the use of the Permitted Premises by the User is illegal, indecent, or obscene the Executive Director shall so notify the User and the User shall either cease and desist from continuing such objectionable use or surrender the Permitted Premises forthwith upon demand of the Executive Director. The User hereby releases the City and its officers, agents, employees and representatives from any loss or damage occasioned by such cancellation.

10. **Food and Beverage.** The User shall not sell or cause to be sold items of food or drink at or in the Permitted Premises. Food and beverage sales are in the exclusive rights of Service America Corporation, d/b/a Centerplate Catering (“**Centerplate**”). The City must approve requests for the User to sample food and drink items; provided, however, that if alcoholic beverages are being sampled, such sampling shall be coordinated with and conducted by Centerplate. In the event of a change in the food and beverage sales provider, the City will confer with the User in good faith.

Centerplate may be contacted at: Centerplate Catering, 700 14th Street, Denver, CO 80204, (303) 228-8081.

11. **Novelties Sales.** The User shall not sell or cause to be sold or sampled any pamphlets, novelties, curios, souvenirs, or similar items (“**Novelties**”) unrelated to its business, except with the permission of the Executive Director. User may choose to handle such sales within its own organization. The Colorado Symphony Guild shop may operate in the Permitted Premises and such shop shall comply with the requirements of Section 23 of this Agreement. The User shall then pay to the City zero percent (-0%) of the gross receipts from such sales plus sales tax. This Agreement shall not affect, in any way whatsoever, any concession heretofore or hereafter granted by the City to any other party.
12. **Fliers and Brochures.** Except for announcement of upcoming events at DAV venues, or upcoming events in which the User is promoting or advertising for the artist performing the event described in paragraph 4 above, the User shall not distribute fliers, petitions, surveys or literature of any kind, except with the permission of the Executive Director. The User may promote all of its performances whether performed on Permitted Premises or off-site venues. If the User does not have access to the Permitted Premises, as described in paragraph 2 above, User shall remove any and all promotional material from the Permitted Premises if requested by the City.
13. **Seating Capacity.** The User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to the demised area than can be properly and safely seated and move about in said area, and the decision of the Executive Director in this respect shall be final.
14. **Ingress and Egress.** All portions of the sidewalks, entrances, passages, vestibules, halls, and all ways of access to public utilities on the Permitted Premises shall be kept unobstructed by the User and shall not be used for any purpose other than ingress or egress to, from, and within the Permitted Premises. The doors, stairways, or openings into any place in the

structure, including hallways, corridors, and passageways, also house lighting attachments, shall in no way be obstructed by the User.

15. **Defense and Indemnification.** The User shall defend, indemnify, and save and hold harmless the City from all loss, cost and expense arising out of any liability, including, but not limited to, any violations of the ADA, or any claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever, by reason of the operation, use or occupation of the facilities hereinabove described, whether such use is authorized or not, or by any act or omission of the User or any of its officers, agents, employees, contractors, subcontractors, guests, patrons, or invitees, and the User shall pay for any and all damage to the property of the City, or loss or theft of such property, done or caused by such person(s). Notwithstanding the foregoing, the User need not indemnify and save and hold harmless the City from damages resulting from the sole negligence of the City's employees, or structural or design defects.

16. **Insurance.**

- a) **General Conditions:** The User agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations and activities pursuant to this Agreement. The User shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof. 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 policies required hereunder are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in paragraph 22 of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. 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, the User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in paragraph 22 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 User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User 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 Agreement.

- b) **Proof of Insurance:** The User shall provide a copy of this Agreement to its insurance agent or broker. The User may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The User certifies that the certificate of insurance, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. 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 Agreement shall not act as a waiver of the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. 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, the User 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 Agreement, the User's insurer shall waive subrogation rights against the City.
- e) Workers' Compensation/Employer's Liability Insurance: The User 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. If the User is exempt from carrying Workers' Compensation/Employer's Liability Insurance, the User shall deliver to the City a copy of the Rejection of Coverage letter submitted with the State of Colorado Workers' Compensation.
- f) Commercial General Liability: The User 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.
- g) Automobile Liability: The User 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 the operations and activities contemplated by this Agreement. If the User does not maintain Business Automobile liability, the User shall provide proof of personal automobile insurance with minimum limits of \$100,000 bodily injury per person; \$300,000 bodily injury per accident; and \$50,000 property damage for all vehicles used in performing the operations and activities contemplated by this Agreement. Additionally, the User shall ensure that any subcontractor operating a motor vehicle in providing services related to this Agreement shall maintain auto liability insurance with the foregoing limits.
- h) Additional Provisions:
 - i. For Commercial General Liability, the policy must provide the following:
 - 1. That this Agreement is an Insured Contract under the policy;
 - 2. Defense costs are outside the limits of liability;
 - 3. A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
 - 4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

ii. For claims-made coverage:

1. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
2. The User 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 User will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

17. **Vacation of Permitted Premises.** In the event any portion of the Permitted Premises is not vacated at the end of the term of this Agreement, then the City shall be and is hereby authorized to remove from the Permitted Premises, at the expense of the User, all goods, wares, merchandise, and property of any kind or description which may be then occupying the Permitted Premises. The City shall not be liable for any damage to or loss of such goods, wares, merchandise or property sustained either during the removal or storage of same and the City, its agents, employees and officials are hereby expressly released from any and all claims for such loss or damage. Upon termination of this Agreement, the User will deliver to the City the Permitted Premises in as good condition and repair as the same shall be found at the beginning of the term of this Agreement, except for normal wear and tear.
18. **User Receipts and Funds.** It is agreed that in the handling, control, custody and keeping of receipts and funds belonging to the User, whether the same are received through the box office or otherwise, the City is acting for the accommodation and the sole benefit of the User.
19. **City Responsibility.** The City assumes no responsibility whatsoever, for any property placed in the Permitted Premises, and the City is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy of the Permitted Premises under this Agreement. All watchmen or other protective service desired by the User must be arranged for by special agreement with the City. In the receipt, handling, care or custody of property of any kind shipped or otherwise delivered to the Permitted Premises, either prior to, during, or subsequent to the use of the Permitted Premises by the User, the City and its officers, agents, and employees shall act solely for the accommodation of the User and neither the City nor its officers, agents, or employees shall be liable for any loss, damage, or injury to such property.
20. **Articles Left at Permitted Premises.** The City shall have the sole right to collect and have custody of all articles left at the Permitted Premises by persons attending any function held at the Permitted Premises. Any property left at the Permitted Premises by the User shall, after a period of thirty (30) days from the last day of the term of this Agreement, be deemed abandoned and at the City's sole option, become the property of the City, without further notice.
21. **Notices.** Any notice or communication which the City may desire to give the User shall be deemed sufficiently rendered or given if the same be in writing and sent by registered or

certified mail addressed to the User as specified on Page One hereof, or at the latest address submitted therefore by the User in writing to the City, or left at such address or delivered to the User's representative. Delivery of such notice or communication shall be deemed to be the time when the same is mailed, left, or delivered as herein provided. Any notice from the User to the City shall be validly given if sent by registered or certified mail addressed to the Executive Director for Denver Arts & Venues, City and County of Denver, 1345 Champa Street, Denver, Colorado 80204-2107 with additional notice sent to Denver Arts & Venues Finance Director, 1345 Champa Street, Denver, Colorado 80204-2107, or at such other address as the City shall hereafter designate by notice to the User.

22. **Time of the Essence.** Time is of the essence with reference to all payments. Any extra time desired by the User not provided for by this Agreement must be first allowed and approved in writing by the Executive Director, and must be paid for in accordance with the schedule of fees.
23. **Taxes and Fees.** The User agrees to pay promptly all taxes, excise, or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses, Municipal, State, or Federal, required for the usage herein permitted, and further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to and showing that all required permits and licenses are in effect. Appropriate records shall be maintained and made available per Ordinance requirements. All Users who have incorporated must be registered with the Office of the Colorado Secretary of State. The User agrees that the City's Auditor, or authorized representative(s), may inspect any tax data provided to the Department of Finance as required by Denver's Revised Municipal Code, Chapter 53, Taxation and Miscellaneous Revenue and any related audit reports and data generated by the Department of Finance. The User waives any claim of confidentiality that it may have in connection therewith. Such records may include taxpayer's returns or reports, accompanying schedules and data, and associated audit data and information generated by authorized representatives of the City's Manager of Finance.
24. **City's Enforcement Rights.** It is understood and agreed that the City hereby reserves the right to control and manage the Permitted Premises and the Denver Performing Arts Complex and to enforce all necessary and proper rules for the management and operation of the same and for its authorized representatives to enter the portion of the Permitted Premises, hereby demised to the User, at any time and on any occasion. The City also reserves the right, but not the duty, through its duly appointed representatives, to eject any objectionable person or persons from the Permitted Premises and the User hereby waives any and all claims for damages against the City or any and all of its officers, agents or employees resulting from the exercise of this authority.
25. **Release.** The User hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure or impairment of the water supply system, drainage system, heating system, steam system, electrical system, ventilation system, or refrigeration system on or related to the Permitted Premises. In the event the Permitted Premises or any part thereof is damaged by fire, or if for any other

