



CITY OF KIRKLAND
Department of Public Works
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Lynn Zwaagstra, Parks & Community Services Director
John Lloyd, Parks & Community Services Deputy Director
Linda Murphy, Parks & Community Services Recreation Manager

Date: April 17, 2018

Subject: Kirkland Performance Center Use and Occupancy Agreement

RECOMMENDATION:

It is recommended that City Council receive a summary report on negotiations between City staff and the Kirkland Performance Center ("KPC") on the proposed extension of the Use and Occupancy Agreement ("Agreement"). Following this report, it is recommended that City Council adopt a resolution to approve the updated Agreement.

BACKGROUND DISCUSSION:

The City initially entered into a 10-year Agreement (**Attachment A**) with the KPC in 1997 with options to renew following the initial term. The Agreement was renewed in 2008 through Resolution 4747 (**Attachment B**). The present Agreement expires June 30, 2018. In accordance with the Agreement's notice provisions, KPC staff notified the City in December of 2016 of their desire to renew the Agreement. In the fall of 2017, City staff consulted with Councilmembers to determine the desired terms and conditions of an extended Agreement. Beginning in December 2017, City staff has been working with Jeff Lockhart, KPC Director and other KPC staff and KPC Boardmembers, to incorporate those terms and conditions into a new 10-year Agreement term. Those efforts have resulted in the proposed extended Agreement, Exhibit A to the resolution.

HISTORY:

The City has a long history of partnering with the KPC dating back to the very early concepts of having a performing arts center in Kirkland. A brief overview of the timeline progression is provided below.

- In 1993, the City Council passed Resolution R-3815 (**Attachment C**), which committed the City to renovate an old library to a theater that would be leased and operated by a non-profit Kirkland Performing Arts Center. This resolution also pledged \$500,000 in City funding towards the renovation.

- In 1998, the City entered into its first agreement regarding the Use and Occupancy of the Performing Arts Center (KPC) through the adoption of Resolution R-4079 (**Attachment A**). The initial term was for ten years with the option for three additional 10-year terms.
- In 2008, through Resolution R- 4747 (**Attachment B**), the City entered into its present Agreement, including its term with KPC that will expire on June 30, 2018. The Agreement has options to extend the agreement for two additional consecutive terms of 10 years.
- In 2013, by Resolution R-4974 (**Attachment D**), the Council amended the present Agreement to extend the Admission Tax rebate for an additional five years, also set to expire June 30, 2018.
- In 2017, the City received an audited Generally Accepted Accounting Principles (GAAP) finance report from KPC (**Attachment E**), as required in the Agreement referenced in Resolution 4747.

FINANCIAL SUPPORT:

Since 1998, the City has provided support to the KPC as both the facility owner and landlord. This includes \$500,000 towards the initial facility renovation, operational maintenance, capital maintenance, admissions tax rebate, gratis rent, limited use of the Peter Kirk Community Center lobby, and annual grants. Including the 2018 estimated budget, the City has funded approximately \$2.5 million dollars in the last 20 years. A summary of this is shown below. Further details of the City's financial support of the KPC can be found in **Attachment F**. Please note that the figures do not recognize the gratis rental fees.

- Operational Maintenance \$296,064
- Capital Maintenance Repairs \$530,652
- Admissions Tax Rebate \$672,814
- Tourism Grants From Lodging fund \$181,000
- Outside Agency Contributions \$761,000
- Misc. Grants for One Time Events \$7,698

UPDATED LEASE TERMS:

The terms and conditions of the agreement are very similar to the current Agreement. Below are the amendments being proposed to the current Agreement:

- Article 3.1 & 3.2 updates -- Effective date July 2018, expiration date June 2028
- Article 7.1 - Admission Tax rebate will be reviewed for reauthorization every five years
- Article 8.1 - KPC will strive to keep a minimum \$200,000 in operating reserves
- Article 8.4 – Financial reporting:
 - KPC will provide a financial report annually every September
 - Bi-annually, in odd years beginning in 2019, the report shall include a financial statement audited by an independent certified public accounting firm for the previous two years period, prepared in accordance with GAAP

- Article 8.5 (New) – The City requests the completion of a business plan within two years after the start date of the Agreement, to be updated periodically as market conditions changes
- Article 12.1- Maintenance
 - Added: City will coordinate routine meetings with KPC to discuss and schedule future up-and-coming maintenance
 - 12.1.1- The City shall strive to coordinate maintenance work with KPC so as to not to interfere with KPC's operations. At a minimum, the City shall give KPC at least twenty-four hour notice; provided, however, that such maintenance and repair work shall not unduly interfere with the use of the premises for the presentation of the performing arts. In the event of an emergency, however, no such notice shall be required.
- Article 27.1 – Updated contact information to reflect current staff

Attachment A: Resolution 4079

Attachment B: Resolution 4747

Attachment C: Resolution 3815

Attachment D: Resolution 4974

Attachment E: Kirkland Performance Center, Financial Statement for year end 2016

Attachment F: City of Kirkland contributions to Kirkland Performance Center 1998-2018

RESOLUTION NO. 4079

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE ATTACHED AGREEMENT BETWEEN THE KIRKLAND PERFORMANCE CENTER AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER.

WHEREAS, the City of Kirkland is interested in the artistic and cultural development of the city and its residents; and

WHEREAS, the Kirkland Performance Center ("KPC") is organized for the express purpose of operating a performing arts center; and

WHEREAS, both parties agree that the performing arts center will provide an essential venue for the presentation of public entertainment and cultural events, and thereby fulfill an important public purpose; and

WHEREAS, both parties agree that it would be in the best interests of the City, as Landlord, and KPC, as Tenant, for KPC to lease and have exclusive operational control of the new performing arts center, reserving the right of the City to use the new performing arts center; and

WHEREAS, both parties agree that it would be in the best interests of the City and KPC for KPC to have total artistic and content control of performances at the new performing arts center; and


WHEREAS, both parties intend that KPC operate the performing arts center in a manner consistent with the important public purpose of presenting public entertainment and cultural events; and

WHEREAS, both parties desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the facility;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland that the City Manager is hereby authorized on behalf of the City of Kirkland to sign and execute the attached agreement between the parties, entitled "AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE KIRKLAND PERFORMANCE CENTER REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER."


PASSED by majority vote of the Kirkland City Council on the 27 day of May, 1997.

SIGNED in authentication thereof on the 27 day of May, 1997.



