

FIFTH AMENDATORY LEASE AGREEMENT

THIS FIFTH AMENDATORY LEASE AGREEMENT (this “Third Amendment”) is made by and between the **CITY AND COUNTY OF DENVER** (“City” or “Lessor”), a municipal corporation and home rule city of the State of Colorado, and **COLORADO SYMPHONY ASSOCIATION**, a Colorado nonprofit corporation, whose address is 1000 14th Street, Unit 15, Denver, CO 80202 (“Lessee”).

WITNESSETH:

WHEREAS, the City is the owner of certain property located at 1245 Champa Street, Denver Colorado (the “Property”), a portion of which is not required for public use and occupancy at present; and

WHEREAS, the City entered into a Lease Agreement dated **September 25, 2013**, and amended by an Amendatory Lease Agreement dated **September 1, 2015**, a Second Amendatory Lease Agreement dated **July 3, 2017**, a Third Amendatory Lease Agreement dated **May 9, 2018**, and a Fourth Amendatory Agreement dated **July 8, 2021** to lease a portion of the Property to Lessee for use as offices for the Colorado Symphony Association (the “Lease”); and

WHEREAS, the City now desires to amend the Lease as described below.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations herein set forth the City and the Lessee agree as follows:

1. Effective upon execution, all references to Exhibit A, A-1, and A-2 in the existing Agreement shall be amended to read Exhibit A-3, as applicable. Exhibit A-3 is attached and will control from and after the date of execution.

2. Section 1, “**LEASED PREMISES**,” of the Lease Agreement is modified in its entirety to read as follows:

“1. **LEASED PREMISES**: Subject to the terms of this Lease Agreement (hereinafter referred to as “Lease”), the City agrees to lease, demise and let unto Lessee and the Lessee does hereby lease from the City those certain premises (the “Leased Premises”) located at 1245 Champa Street in Denver, Colorado, as more particularly described in Exhibit A-3, attached hereto and incorporated herein,

containing general office space of the Penthouse (3,468 square feet in size); the 2nd Floor (1,428 square feet in size); and the 4th Floor (10,600 square feet in size) for a total Leased Premises space of 15,116 square feet of the 1245 Champa Street building. The depiction of the Premises contain in Exhibit A-3 may be modified upon written authorization from the Director of Real Estate (the “Director”) to correct minor, technical errors.”

3. Section 2, “**TERM**,” of the Lease Agreement is modified in its entirety to read as follows:

“2. **TERM**: The term of this Lease shall begin on **October 1, 2013**, and it shall terminate on **June 30, 2029**, unless sooner terminated pursuant to the terms of the Lease (the “Term”); provided, however, this Lease shall be coterminous with the Lessee’s Master User Agreement of the Boettcher Concert Hall, filed as **THTRS-202475155**, if such agreement terminates prior to **June 30, 2029**, this Agreement shall also terminate.

4. Section 3, “**RENT**,” of the Lease is amended by replacing it in its entirety with the following:

“3. **RENT**: Commencing July 1, 2024, and continuing through the duration of the Lease, the Lessee shall pay to the City monthly Rent of **TWO THOUSAND TWO HUNDRED DOLLARS AND ZERO CENTS (\$2,200.00)**. This amounts to a new total contract amount of **FOUR HUNDRED THIRTY-FOUR THOUSAND NINE HUNDRED THIRTY-EIGHT DOLLARS AND EIGHTEEN CENTS (\$434,938.18)**. Rent shall be paid to the City as specified by the Director.”

5. Section 13 of the Lease titled “INDEMNITY” is amended by replacing it in its entirety with the following:

“13. **DEFENSE & INDEMNIFICATION**:

(a) Lessee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically

determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Lessee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Lessee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Lessee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) Lessee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Lessee under the terms of this indemnification obligation. The Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement."

6. Section 16, "**HOLDING OVER**," of the Lease is amended by replacing it in its entirety with the following:

"**16. HOLDING OVER**: If after the expiration 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 monthly rent of one hundred and fifty percent (150%) of the current rental rate as of July 1, 2024, 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.”

7. Section 18 of the Lease titled “**NONDISCRIMINATION**” is amended by replacing it in its entirety with the following:

“**18. NONDISCRIMINATION:** In connection with Lessee’s performance pursuant to this Lease, Lessee agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Lessee shall insert the foregoing provision in all subcontracts for work on the Leased Premises.”