reason, including strikes, failure of utilities, or any act of God which, in the judgment of the Executive Director, renders the fulfillment of this Agreement by the City impossible, the User hereby expressly releases and discharges the City and its agents from any and all demands, claims, actions, and causes of actions arising from any of the causes aforesaid.

26. **No Discrimination in Employment.** In connection with the performance of work under this Agreement, the User 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, gender identity or gender expression, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.
27. **Emergency Personnel.** The User shall pay for Denver Police, Denver Fire and Paramedic personnel who are on duty during the event. The necessity for and staffing levels of such personnel shall be solely determined by DAV, in consultation with such agencies.
28. **Rigging.** If rigging is desired or required for this event, the User shall coordinate such rigging with DAV and comply with all rigging requirements of the City and the Denver Performing Arts Complex Venue Guide.
29. **Governing Law; Venue.** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
30. **Licensing.** The User warrants that all copyrighted material to be performed has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred with regard thereto.
31. **House Seats:**

The City shall receive a total of ten (10) Mezzanine tickets at no charge for the house for every performance. The house seats are distributed for each seating configuration as follows:

 - 6 Mezzanine Tickets – Mezzanine 4, Row JJ, Seats 10-15
 - 4 Mezzanine Tickets – Mezzanine 4, Row J, Seats 6-9

If the event does not utilize the designated seating area in the Permitted Premises, the User shall provide City up to ten (10) tickets to each event.
32. **ADA – Americans with Disability Act Requirements:**

The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act (“**ADA**”) and that the User is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010 and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors, walkways, and accessible seats. The User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User. User shall comply with the ADA and all regulations thereunder.

Tickets for unsold accessible seating may be released for sale to individuals without disabilities:

1. When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
2. When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
3. When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

The User represents that it has viewed or otherwise apprised itself that such access to the Permitted Premises and common areas and accepts such access, common areas and other conditions of the Permitted Premises and common areas as adequate for the User’s responsibilities under the ADA. The User shall be responsible for ensuring that the space rented by City to the User complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as the User modifies, rearranges or sets up in the facility in order to accommodate the performance produced by the User. The User shall be responsible for any violations of the ADA that arise from the User’s reconfiguration of the seating areas or modification of other portions of the Permitted Premises in order to accommodate the User’s engagement. The User shall be responsible for: providing auxiliary aids and services that are ancillary to its production, ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA, and any costs related thereto.

Without limiting the foregoing, the User’s ticketing policy, seating charts, special restrictions, etc. shall, at a minimum, comply with the regulations and criteria set forth by the ADA and the City policies, including but not limited to any applicable Ticketing and Seating Protocols and any other instructions, policies or procedures provided by the City to User.

33. **Pyrotechnics Restrictions.** The use of pyrotechnics during performances at the Permitted Premises is allowed only by permit from and payment by the User of required fees to the Denver Fire Department, Fire Prevention Division - 745 West Colfax Ave., 3rd Floor, Denver, CO 80204, 720-913-3448, scott.buccieri@denvergov.org – in accordance with DAV’s Denver Performing Arts Complex Venue Guide. If a pyrotechnician is required, arrangements must be made through the Denver Fire Prevention Bureau at the User’s expense.