Mayor

ATTEST:



City Clerk

**AGREEMENT
BETWEEN
THE CITY OF KIRKLAND
AND
THE KIRKLAND PERFORMANCE CENTER
REGARDING THE
USE AND OCCUPANCY OF
THE PERFORMING ARTS CENTER**

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**AGREEMENT
BETWEEN
THE CITY OF KIRKLAND
AND
THE KIRKLAND PERFORMANCE CENTER
REGARDING THE
USE AND OCCUPANCY
OF THE PERFORMING ARTS CENTER**

THIS USE AND OCCUPANCY AGREEMENT is dated as of _____, 1997, and entered into by and between the CITY OF KIRKLAND (hereinafter referred to as the "City"), a Washington municipal corporation, and the KIRKLAND PERFORMANCE CENTER (hereinafter referred to as "KPC"), a Washington non-profit corporation.

WHEREAS, the City is interested in the artistic and cultural development of the City and its residents;

WHEREAS, KPC is organized for an express purpose of operating a performing arts center;

WHEREAS, the City and KPC each will make investments in the renovation of a building (hereinafter referred to as the "old library"), into a performing arts center;

WHEREAS, the old library is owned by the City and is situated upon its real property in King County, Washington, legally described in Exhibit 1 to the Memorandum of Lease attached hereto and incorporated herein by this reference (hereto the "Premises");

WHEREAS, the City and KPC cooperated in the development and construction of the performing arts center;

WHEREAS, the City is making the old library available for the performing arts center, and will spend City funds to renovate the old library;

WHEREAS, KPC contributed or otherwise made available to the City funds equal to the difference between the total cost of the performing arts center and the sum of money spent by the City to renovate the old library;

WHEREAS, both parties agree that the performing arts center will provide an essential venue for the presentation of public entertainment and cultural events, and thereby fulfill an important public purpose;

WHEREAS, both parties agree that it would be in the best interests of the City, as Landlord, and KPC, as Tenant, for KPC to lease and have exclusive operational control of the

new performing arts center, and subject to the terms of this Agreement, reserving the right of the City to use the new performing arts center;

WHEREAS, both parties agree that it would be in the best interests of the City and KPC for KPC to have total artistic and content control of performances at the new performing arts center;

WHEREAS, both parties intend that KPC operate the performing arts center in a manner consistent with the important public purpose of presenting public entertainment and cultural events; and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the new performing arts center;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and as a direct benefit to the City, the parties agree as follows:

I. DEFINITIONS.

All words in this Agreement bearing initial capitals, other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the Design and Construction Agreement as set forth below. Any sums set forth below are subject to modification by a written amendment to this Agreement in the form attached as Exhibit C. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

A. Agreement means this Use and Occupancy Agreement, as from time to time amended in accordance with the terms hereof.

B. Approval means the prior written consent of a party hereto or designated representatives thereof, including the Project Management Committee.

C. Architect means the person or entity awarded the contract for design of the Facility.

D. Architect Agreement means the agreement entered into between the City and the Architect for design of the Facility.

E. Cash Equivalents means funds of KPC which have been invested in financial instruments or investment funds that have maturity dates which are convertible to cash on demand (with or without penalties for early withdrawal).

F. City means the City of Kirkland.

G. City's Share of Total Design and Construction Costs or City's Share means the sum of Nine Hundred Twenty-Five Thousand Dollars (\$925,000), to be used solely for actual construction and renovation costs.

H. City Manager means the City Manager of the City of Kirkland, or his or her designee.

I. Construction Contractor means the person or entity awarded the contract for construction of the Facility pursuant to the bidding procedures described in this Agreement.

J. Construction Contract means the agreement to be entered between the City and the Construction Contractor for construction of the Facility.

K. Design means the phase of the Project during which the form, functions, materials, and method of construction of the Facility is established through graphic and written means; also the graphic and written description of the Facility including the instructions to be followed by the Construction Contractor to construct the Facility.

L. Design and Construction Contingency Fund means an amount equal to at least ten percent (10%) of the Construction Contract and, once actual construction begins, an amount as determined by the Project Management Committee.

M. Facility means the performing arts center to be developed pursuant to this Agreement.

N. Kirkland Performance Center or KPC means the Kirkland Performance Center, a Washington non-profit corporation.

O. KPC's Share of Total Design and Construction Costs or KPC's Share means the difference between the Total Design and Construction Costs and the City's Share of Total Design and Construction Costs.

P. Letter of Credit means a single letter of credit in the amount of One Hundred Thousand Dollars (\$100,000) from a financial institution acceptable to the City to secure pledges from individuals.

Q. Project means all work related to the design and construction of the Facility.

R. Project Budget means the Project Budget attached as Exhibit B to the Design and Construction Agreement.

S. Project Management Committee means a six-member committee composed of three KPC appointees and three City appointees.

T. Project Manager means the Public Works Director of the City of Kirkland, or his designee.

U. Tenant Improvements means all property (such as equipment, fixtures and furnishings, whether the property is physically affixed to the Facility or not) which is used in the scheduling or presentation of events at the Facility, including, but not limited to, lighting, sound system, curtains, seating, carpeting, phone system, lift, piano, stage rigging, and computerized box office system. Tenant Improvements does not mean the structure and core of the Facility; HVAC, plumbing, electrical and mechanical systems; elevator; and stage.

V. Tenant Improvement Costs means \$628,552 needed to acquire Tenant Improvements. The term "Tenant Improvement Costs" does not and shall not include any legal fees, fund raising costs, or Total Design and Construction Costs incurred by KPC or the City in connection with the Project or otherwise.

W. Total Design and Construction Costs means \$2,994,482 needed to renovate the old library into a performing arts center. The term "Total Design and Construction Costs" includes the capital costs of design, bidding, construction, and renovation. The term "Total Design and Construction Costs" does not and shall not include any legal fees, fund raising costs, or Tenant Improvement Costs incurred by KPC or the City in connection with the Project or otherwise.

X. Use and Occupancy Agreement means the Use and Occupancy Agreement to be executed prior to the award of the Construction Contract.

II. LEASE AND DESCRIPTION OF PREMISES.

The City, as Landlord, hereby leases to KPC, and KPC, as Tenant, hereby leases from the City, subject to the terms and conditions hereof, the Premises, including the performing arts center developed pursuant to the "Agreement Between the City of Kirkland and the Kirkland Performance Center Regarding the Design and Construction of a Performing Arts Center" (the "Design and Construction Agreement").

III. TERM OF AGREEMENT.

A. Effective Date of Agreement. This Agreement shall be effective upon the last to occur of the following items (the "Commencement Date"):

1. The City Council's approval of KPC's proposed Business Plan and Operating Budget, including the costs of maintenance and operation of the performing arts center, and the costs of a development professional to raise funds (exclusive of promotional materials or additional printing costs) for the use and operation of the performing arts center;

2. The City Council's satisfaction that KPC has sufficient ability to meet the requirements of KPC's Business Plan and for ongoing operational costs;

3. The City Council's satisfaction that KPC has a total of Two Hundred Thousand Dollars (\$200,000) in cash net of any outstanding liabilities to establish the Operating Reserve as described in the Design and Construction Agreement, which shall be held in a segregated account and which shall require KPC Board approval for disbursements; and

4. The City's issuance of a Certificate of Occupancy for the renovated structure.

B. Initial Term. The Initial Term of this Agreement shall expire ten (10) years after the Commencement Date, unless terminated earlier pursuant to the provisions hereof.

