

**FIRST AMENDMENT TO LEASE AGREEMENT
AND
TERMINATION OF SUBLEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT AND TERMINATION OF SUBLEASE AGREEMENT (this "First Amendment") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City," and **DENVER CENTER FOR THE PERFORMING ARTS**, a Colorado nonprofit corporation with an address of 1101 13th Street, Denver, Colorado 80204, hereinafter referred to as the "DCPA" (together, the "Parties").

RECITALS:

A. The Parties entered into a Lease and Agreement dated February 5, 1999 ("Lease Agreement"), pursuant to which the City leased to DCPA the "Art and Humanities Building" located at 1245 Champa Street, Denver, Colorado (the "1245 Champa Building"), for its use in the promotion of the arts in Denver. As a part of the rights conveyed to DCPA in the Lease Agreement, DCPA received the right to use seventy-two (72) parking spaces within the DPAC Parking Garage (the "DPAC Parking Spaces"). The Parties more recently entered into a Sublease Agreement dated September 27, 2005 (the "Sublease Agreement"), as amended, pursuant to which the City's Arts & Venues Division sublets the first floor of the 1245 Champa Building.

B. The Parties wish (i) to amend the Lease Agreement, to partially terminate the Lease Agreement with respect to the 1245 Champa Building and to return the management and control thereof to the City, while preserving the existing terms of the Lease Agreement with respect to the DPAC Parking Spaces, and (ii) to terminate the Sublease Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Parties agree as follows:

1. Termination of Sublease Agreement; Mutual Releases Relating to Sublease Agreement.

(a) Termination of Sublease Agreement. As of the Effective Date (as hereinafter defined), the Sublease Agreement shall be terminated as if the Effective Date were the scheduled expiration date of the Sublease Agreement and from and after the Effective Date

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the Parties shall have no further rights or obligations under the Sublease Agreement, except for those obligations which arose prior to the Effective Date and remain to be performed on the Effective Date, and except for those terms of the Sublease Agreement which expressly survive the expiration or earlier termination of the Sublease Agreement. The Parties acknowledge and agree that the City shall not be obligated to vacate or surrender possession of the Leased Premises (as defined in the Sublease) because the City will continue to use and occupy the Leased Premises (as defined in the Sublease) as a result of the termination of the Lease Agreement with respect to the 1245 Champa Building, as more particularly described below in this First Amendment.

(b) City Release of DCPA Relating to Sublease Agreement. City, on behalf of itself and its officers, directors, agents, employees, successors in interest and assigns, hereby releases and discharges DCPA, its affiliates, officers, directors, agents, employees, contractors, successors in interest and assigns, from and against any and all claims, demands, causes of action, liabilities and obligations, known and unknown, foreseen and unforeseen, direct and indirect, in any way arising out of or relating to the Sublease Agreement and/or the City's use and occupancy of the Leased Premises (as defined in the Sublease Agreement); it being the express intention of the Parties that the foregoing shall be deemed to be a full and general release with respect to the Sublease Agreement and the Leased Premises (as defined in the Sublease Agreement).

(c) DCPA Release of City Relating to Sublease Agreement. DCPA, on behalf of itself and its officers, directors, agents, employees, successors in interest and assigns, hereby releases and discharges the City and its officers, directors, agents, employees, successors in interest and assigns from and against any and all claims, demands, causes of action, liabilities and obligations, known and unknown, foreseen and unforeseen, direct and indirect, in any way arising out of or relating to the Sublease Agreement and/or the City's use and occupancy of the Leased Premises (as defined in the Sublease); it being the express intention of the Parties that the foregoing shall be deemed to be a full and general release with respect to the Sublease Agreement and the Leased Premises (as defined in the Sublease); provided, however, the release and discharge set forth in this Section 1(c) shall not apply to the following: (i) the City's obligations under the Sublease Agreement which accrue prior to the Effective Date; (ii) the

City's obligations under the Sublease Agreement which expressly survive the expiration or earlier termination of the Sublease Agreement; and (iii) the provisions of this First Amendment.

2. Partial Termination of Lease Agreement; Mutual Releases Relating to 1245 Champa Building; Amendment to Leased Premises.

(a) Partial Termination of Lease Agreement. The Parties hereby agree that, as of the Effective Date, the Lease Agreement shall be partially terminated with respect to the DCPA's rights and responsibilities relating to the occupancy and use of the 1245 Champa Building, but the DCPA shall retain the right to use the DPAC Parking Spaces granted in the Lease Agreement. The Parties agree that the DCPA and the City shall reasonably cooperate to transfer control of the building system controls for the 1245 Champa Building (including without limitation the card access system and the HVAC system) from the DCPA's building control systems to the City's building control systems within thirty (30) days after the Effective Date. The City and the DCPA shall coordinate to have all utility accounts (including electricity, gas, chilled water and steam services) relating to the 1245 Champa Building transferred from the DCPA to the City as of the Effective Date, with the DCPA responsible for the timely payment of all utility charges incurred prior to the Effective Date, and the City responsible for the timely payment of all utility charges incurred on or after the Effective Date. The City hereby agrees to accept the 1245 Champa Building in its "AS IS" condition on the Effective Date, without any obligation for the DCPA to perform any repairs or other work therein, except for the separation of the building system controls described above.