8. Section 23 of the Lease titled “**EXAMINATION OF RECORDS**” is amended by replacing it in its entirety with the following:

“**23. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Lessor’s performance pursuant to this Lease, provision of any goods or services to the City, and any other transactions related to this Lease. Lessor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Lease or expiration of the applicable statute of limitations. When conducting an audit of this Lease, the

City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Lessor to make disclosures in violation of state or federal privacy laws. Lessor shall at all times comply with D.R.M.C. 20-276.”

9. A Section 38, and titled “**COMPLIANCE WITH DENVER WAGE LAWS**”, is added to the Lease and will read as follows:

“**38. COMPLIANCE WITH DENVER WAGE LAWS**: To the extent applicable to the Lessee, the Lessee shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Lessee expressly acknowledges that the Lessee is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Lessee, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein”

10. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

11. This Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

Exhibit List:

Exhibit A-3 – Leased Premises

[SIGNATURE PAGES FOLLOW]

Contract Control Number: FINAN-202475426-05 (Alfresco 201311017-05)
Contractor Name: Colorado Symphony Association

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:

Attorney for the City and County of Denver

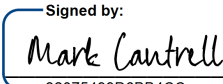
By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202475426-05 (Alfresco 201311017-05)
Colorado Symphony Association

By:  Signed by:
32075499D6BB4CC...

Name: Mark Cantrell
(please print)

Title: President and CEO
(please print)

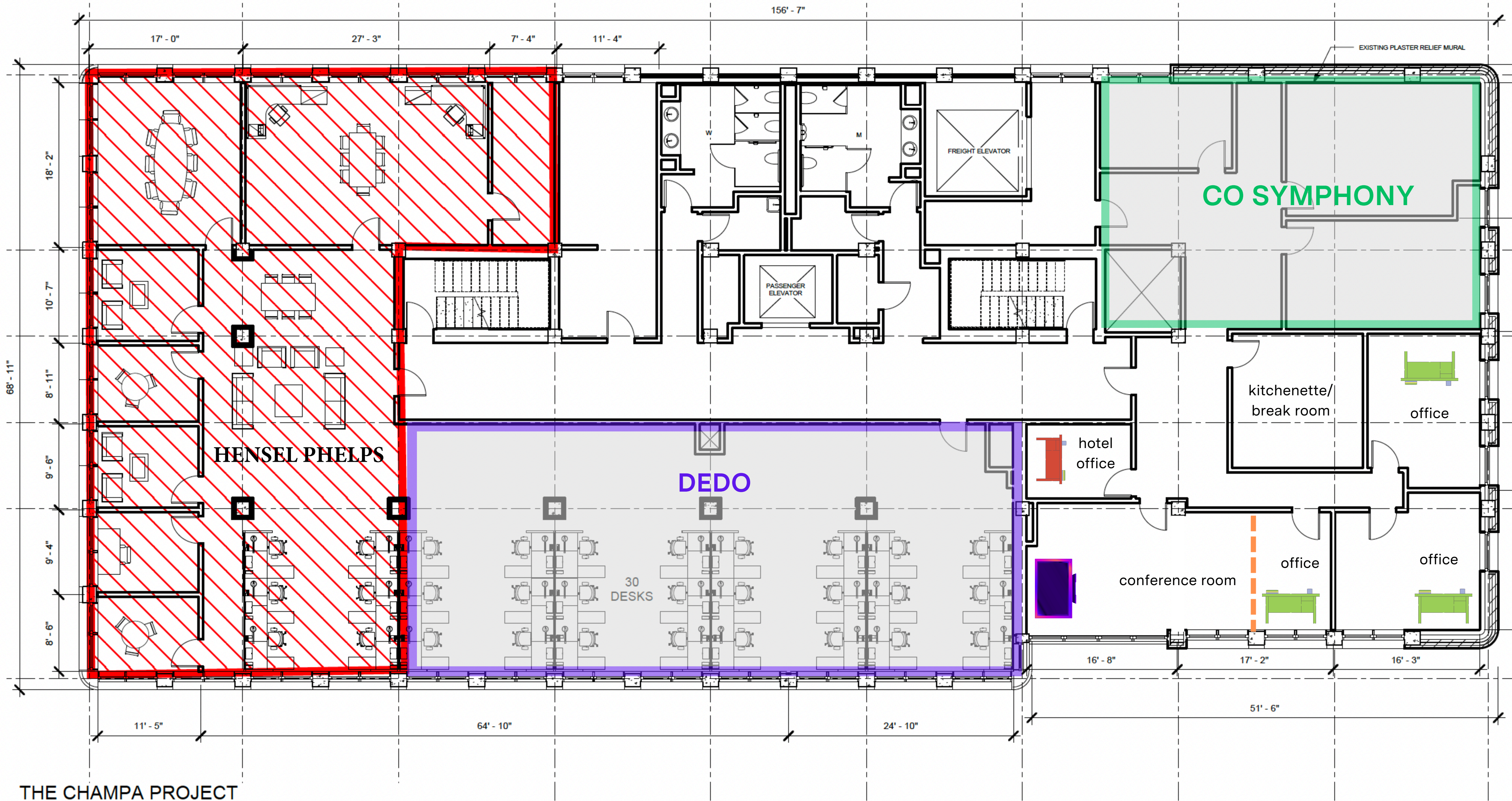
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