C. Option for Extension of Term. KPC may extend the term of this Agreement for three (3) additional consecutive terms of ten (10) years; provided that, at the end of the initial term, and every five (5) years thereafter, the parties have the option to renegotiate the amount of annual rent and other terms and conditions (except KPC retention of total artistic control of performances) of this Agreement. If the parties fail to agree on a satisfactory amount of annual rent or other terms and conditions of this Agreement, the parties agree to use non-binding mediation before the City may terminate this Agreement. If the parties fail to agree on annual rent or other terms and conditions of this Agreement through mediation, the City may terminate this Agreement.

Not later than six (6) months before the expiration of this Agreement, the City shall notify KPC of the City's exercise of its option to renegotiate the amount of annual rent, and other terms and conditions of this Agreement.

Not later than one (1) year before the expiration of this Agreement, KPC shall notify the City of KPC's exercise of its option to extend the initial term of this Agreement and of each extension. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than KPC.

D. Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the City may terminate this Agreement. Upon no less than one (1) year's notice to the City, KPC may terminate this Agreement. In the event that this Agreement is terminated, KPC shall surrender the Premises to the City. The City shall not owe KPC any "refund" or other compensation for contributions made by KPC for the design and construction of the performing arts center, or tenant improvements to the performing arts center.

IV. AUTHORIZED USE OF PREMISES.

KPC shall have exclusive possession and operational control of the Premises, subject to the terms of this Agreement reserving the right of the City to use the new performing arts center. KPC shall also have total artistic control of performances, also subject to the terms of this Agreement. KPC shall use the Premises for the presentation of performing arts, as well as for meetings of KPC Board members, staff, and other personnel directly associated with KPC, KPC

classes and other KPC educational programs, presentations, KPC fund-raising endeavors, rehearsals, and other related activities, KPC offices, and such other activities as are incidental to the foregoing. KPC shall also use the Premises to actively encourage and provide for youth experiences with the performing arts. KPC may use the Premises for business and community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the priority use of the Premises for the presentation of performing arts. KPC may use the Premises to engage in concession and catering activity only as provided in this Agreement. KPC may use the Premises for additional purposes with the prior written approval of the City Manager.

V. CITY USE.

A. The City reserves the right to use the Premises with the exception of KPC's Administrative Offices up to seven (7) days per year on a space available basis. These "City use" dates must be reserved more than sixty (60) days in advance of the use date, and shall not compete with dates requested by KPC rental customers. The City also reserves the right to use the Premises on additional days on a space available basis. These "additional City use" dates may not be reserved more than sixty (60) days in advance of the use date and shall not compete with dates requested by KPC rental customers.

B. The City shall be allowed to use the Premises without rental charge, but shall pay operational expenses arising from its use of the Premises including, but not limited to, extra staffing or janitorial services.

VI. RENT.

In consideration of the value of KPC's contribution to development of the performing arts center, the value of KPC's tenant improvements to the performing arts center, the value of KPC's maintenance and operation of the Premises, the value of KPC's payments of all utility charges, and subject to the terms and conditions of this Agreement, KPC hereby covenants to and shall pay no rent for the Premises during the initial term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Section III.C. of this Agreement.

VII. ADMISSIONS TAXES.

A. The City agrees to dedicate to KPC one hundred percent (100%) of the admissions taxes generated from facility events to support the public purposes served by the facility for the first five (5) years of operation.

B. The City agrees to pay to KPC such admissions taxes within thirty (30) days of receipt; provided, however, that KPC must pay to the City such admissions taxes in accordance with applicable provisions of the Kirkland Municipal Code and State law.

VIII. RESERVE, RECORD KEEPING AND REPORTING.

A. KPC shall replenish the Operating Reserve according to a schedule determined by KPC and the City whenever the Operating Reserve is less than Two Hundred Thousand Dollars (\$200,000).

B. The City shall appoint a liaison between the City and KPC who will ensure compliance with all record keeping and reporting requirements set forth in this section.

C. KPC shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles ("GAAP") consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by KPC under the Design and Construction Agreement, and this Agreement.

D. KPC shall provide bi-monthly reports in the first twelve (12) months of operation and quarterly reports thereafter, on a schedule and in a form acceptable to the City. The reports shall include, at a minimum, unaudited financial statements (balance sheet and income and cash flow statements depicting performance against budget), profit and loss statements, box office statements (statements depicting ticket sales, admissions taxes collected, service charges, and average ticket prices), projected bookings, and fund development progress.

E. KPC shall provide an annual report, by a date to be mutually determined, to the City. The annual report shall include a budget for the forthcoming year that provides adequate funding for maintenance and operations, including funding for reserves and a development professional. The annual report shall also include a financial statement audited by an independent certified public accounting firm, and prepared in accordance with sound accounting procedures consistently applied. The annual report shall summarize KPC's activities and status.

IX. IMPROVEMENTS, ALTERATIONS AND ADDITIONS TO THE PREMISES.

A. Tenant Improvements. KPC may make Tenant Improvements to the Premises with the consent of the Project Management Committee in accordance with the Design and Construction Agreement. If an Event of Default occurs, if KPC fails to perform its duties under this Agreement, or if this Agreement expires, terminates, or is otherwise not renewed, all KPC-provided or owned Tenant Improvements on the Premises shall remain in place and shall automatically and without further notice or act by the City and without compensation to KPC become the property of the City.

B. Other Improvements, Alterations and Additions. KPC shall not alter any structural features of the Premises without City approval. KPC, at its sole expense, may redecorate any interior surface of walls, ceilings, windows and doors.

C. Waiver of Artistic Rights. In the event that KPC installs an art work in the Premises that will incorporate such work into the Premises in such a way that removing such work may subject it to destruction, distortion, mutilation or other modification, KPC shall require the artist to waive any rights under federal or state law (including without limitation the Visual Artists Rights Act and the New York Arts and Cultural Affairs Law) with respect to the consequences of removing all or part of such work from the Premises. The waiver must be in writing, be signed by the City, KPC and the artist, be approved as to form by the City Attorney, and be recorded. The waiver must specifically identify the art work and the uses to which it applies.