34. **No Third Party Beneficiary.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the User that any person other than the City or the User receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
35. **Legal Authority.** The User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the User, do hereby warrant and guarantee that he/she or they have been fully authorized by the User to execute this Agreement on behalf of the User and to validly and legally bind the User to all the terms, performances, and provisions herein set forth.
36. **Agreement as Complete Integration; Amendments.** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. Except as otherwise provided herein, no subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, personal representatives, successors, and assigns.
37. **Conflict of Interest.** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire, or contract for services with, any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.
38. **Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.
39. **No Construction Against Drafting Party.** The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.
40. **Survival of Certain Provisions.** The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and

will continue to be enforceable. Without limiting the generality of this provision, the User's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

41. **Prohibition on Sale and Advertising of Tobacco.** User 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. "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.
42. **Electronic Signatures and Electronic Records.** The User consents to the use of electronic signatures by the City. The Agreement, 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 Agreement 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 Agreement 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.
43. **Building Maintenance and Equipment.** The City intends to invest in approximately \$300,000 of capital improvements and approximately \$500,000 of new equipment for to the Permitted Premises during the Term. Subject to the City's standard contract negotiation, review and approval process, all expenditure details to be mutually agreed upon between User and City.
44. **Public Benefit Concerts.** User shall coordinate and perform at least seven (7) concerts presented by DAV during each year of the Term (the "**Public Benefit Concerts**"). The Public Benefit Concerts shall consist of three (3) free community concerts performed at Boettcher Concert Hall, including the Martin Luther King, Jr. Tribute, Latino Beats, and Season Preview, and four (4) concerts performed in other mutually acceptable venues, including but not limited to the City's parks. The User intends to provide a public benefit to the City by coordinating and performing the Public Benefit Concerts and the User shall be solely responsible for the costs of the Public Benefit Concerts.
45. **Termination.** Either party may, at its discretion, terminate this Agreement upon eighteen (18) months written notice to the other party.

[SIGNATURES ON THE NEXT PAGE]

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: THTRS-201839929-00

Contractor Name: Colorado Symphony Association

By:  _____

Name: JEROME H. KERN
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

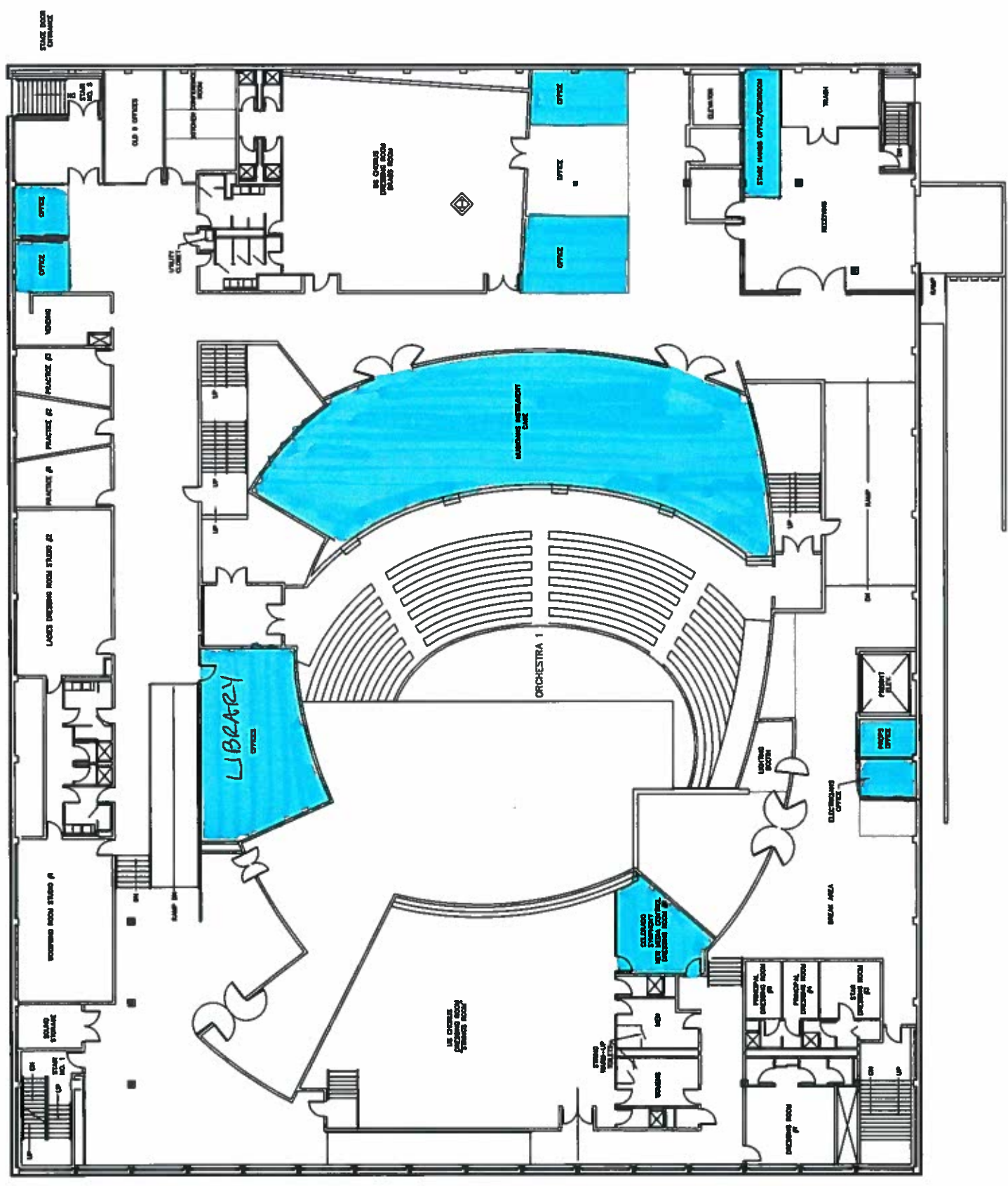
Title: _____
(please print)