(b) DCPA Release of City Relating to 1245 Champa Building. DCPA, on behalf of itself and its officers, directors, agents, employees, successors in interest and assigns, hereby releases and discharges the City, its officials, officers, , agents, employees, contractors, successors in interest and assigns, from and against any and all claims, demands, causes of action, liabilities and obligations, known and unknown, foreseen and unforeseen, direct and indirect, in any way arising out of or relating to DCPA's use and occupancy of the 1245 Champa Building; it being the express intention of the Parties that the foregoing shall be deemed to be a full and general release with respect to the use and occupancy of the 1245 Champa Building by the DCPA.

(c) City Release of DCPA Relating to 1245 Champa Building. City, on behalf of itself and its officers, officials, agents, employees, successors in interest and assigns, hereby releases and discharges DCPA and its officers, directors, agents, employees, successors in interest and assigns from and against any and all claims, demands, causes of action, liabilities and obligations, known and unknown, foreseen and unforeseen, direct and indirect, in any way arising out of or relating to the DCPA's use and occupancy of the 1245 Champa Building; it being the express intention of the Parties that the foregoing shall be deemed to be a full and general release with respect to the DCPA's use and occupancy of the 1245 Champa Building; provided, however, the release and discharge set forth in this Section 2(c) shall not apply to the following: (i) DCPA's obligations under the Lease Agreement with respect to the 1245 Champa Building which accrue prior to the Effective Date; (ii) DCPA's obligations under the Lease Agreement with respect to the 1245 Champa Building which expressly survive the expiration or earlier termination of the Lease Agreement; (iii) the provisions of this First Amendment; and (iv) the continuing obligations of DCPA under the Lease Agreement, as amended herein, with respect to the DPAC Parking Spaces.

(d) Amendment of Leased Premises. As of the Effective Date (as hereinafter defined), Section 2 of the Lease Agreement, entitled "**LEASED PREMISES**," is hereby amended and restated in its entirety to read as follows:

LEASED PREMISES. The Lessee shall have the exclusive right to utilize seventy-two (72) parking spaces free of charge within the DPAC Parking Garage, as designated by the City from time to time, and for so long as the said DPAC Parking Garage shall remain operational. If such free spaces are no longer available to Lessee because the DPAC Parking Garage is no longer operational, then City shall provide seventy-two (72) suitable alternative parking spaces free of charge to Lessee. Lessee shall only be entitled to use the parking for its own officers, employees, agents, and business visitors, and shall not sublet, rent, or otherwise license the use of the parking spaces to any other person or entity either for single performances or events, or on a longer term basis. Lessee's use of the parking spaces shall further be subject to all rules, regulations and policies of operation generally applied to the parking facilities by the City from time to time, except that the right of Lessee to utilize the seventy-two (72) parking spaces free of charge shall not be unreasonably impaired by such rules, regulations and policies.

3. Use. As of the Effective Date (as hereinafter defined), the first sentence of Section 5 of the Lease Agreement, entitled "**USE**" is hereby amended and restated in its entirety to read as follows: "The Leased Premises are to be used and occupied by Lessee for parking in

connection with Lessee's office and other purposes directly supportive of the promotion of the arts and humanities in the Denver area."

4. DCPA's Deliverables. To the extent the following are in the possession or reasonable control of DCPA, DCPA agrees to provide the following to the City within thirty (30) days of the Effective Date (as hereafter defined):

- a. Copies of all warranties, and all operating manuals and maintenance contracts (current contracts and expired contracts) in connection therewith relating to the 1245 Champa Building, including without limitation those concerning the elevator and HVAC system.
- b. Copies of all maintenance records relating to the 1245 Champa Building.

5. DCPA's Representations. DCPA hereby represents and warrants to City that as of the Effective Date:

- a. Any assets of DCPA located at the 1245 Champa Building shall become the property of the City, free and clear of all claims.
- b. There are no mechanics, labor or materials liens that encumber the 1245 Champa Building, and no inchoate rights to assert such liens in connection with work undertaken by or on behalf of the DCPA or any affiliate thereof.
- c. Other than the Sublease, DCPA has not entered into any leases or other occupancy agreements with any party for the possession or use of all or any portion of the 1245 Champa Building.

6. Notices. Section 27 of the Lease Agreement, entitled "NOTICES," is hereby amended and restated in its entirety to read as follows:

NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Lessee at the address first above written, and if to the City at:

Director of Real Estate
201 W. Colfax Ave., Dept. 904
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office

1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

7. Effective Date. This First Amendment to Lease Agreement shall be effective as of June 1, 2013 (the "Effective Date").

8. Provisions No Longer Applicable. The Parties agree that the following sections of the Lease Agreement will have no continuing application following the Effective Date and as of the Effective Date the same are amended and restated to read "Intentionally Omitted": Section 9 (Service Charges), Section 15 (Continuous Operation), Section 20 (Patent, Trademark and Copyright Indemnification) and Section 22 (Sublease).

9. Ratification; Conflict. As herein amended the Lease Agreement is hereby ratified and reaffirmed. In the event of any conflict between the terms of this First Amendment and the terms of the Lease Agreement, or the terms of the Sublease Agreement, the terms of this First Amendment shall govern and control.

Contract Control Number: FINAN- RC8Y022-01

Contractor Name: DCPA

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

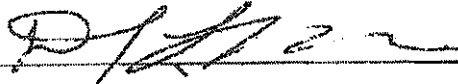
By _____

By _____



Contract Control Number: FINAN- RC8Y022-01

Contractor Name: DCPA

By: 

Name: DANIEL L. RITCHIE
(please print)

Title: CHAIRMAN & CEO DCPA
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