X. ACCEPTANCE OF PREMISES.

Prior to entering into and occupying the Premises, KPC shall have an opportunity to inspect the Premises to ensure consistency with the Project Design, as approved by the KPC Board and the City Council and as modified in the course of construction. Thereafter, by entering into and occupying the Premises, or any portion thereof, KPC accepts the same in their condition as of the date of the filing of the Certificate of Occupancy. KPC, covenants that no representation, statement or warranty, express or implied, has been made by or on behalf of the City with respect to the condition of the Premises or the use that may be made of the Premises, except as may be contained in this Agreement or as is provided for in the Design and Construction Agreement. Nothing contained in the foregoing sentence shall be construed to waive any rights of KPC under the Design and Construction Agreement. Nothing contained in this section shall be construed to be made for the benefit of any party other than the City or waive any KPC rights with respect to such third parties.

XI. QUIET ENJOYMENT.

The City covenants that it holds legal title to the Premises, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, if any, such mortgage or mortgages as are permitted by the terms of this Agreement, zoning ordinances and other building and fire ordinances and government regulations relating to the use of such property, and easements, restrictions and other conditions of record. The City represents and warrants that it has full right and authority to enter into this Agreement and that KPC, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have, hold and enjoy the Premises for the term of this Agreement, including, but not limited to, the scheduling of KPC performances and events, management of operations, or selection of productions, employees and agents without hindrance or interference from the City, subject to the terms and provisions of this Agreement.

XII. HAZARDOUS SUBSTANCES.

KPC shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Premises, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders. The term "Hazardous Materials"

refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. KPC shall indemnify, defend and hold the City harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("remedial work") required by, or incurred by the City or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during the term of this Agreement. The City shall indemnify, defend and hold KPC harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("remedial work") required by, or incurred by KPC or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during a time other than the term of this Agreement. If any remedial work is so required under any applicable federal, state or local law during the term of this Agreement, KPC shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by KPC and approved in advance in writing by the City. If KPC does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, the City may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Agreement.

XIII. MAINTENANCE; CLEANING; REPAIR; AND UTILITIES.

A. City. The City is responsible for maintenance and repair of the structural components of the performing arts center which shall include the roof, the exterior walls, the foundation, the HVAC system, and the elevator. The City is also responsible for maintenance which is necessary for the structural integrity of the performing arts center, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. The City is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided that, if KPC wants special plantings or landscaping and landscape maintenance that exceed City standards, KPC will be responsible for and will pay for such plantings or features. The City is also responsible for and will pay for maintenance of the parking lot that meets City standards.

Before entering the Premises to undertake maintenance and repair work, the City shall give KPC at least twenty-four (24) hours notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the Premises for the presentation of performing arts. In the event of an emergency, however, no such notice shall be required.

B. KPC. KPC is responsible for maintenance and repair of the interior of the performing arts center which shall include tenant improvements, audio/visual systems, sound system, telephone equipment, lighting and plumbing fixtures and appliances. KPC's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. KPC's janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning, repair, or replacement of seating, curtains, carpets, flooring, and faucets; cleaning windows and walls; and servicing of audience areas and restrooms. KPC shall pay to the City an amount that provides for an annual service contract for preventative maintenance on the elevator. KPC shall timely pay all utility charges for utility service to the Premises including, but not limited to, electricity, water, storm water, sewer, garbage, and telephone.

XIV. INDEMNIFICATION.

The City shall not be liable to KPC or KPC's employees, agents, guests, invitees or visitors, or to any other person for any injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the negligence or misconduct of KPC, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the building and improvements located on the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause except injury to persons or damages to property solely caused by the gross negligence of the City or breach of this Agreement.

XV. INSURANCE.

A. The City shall maintain insurance covering the building of which the Premises are a part in an amount equal to its replacement cost, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverages and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State of Washington for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state. Subject to the terms of this Agreement, such insurance shall be for the sole benefit of the City and under its sole control.

B. KPC shall notify the City immediately after a casualty occurs to the Premises or the building. (1) If the building is totally destroyed by fire or other casualty, (2) if the casualty is not insured, (3) if the cost of restoration would exceed the total Insurance proceeds and KPC's available funds, including the Operating Reserve, provided that KPC replenishes the Operating Reserve in accordance with Section VIII.A of this Agreement, or (4) if rebuilding or repairs cannot in the City's estimation be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage, then this Agreement shall terminate effective upon the date of the occurrence of such damage. The City shall give notice to KPC in

writing of its determination to terminate this Agreement within ninety (90) days following the date of the occurrence of such damage.

C. If the building is damaged by any peril covered by the Insurance to be provided by the City, but only to such extent that rebuilding or repairs can in the City's estimation be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage, this Agreement shall not terminate, and the City shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such building to substantially the condition in which it existed prior to such damage, except that the City shall not be required to rebuild, repair or replace any part of the partition, fixtures, additions and other improvements which may have been placed in, or about the Premises by KPC. If the building is subsequently damaged while the City is rebuilding and repairing the building, the City shall estimate whether rebuilding or repairs can be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such subsequent damage. If the Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If the City does not complete such repairs and rebuilding within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage or such subsequent damage, as appropriate, KPC may at its option terminate this Agreement by delivering written notice of termination to the City within three hundred ninety-five (395) days after the date of the notice of the damage or the subsequent damage, as appropriate, as KPC's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

D. Notwithstanding anything in this Agreement to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then the City shall have the right to terminate this Agreement by delivering written notice of termination to KPC within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations under this Agreement shall cease and terminate.

E. KPC shall, during the Term and any other period of occupancy, at its sole cost and expense, keep in full force and effect the following insurance:

1. Comprehensive General Liability Insurance insuring KPC against any liability arising out of lease, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than Five Million Dollars (\$5,000,000) Combined Single Limit for injury to, or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence. The policy shall insure the hazards of Premises and operations, independent contractors, contractual liability (covering the indemnity contained in this Agreement) and shall (1) name the City as an additional insured, and (2) contain a provision that "the insurance provided the City hereunder shall be primary and non-contributing with any other insurance available to the City."

2. Any other forms of insurance and in such amounts as the City or any mortgagees of the City may reasonably require from time to time.

All policies shall be written in a form satisfactory to the City and shall be taken out with insurance companies holding a General Policyholders Rating of "A", as set forth in the most current issue of Bests Insurance Guide, and authorized to do business in the State of Washington. Within ten (10) days after the execution of this Agreement, KPC shall deliver to the City copies of binding commitments of insurers evidencing their intent to provide the amounts and forms of coverage satisfying to the City. Within ten (10) days after the Commencement Date, KPC shall deliver to the City copies of policies or certificates evidencing the existence of the amounts and forms of coverage satisfactory to the City. No policy shall be cancelable or reducible in coverage except after thirty (30) days prior written notice to the City. KPC shall at least ten (10) days before expiration of such policies, furnish the City with renewals or "binders" thereof, or the City may order such insurance and charge the cost thereof to KPC as additional rent.