EXHIBIT A: EXCLUSIVE USE AREAS

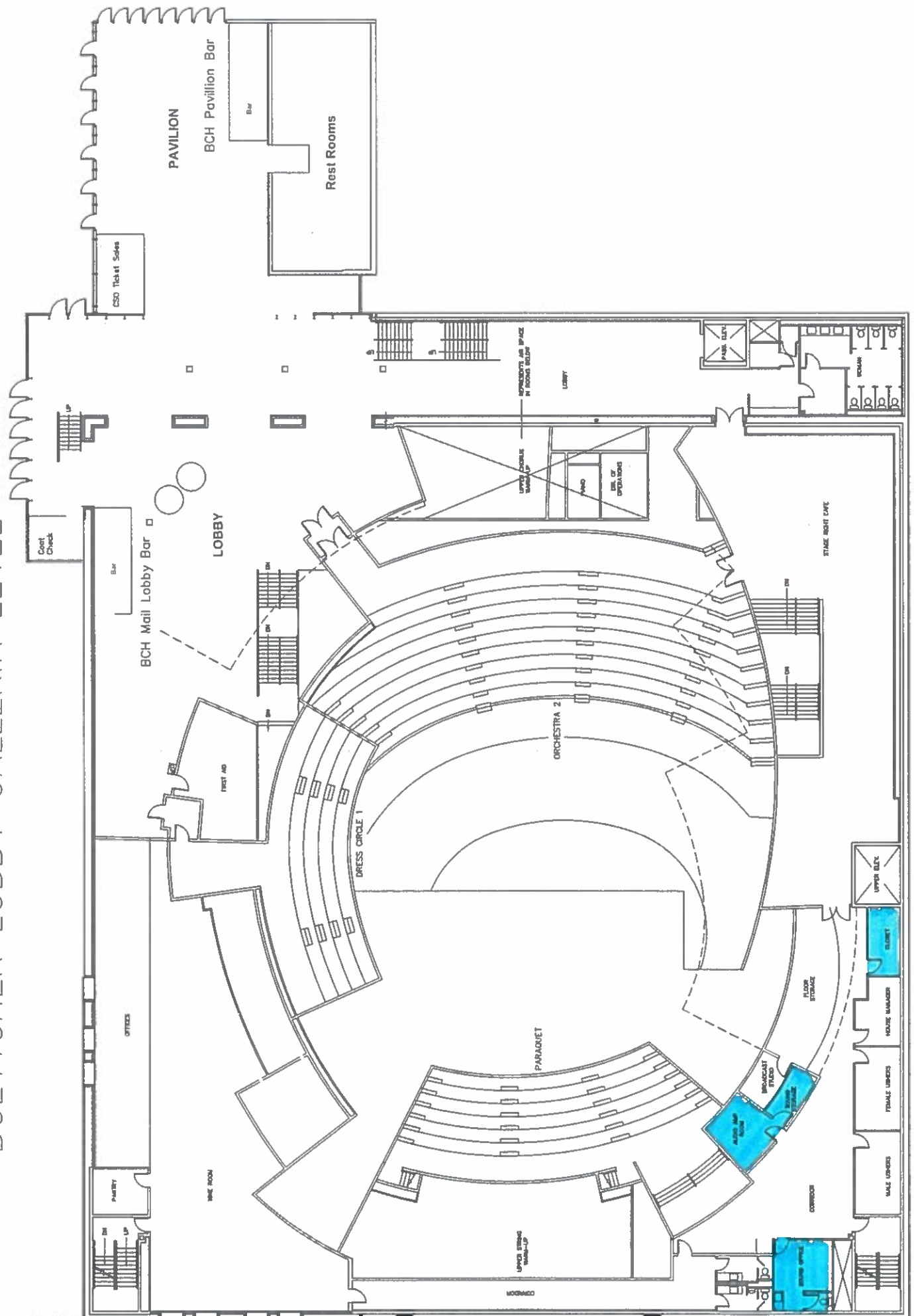
Exhibit A - Boettcher Offices and Storage Listing				
Exclusive CSA Use	LOBBY LEVEL - Back of House	Occupant	Access	Notes
Yes	Usher Migr Office with Bathroom Usher Lounge/Dressing, etc.	CSA	Available for use when renting BCH	swap with Usher Area Office 3
Yes	Eric Christiansen's Office	CSA/Stagehand	Available for use when renting BCH	
	Usher Area Office 2 (Production with Window over Parquet)	Argus	Available for use when renting BCH	swap with Ush Mgr Office with Bathroom
Yes	Usher Area Office 3 (Currently Empty)	CSA		Potentially Guild Storage--or one of the offices
	Usher Area Storage Room			
	STAGE LEVEL			
	Office Near Loading Dock 1	Argus		
	Office Near Loading Dock 2	Argus		
Yes	Office Near Loading Dock 3 (2 Cubes)	CSA		Access to IT always allowed
	Office Near Loading Dock 4 (IT YESGO)	AVD		Storage moved to basement
Yes	Office Near Loading Dock 5 (Currently AVD Storage)	CSA	Available for use when renting BCH	
	Brass Room			
Yes	Office Near Stage Door 1	CSA		
Yes	Office Near Stage Door 2	CSA		
	Conference Room Near Stage Door/Kitchen	AXS		
	Storage Near Conference Room (AVD Marketing Storage)	AVD		
Yes	Cage			
	Small Practice Room 1	CSA	Available for use when renting BCH	