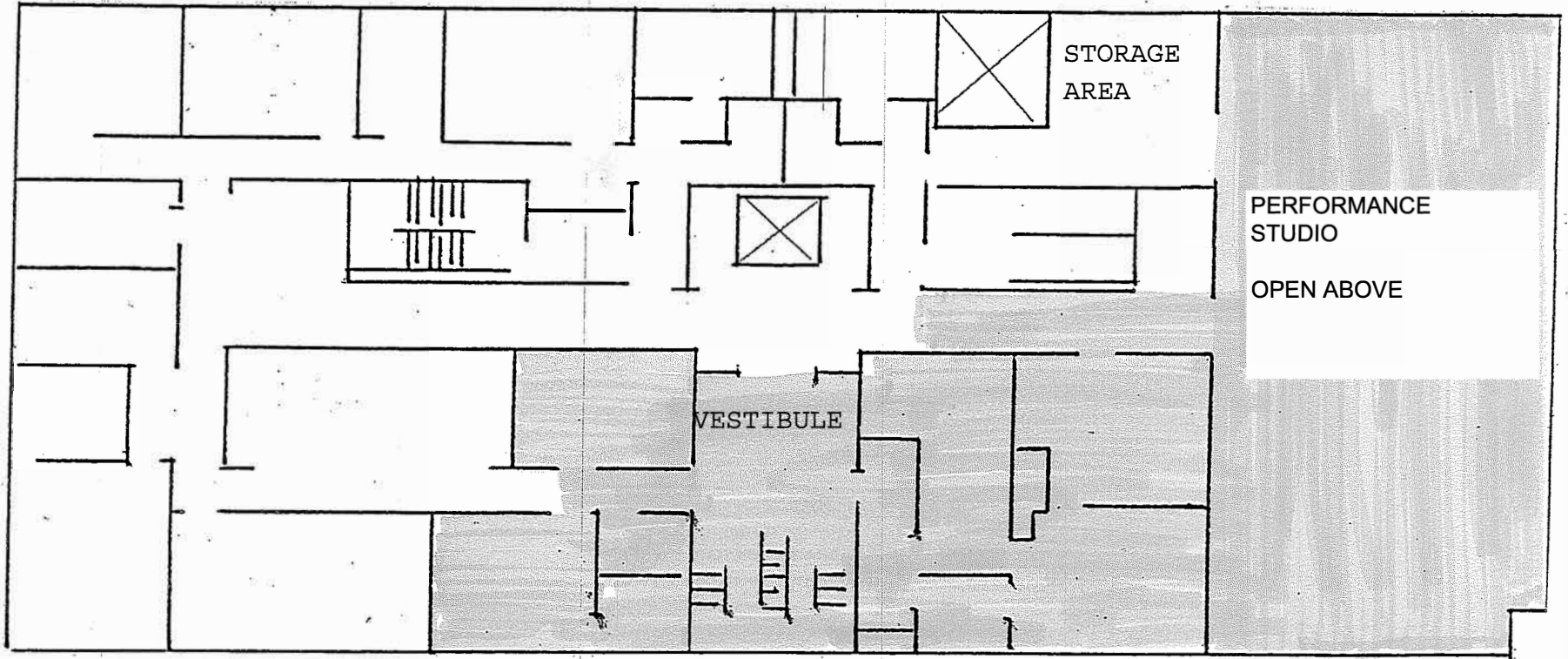
EXHIBIT A-3



THE CHAMPA PROJECT
 Level Two
 Scale 3/32"=1'-0"