F. Each party waives and releases claims arising in any manner in its (Injured Party's) favor and against the other party for loss or damage to Injured Party's property located within or constituting a part or all of the building. This waiver applies to the extent the loss or damage is covered by:

1. the Injured Party's insurance; or
2. the insurance the Injured Party is required to carry under this Agreement,

whichever is greater. This waiver and release extends to anyone claiming through or under a party as a result of a right of subrogation. This waiver and release does not apply to claims caused by a party's willful misconduct. Each party shall obtain from its insurance carrier a waiver of subrogation as a clause in or endorsement to its policy.

XVI. SIGNS.

The KPC may install signs on the exterior of the Premises, identifying the building as the Kirkland Performance Center or other mutually agreed upon name, and containing other information related to KPC, including without limitation, program information, fundraising information and special KPC announcements. The design, installation and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

XVII. ASSIGNMENT, SUBLEASE OR TRANSFER.

Obligations or rights of KPC under this Agreement may not be assigned, subleased, or otherwise transferred by KPC, without the prior written consent of the City, which consent may be withheld at the sole discretion of the City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an Event of Default. Any such assignment,

sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, KPC shall cause to be delivered to the City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

XVIII. CONCESSIONS AND CATERING ACTIVITY.

A. **Definitions.** As used in this section, unless the context clearly requires a different meaning,

1. "Concession and catering activity" means and includes the preparation, service, free distribution, or sale of food or any beverage, including any alcoholic beverage, or the free distribution or sale of any concession merchandise or service; and

2. "Concession merchandise or services" means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.

B. **Grant of Right.** The City grants to KPC the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one or more concessionaires to engage in such activity for and on the behalf of, or under the auspices of, KPC, at the Premises, subject to the terms of this Agreement. If KPC decides to retain any such concessionaire(s), KPC shall select such concessionaire(s). If KPC enters into any such agreement(s), KPC shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement.

C. **Right Not Effective During City Use Periods.** The concession and catering rights granted in this section shall not be effective during any period of time when the Premises are used by the City, unless by express request of the City, with the exception of the box office.

D. **Food Service Establishment Permit Required.** KPC, or any such concessionaire(s), shall ensure that all food offered for sale on or from the Premises has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle-King County Department of Public Health or its successor.

E. **Licenses and Permits Required; Contingent Expiration of Right.** KPC, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to the City, all licenses, permits and other authorization required in order to legally conduct the concession and catering activity contemplated herein. The City shall have no obligation to issue such licenses, permits, or other authorization. The City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of KPC, or any such concessionaire(s), to secure or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein.

XIX. COMPLIANCE WITH LAW.

A. Lawful Use. KPC and the City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between the City and KPC.

B. Licenses and Similar Authorizations. KPC, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. The City shall have no obligation to issue such licenses, permits, or authorizations. The City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.

C. Taxes. KPC shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Premises pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on KPC property, equipment, and improvements on the Premises; taxes on KPC's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A, if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from KPC's use or occupancy of the Premises or the conduct of any activity subject to tax, or the State withholds funds due to the City to enforce collection of leasehold excise or any other tax, KPC, at its sole expense, shall contest such action and indemnify the City for all sums expended by or withheld by the State from the City in connection with such taxation; provided, that KPC may pay any such tax in lieu of contesting it or indemnifying the City. The City shall pay and shall indemnify and hold KPC harmless for all taxes imposed, that relate to City sponsored events at the Premises (except for taxes imposed on concession sales by KPC or for KPC's benefit), and for all taxes that may be imposed on KPC or KPC use of the Premises resulting from any City use under this Agreement.

D. Attendance and Safety Standards. The Kirkland Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Premises. KPC shall not sell or issue tickets or credentials for admission to the Premises in an aggregate number that exceeds the Kirkland Fire Chief's determined number. KPC shall not admit to the Premises more people than the number so determined by the Kirkland Fire Chief. KPC shall not permit any chair or movable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Premises shall not be obstructed by KPC or used for any purpose other than for ingress and egress to the Premises for persons or property. The City shall be responsible for

assuring compliance with each of the foregoing requirements during periods of City use of the Premises under this Agreement.

E. Nondiscrimination. KPC shall not deny or substantially impair any person's receipt of services, permission to use premises, or benefits offered by virtue of this Agreement on the grounds of race, color, sexual orientation, nationality, sensory, mental or physical handicap, or sex. KPC shall not discriminate against any employee or applicant for employment in connection with this Agreement because of age, sex, marital status, race, creed, color, sexual orientation, nationality, or the presence of any sensory, mental or physical handicap, except where there is a bona fide occupational limitation.

F. Americans With Disabilities Act. KPC shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, including without limitation Title III of the Americans With Disabilities Act.

G. Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

XX. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS.

KPC shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Premises. The City shall be responsible for all similar royalties, license fees and other charges in connection with the City's use of the Premises.

XXI. LIENS AND ENCUMBRANCES

KPC shall keep the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances. Notwithstanding the foregoing, KPC may finance up to \$20,000 of the total costs of the Tenant Improvements. At the City's request, KPC shall furnish the City written proof of payment of any items that would or might constitute the basis for such a lien on the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements if not paid.

XXII. DEFAULT.

A. Default. The following events shall constitute a default and material breach of this Agreement:

1. The failure to comply with any of the terms of this Agreement regarding insurance;
2. The material violation of any law, ordinance, rule, or regulation which, after notice and reasonable time to cure, remains uncured;

3. The abandonment or vacating of the Premises for a period of twenty (20) days or more;

4. The absence of any KPC-scheduled performing arts event for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which the City is responsible;

5. The failure to pay any sum of money due to the City within thirty (30) days after notice from the City that such a payment is overdue;

6. The dissolution of KPC or the merger of KPC with another entity without the prior written approval of the City;

7. The assignment or transfer of this Agreement without the prior written consent of the City as described in Section XVII of this Agreement; and

8. The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.

B. Extension of Period to Remedy Default. Neither the City nor KPC shall be in default unless such party fails to perform an obligation required of it within thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

XXIII. REMEDIES UPON DEFAULT AND MATERIAL BREACH.

Upon the occurrence of any Event of Default by KPC, the City shall have the option to pursue any one or more of the following remedies without notice or demand.

A. Accelerate all rent payments under this Agreement which shall then become immediately due and payable.

B. Terminate this Agreement, in which event KPC shall immediately surrender the Premises to the City, and if KPC fails so to do, the City may, without prejudice to any other remedy it may have for possession or unpaid rent, enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and KPC agrees to pay to the City on demand the amount of all loss and damage the City

may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

C. Enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and relet the Premises for such terms ending before, on or after the expiration date of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as the City in its sole discretion may determine, and receive the rent therefor; and KPC agrees to pay to the City on demand any deficiency that may arise by reason of such reletting. The City shall have no obligation to relet the Premises or any part thereof and shall not be liable for refusal or failure to relet or in the event of reletting for refusal or failure to collect any rent due upon such reletting. If the City is successful in reletting the Premises at a rental in excess of that agreed to be paid by KPC pursuant to the terms of this Agreement, the City and KPC each mutually agree that KPC shall not be entitled, under any circumstances, to the excess rental, and KPC specifically waives any claim to the excess rental.