	Small Practice Room 2		Available for use when renting BCH	
	Small Practice Room 3		Available for use when renting BCH	
Yes	Music Library	CSA	Available for use when renting BCH	
	Women's Dressing Room		Available for use when renting BCH	
	Woodwind Room		Available for use when renting BCH	
	Strings Room		Available for use when renting BCH	
	Dress 1 - Conductor's Suite		Available for use when renting BCH	
Yes	Dress 2 - New Media Center	CSA	Available for use when renting BCH	
	Dress 3		Available for use when renting BCH	
	Dress 4		Available for use when renting BCH	
	Dress 5		Available for use when renting BCH	
Yes	Phil Heister's Office	CSA/Stagehand		
Yes	Deb Guess's Office	CSA/Stagehand		
	Electrical Storage Room	AVD		
	BASEMENT LEVEL			
	Washer/Dryer room	AVD		
	Boettcher Breakroom	Aramark		
	Basement Storage 1		Used for Storage CSA and AVD	
	Basement Storage 2		Used for Storage CSA and AVD	
	Basement Storage 3		Used for Storage CSA and AVD	
	Basement Storage 4		Used for Storage CSA and AVD	
	Basement Storage 5		Used for Storage CSA and AVD	
	Basement Storage 6		Used for Storage CSA and AVD	
	Mechanical Room			

BOETTCHER STREET LEVEL



LEGEND: = CSA EXCLUSIVE USE

BOETTCHER LOBBY GALLERIA LEVEL



LEGEND: = CSA EXCLUSIVE USE