EXHIBIT A-3

CITY AND COUNTY OF DENVER
OFFICE BUILDING

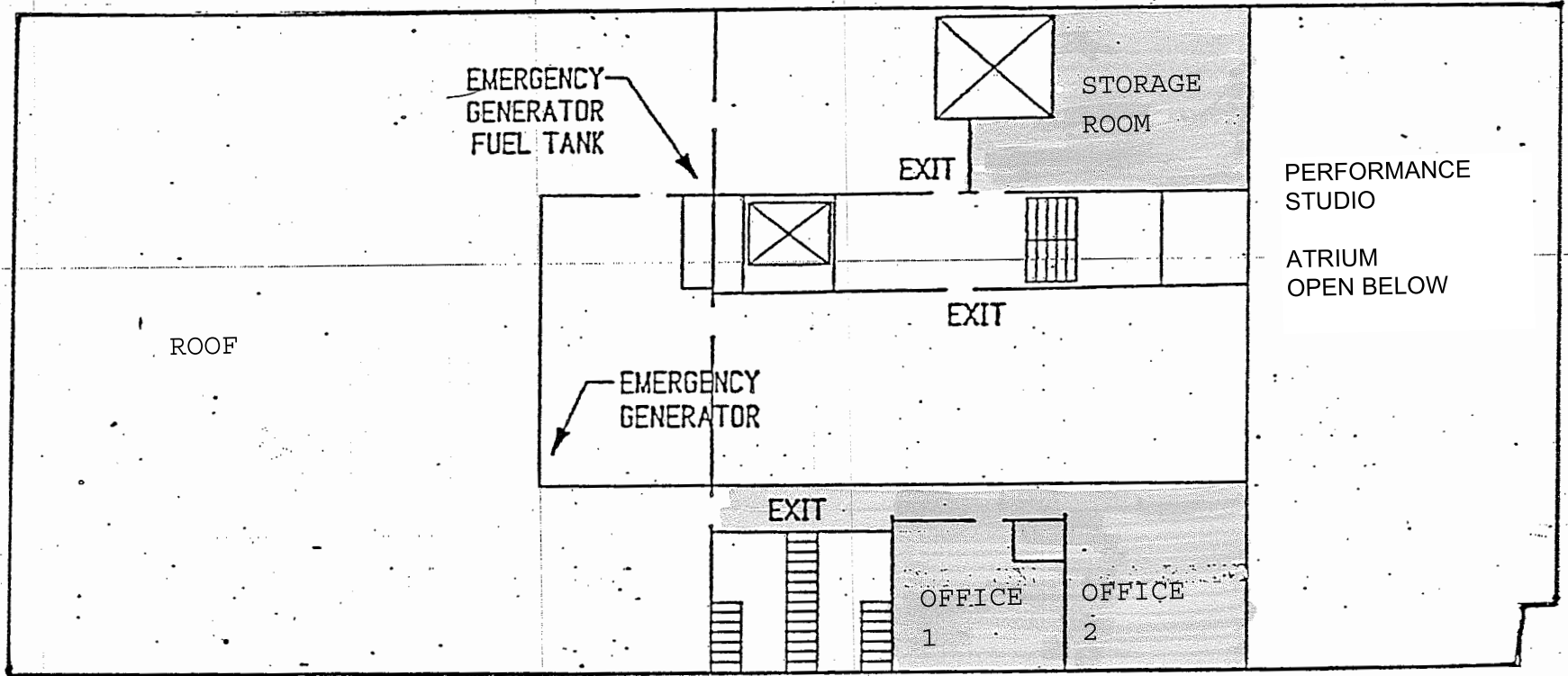


4TH FLOOR

1245 CHAMPA STREET

CITY AND COUNTY OF DENVER
OFFICE BUILDING

EXHIBIT A-3



PENTHOUSE