D. Enter upon the Premises, and do whatever KPC is obligated to do under the terms of this Agreement. KPC agrees to reimburse the City on demand for any expenses which the City may incur in thus effecting compliance with KPC's obligations under this Agreement, and KPC further agrees that the City shall not be liable for any damages resulting to the KPC from such action, whether caused by the negligence of the City or otherwise.

E. Whether or not the City retakes possession or relets the Premises, the City shall have the right to recover unpaid rent and all damages caused by KPC's default, including attorney's fees. Damage shall include, without limitation: all rentals lost, all legal expenses and other related costs incurred by the City following KPC's default, all costs incurred by the City in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting the Premises for a comparable use, all costs (including without limitation any brokerage commissions and the value of the City's time) incurred by the City, plus interest thereon from the date of expenditure until fully repaid at the rate of eighteen percent (18%) per year.

F. If KPC does not pay any installment of rent, additional rent or other charges owed the City under this Agreement as and when due, to help defray the additional cost to the City for processing late payments KPC shall pay to the City on demand a late charge in an amount equal to five percent (5%) of the payment. The late charge shall be in addition to all of the City's other rights and remedies under this Agreement or at law and shall not be construed as liquidated damages or as limiting the City's remedies in any manner.

G. Pursuit of one remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due the City or of any damages accruing to the City by reason of KPC's breach of this Agreement. No act or thing done by the City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Premises. No agreement to terminate this Agreement or accept a surrender of said Premises shall be valid unless in writing signed by the City. No waiver by the City of any

violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. The City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by the City to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of the City's right to enforce any remedies with respect to such default or any subsequent default.

H. If the City employs the services of an attorney in connection with an event of default by KPC under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its attorneys fees and costs.

XXIV. SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

A. Surrender of Premises. Upon termination or expiration of this Agreement, KPC shall surrender to City the Premises and all keys therefor.

B. Conditions of Premises Upon Surrender. The Premises to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by KPC, except for the effects of improvements, additions, alterations, and repairs made with the concurrence of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear; and acts of God.

C. Removal of Property. Prior to the expiration of this Agreement, or within sixty (60) days after termination in the event of an earlier termination of this Agreement, KPC shall remove from the Premises, at no cost or expense to City, all personal property owned and placed in or on the Premises by KPC, its agents, invitees, employees, contractors or successors. In removing such personal property, KPC shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by KPC to the City Manager's reasonable satisfaction, at KPC's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period.

XXV. NO WAIVERS.

No action other than a written document by the City Manager or the KPC Board President specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

XXVI. REMEDIES CUMULATIVE.

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude or waive the right to use another.

XXVII. OBLIGATION OF KPC LIMITED TO CORPORATION.

Any and all obligations of KPC under this Agreement are enforceable only against Kirkland Performance Center, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon KPC's officers, directors, trustees, members, employees, or agents.

XXVIII. ADDRESSES.

Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Anne Pflug
Interim City Manager
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033-6189

and to KPC at the following address:

Steve Lorian
Executive Director
Kirkland Performance Center
350 Kirkland Avenue
Kirkland, Washington 98033

Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

XXIX. TITLES OF SECTIONS.

The titles of sections and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any section.

XXX. AMENDMENTS.

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

XXXI. DISPUTE RESOLUTION.

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the KPC President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by the KPC President, and a third member selected by the first two. The City shall pay any costs or fees associated with the member it selects. KPC shall pay any costs or fees associated with the member it selects. The City and KPC shall each pay one half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice. The decision of the Resolution Panel will be announced within ten (10) City business days and it will be given a legal presumption of correctness as to whether the complained of commission or omission, if continued, would constitute breach of the terms of this Agreement.

XXXII. MEMORANDUM OF LEASE.

The City agrees to execute and deliver to KPC a Memorandum of Lease in the form attached as Exhibit B simultaneously with the execution of this Agreement. KPC may, at its expense, record the Memorandum of Lease in the real estate records of King County, Washington.

XXXIII. ENTIRE AGREEMENT.

The parties hereto acknowledge that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all of the exhibits attached hereto, embodies the entire Agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties regarding the Premises except as expressly referenced herein.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement by affixing their signatures in the spaces below.

DATED this ____ day of _____, 1997.

KIRKLAND PERFORMANCE CENTER

By: _____
Steve Lerian
Executive Director

By: _____
William C. Woods
President, Board of Directors

THE CITY OF KIRKLAND

By: _____
Anne Pflug
Interim City Manager

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EXHIBITS

- | | |
|-----------|---------------------------------------|
| Exhibit A | Detailed Drawings Describing Premises |
| Exhibit B | Memorandum of Lease |
| Exhibit C | Form of Amendment |

EXHIBIT A

DETAILED DRAWINGS DESCRIBING PREMISES

EXHIBIT B

MEMORANDUM OF LEASE

This Memorandum of Lease Agreement is made between the City of Kirkland ("Landlord") and Kirkland Performance Center ("Tenant").

1. Premises. Landlord hereby leases to Tenant upon the terms and conditions of the Use and Occupancy Agreement executed this date by and between Landlord and Tenant (the "Use and Occupancy Agreement") the performing arts center located on the real property legally described in Exhibit 1 attached hereto, situated in King County, Washington (the "Leased Premises"). This Memorandum of Lease Agreement is prepared solely for the purpose of recordation with the clerk and in the public records of King County, Washington; it in no way modifies the Use and Occupancy Agreement.

2. Term. The Term of this Memorandum of Lease Agreement shall be for ten (10) years, with certain extension rights on the part of Tenant as more fully stated in the Use and Occupancy Agreement.

3. Limitations on Assignment. The Use and Occupancy Agreement contains limitations on assignment or transfer of the Tenant's interest or portions thereof in and to the Use and Occupancy Agreement and the real property which is the subject thereof.

4. Terms. Capitalized terms not defined in this Memorandum of Lease Agreement shall have the meaning ascribed to them in the Use and Occupancy Agreement.

5. Other Provisions. All terms and conditions of the Use and Occupancy Agreement are incorporated herein as though the same were set forth in full but are not included in this summary as its sole purpose is for recordation and notice of the interest of Tenant in the real property described herein.

6. Date. This Memorandum of Lease Agreement is made _____, 1997.

LANDLORD:

The City of Kirkland

TENANT:

Kirkland Performance Center,
a Washington nonprofit corporation

By: _____

Steve Lerian
Executive Director

By: _____

Anne Pflug
Interim City Manager

By: _____

William C. Woods
Chair, Board of Directors

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Steve Lerian and William C. Woods signed this instrument, on oath stated that they were authorized to execute this instrument and, as the respective Executive Director and President of the Board of Directors, of the Kirkland Performance Center, acknowledged it to be the free and voluntary this instrument.

DATED: _____

Notary Public in and for the State of
Washington, residing at _____

Print Name: _____

My Appointment Expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Anne Pflug signed this instrument, on oath stated that she was the Interim City Manager of the City of Kirkland and was authorized to execute this instrument for said municipal corporation, and, acknowledged that such action was the free and voluntary act of the City for the uses and purposes mentioned in this instrument.

DATED: _____

Notary Public in and for the State of
Washington, residing at _____
Print Name: _____
My Appointment Expires: _____

**EXHIBIT 1
TO
MEMORANDUM OF LEASE**

Legal Description: Kirkland Performance Center

A portion of S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 5, Twp. 25 North, Range 5 E.W.M. described as follows: Beginning at a point in the south line of Section 5, Twp. 25 North, Range 5 E.W.M., N. 89°39' E. 1511.50 ft. from the meander corner between Section 5 and 8, said point being the south-easterly corner of Kirkland Recreation Field and running thence S. 89°39' W. 84.12 ft., thence N. 0°31'40" W. 265.23 ft. along existing fence, thence continuing along the existing fence N. 30°23' W. 243.22 ft., thence N. 0°21' W. 56.0 ft., thence N. 89°39' E. 206.29 ft. to a point which bears N. 0°21' W. from the point of beginning being on the east line of said Kirkland Recreation Field, thence S. 0°21' E. 531.80 ft. to the point of beginning. Except therefrom the right-of-way of Kirkland-Redmond Short Line Road.

EXHIBIT C

FORM OF AMENDMENT

This Amendment to the Design and Construction Agreement executed on _____, 1996, and the Use and Occupancy Agreement executed on _____, 1997, is made between the City of Kirkland ("Landlord") and Kirkland Performance Center ("Tenant").

1. The following capitalized terms shall have the meanings set forth below.

a. City's Share of Total Design and Construction Costs or City's Share means the sum of _____ Dollars (\$ _____), to be used solely for actual construction and renovation costs.

b. Tenant Improvement Costs means the sum of _____ Dollars (\$ _____) needed to acquire Tenant Improvements. The term "Tenant Improvement Costs" does not and shall not include any legal fees, fund raising costs, or Total Design and Construction Costs incurred by KPC or the City in connection with the Project or otherwise.

c. Total Design and Construction Costs means the sum of _____ Dollars (\$ _____) needed to renovate the old library into a performing arts center. The term "Total Design and Construction Costs" includes the capital costs of design, bidding, construction, and renovation. The term "Total Design and Construction Costs" does not and shall not include any legal fees, fund raising costs, or Tenant Improvement Costs incurred by KPC or the City in connection with the Project or otherwise.

2. Date. This Amendment to the Design and Construction Agreement and the Use and Occupancy Agreement is made _____, 1997.

LANDLORD:

TENANT:

The City of Kirkland

Kirkland Performance Center,
a Washington nonprofit corporation

By: _____

Steve Lerian
Executive Director

By: _____

Anne Pflug
Interim City Manager

By: _____

William C. Woods
Chair, Board of Directors

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I certify that I know or have satisfactory evidence that Steve Lerian and William C. Woods signed this instrument, on oath stated that they were authorized to execute this instrument and, as the respective Executive Director and President of the Board of Directors, of the Kirkland Performance Center, acknowledged it to be the free and voluntary this instrument.

DATED: _____

Notary Public in and for the State of

Washington, residing at _____

Print Name: _____

My Appointment Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Anne Pflug signed this instrument, on oath stated that she was the Interim City Manager of the City of Kirkland and was authorized to execute this instrument for said municipal corporation, and, acknowledged that such action was the free and voluntary act of the City for the uses and purposes mentioned in this instrument.

DATED: _____

Notary Public in and for the State of
Washington, residing at _____
Print Name: _____
My Appointment Expires: _____

RESOLUTION R-4747

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT BETWEEN THE KIRKLAND PERFORMANCE CENTER AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER.

WHEREAS, support for the artistic and cultural development of the City of Kirkland and its residents fulfills an important public purpose; and

WHEREAS, the Kirkland Performance Center is organized for the express purpose of operating a performing arts center which promotes this artistic and cultural development; and

WHEREAS, both parties agree that the Performing Arts Center provides an essential venue for the presentation of such artistic and cultural events, and thereby fulfills this important public purpose; and

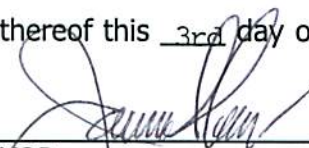
WHEREAS, both parties intend that the Kirkland Performance Center operate the Performing Arts Center in a manner consistent with this important public purpose.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City the agreement between the parties entitled "Agreement Between the City of Kirkland and the Kirkland Performance Center Regarding the Use and Occupancy of the Performing Arts Center" substantially similar to the Agreement attached hereto as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this 3rd day of March, 2009.

Signed in authentication thereof this 3rd day of March, 2009.



MAYOR

Attest:


City Clerk

**AGREEMENT
BETWEEN
THE CITY OF KIRKLAND
AND
THE KIRKLAND PERFORMANCE CENTER
REGARDING THE
USE AND OCCUPANCY OF
THE PERFORMING ARTS CENTER**

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**AGREEMENT
BETWEEN
THE CITY OF KIRKLAND
AND
THE KIRKLAND PERFORMANCE CENTER
REGARDING THE
USE AND OCCUPANCY
OF THE PERFORMING ARTS CENTER**

THIS USE AND OCCUPANCY AGREEMENT is dated as of June 9, 2008, and entered into by and between the CITY OF KIRKLAND (hereinafter referred to as the "City"), a Washington municipal corporation, and the KIRKLAND PERFORMANCE CENTER (hereinafter referred to as "KPC"), a Washington non-profit corporation.

WHEREAS, The City is interested in the artistic and cultural development of the City and its residents;

WHEREAS, KPC is organized for a express purpose of operating a performing arts center;

WHEREAS, the City and KPC cooperated in the development and construction of the performing arts center;

WHEREAS, both parties agree that the performing arts center provides an essential venue for the presentation of public entertainment and cultural events, and thereby fulfill an important public purpose;

WHEREAS, both parties agree that it would be in the best interests of the City, as Landlord, and KPC, as Tenant, for KPC to lease and have exclusive operation control of the performing arts center, and subject to the terms of this Agreement, reserving the right of the City to use the performing arts center;

WHEREAS, both parties agree that it would be in the best interests of the City and KPC for KPC to have total artistic and content control of performances at the performing arts center;

WHEREAS, both parties intend that KPC operate the performing arts center in a manner consistent with the important public purpose of presenting public entertainment and cultural events, and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the performing arts center;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and as a direct benefit to the City, the parties agree as follows:

I. DEFINITIONS.

All words in this Agreement bearing initial capitals, other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the Design and Construction Agreement as set forth below. Any sums set forth below are subject to modification by a written amendment to this Agreement in the form attached as Exhibit C. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

A. Agreement means this Use and Occupancy Agreement, as from time to time amended in accordance with the terms hereof.

B. Approval means the prior written consent of a party hereto or designated representatives thereof.

C. Cash Equivalents means funds of KPC which have been invested in financial instruments or investment funds that have maturity dates which are convertible to cash on demand (with or without penalties for early withdrawal).

D. City means the City of Kirkland.

E. City Manager means the City Manager of the City of Kirkland, or his or here designee.

F. Facility means the performing arts center to be developed pursuant to this Agreement.

G. Kirkland Performance Center or KPC means the Kirkland Performance Center, a Washington non-profit corporation.

H. Tenant Improvements means all property (such as equipment, fixtures and furnishings, whether the property is physically affixed to the Facility or not) which is used in the scheduling or presentation of events at the Facility, including, but not limited to, lighting, sound system, curtains, seating, carpeting, phone system, lift, piano, stage rigging, and computerized box office system. Tenant Improvements does not mean the structure and core of the Facility; HVAC, plumbing, electrical and mechanical systems; elevator; and stage.

I. Use and Occupancy Agreement means the Use and Occupancy Agreement to be executed prior to the award of the Construction Contract.

II. LEASE AND DESCRIPTION OF PREMISES.

The City, as Landlord, hereby leases to KPC, and KPC, as Tenant, hereby leases from the City, subject to the terms and conditions hereof, the Premises, located at 350 Kirkland Avenue, Kirkland, Washington 98033.

III. TERM OF AGREEMENT.

A. Effective Date of Agreement. This effective date of this Agreement shall be June 9, 2008.

B. Term. The Term of this Agreement shall expire on June 30, 2018, which is ten (10) years and 21 days after June 9, 2008, the Effective Date of this Agreement, unless terminated earlier pursuant to the provisions hereof.

C. Option for Extension of Term. KPC may extend the term of this Agreement for two (2) additional consecutive terms of ten (10) years; provided that, every five (5) years thereafter, the parties have the option to renegotiate the amount of annual rent and other terms and conditions (except KPC retention of total artistic control of performances) of this Agreement. If the parties fail to agree on a satisfactory amount of annual rent or other terms and conditions of this Agreement, the parties agree to use non-binding mediation before the City may terminate this Agreement. If the parties fail to agree on annual rent or other terms and conditions of this Agreement through mediation, the City may terminate this Agreement.

Not later than six (6) months before the expiration of this Agreement, the City shall notify KPC of the City's exercise of its option to renegotiate the amount of annual rent, and other terms and conditions of this Agreement.

Not later than one (1) year before the expiration of this Agreement, KPC shall notify the City of KPC's exercise of its option to extend the initial term of this Agreement and of each extension. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than KPC.

D. Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the City may terminate this Agreement. Upon not less than one (1) year's notice to the City, KPC may terminate this Agreement. In the event that this Agreement is terminated, KPC shall surrender the Premises to the City. The City shall not owe KPC any "refund" or other compensation for contributions made by KPC for the design and construction of the performing arts center, or tenant improvements to the performing arts center.

IV. AUTHORIZED USE OF PREMISES.

A. KPC shall have exclusive possession and operational control of the Premises, subject to the terms of this Agreement reserving the right of the City to use the performing arts center. KPC shall also have total artistic control of performances, also subject to the terms of this Agreement. KPC shall use the Premises for the presentation of performing arts, as well as for meetings of KPC Board members, staff, and other personnel directly associated with KPC, KPC classes and other KPC educational programs, presentations, KPC fund-raising endeavors, rehearsals, and other related activities, KPC offices, and such other activities as are incidental to the foregoing. KPC shall also use the Premises to actively encourage and provide for youth experiences with the performing arts. KPC may use the Premises for business and

community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the priority use of the Premises for the presentation of performing arts. KPC may use the Premises to engage in concession and catering activity only as provided in this Agreement. KPC may use the Premises for additional purposes with the prior written approval of the City Manager.

B. Use of Meeting Room.

1. KPC shall have the right to use the Peter Kirk Community Center Lobby Meeting Room for up to ten days per year on a space available basis. These "KPC" dates must be reserved more than ninety (90) days in advance of the use date, and shall not compete with dates programmed or requested by Peter Kirk Community Center customers.
2. Conditions of Use include:
 - a. KPC staff will need to check the key in and out from the Peter Kirk Community Center staff. This will include a walk through prior to and after use to assess any damage.
 - b. KPC shall pay for operational expenses arising from its use of the Premises including, but not limited to, janitorial services, security false alarms, and damage assessed during walk through.
 - c. KPC will have staff present at all times during use.

V. CITY USE.

A. The City reserves the right to use the Premises with the exception of KPC's Administrative Offices up to seven (7) days per year on a space available basis. These "City use" dates must be reserved more than sixty (60) days in advance of the use date, and shall not compete with dates requested by KPC rental customers. The City also reserves the right to use the Premises on additional days on a space available basis. These "additional City use" dates may not be reserved more than sixty (60) days in advance of the use date and shall not compete with dates requested by KPC rental customers.

B. The City shall be allowed to use the Premises without rental charge, but shall pay operational expenses arising from its use of the Premises including, but not limited to, extra staffing or janitorial services.

VI. RENT.

In consideration of the value of KPC's contribution to development and operation of the performing arts center, the value of KPC's tenant improvements to the performing arts center, the value of KPC's maintenance and operation of the Premises, the value of KPC's payments of all utility charges, and subject to the terms and conditions of this Agreement, KPC hereby covenants and shall pay no rent for the

Premises during the second term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Section III.C. of this Agreement.

VII. ADMISSIONS TAXES.

A. The City agrees to dedicate to KPC one hundred percent (100%) of the admissions taxes generated from KPC events at the Facility to support the public purposes served by the Facility for the first five years of this second term, to cover the periods of June 9, 2008 through June 30, 2013.

B. The City agrees to pay to KPC such admissions taxes within thirty (30) days of receipt; provided, however, that KPC must pay to the City such admissions taxes in accordance with applicable provisions of the Kirkland Municipal Code and State law.

VIII. RESERVE, RECORD KEEPING AND REPORTING.

A. KPC will strive to keep a minimum of \$200,000 in Operating Reserves. Currently, KPC shall replenish the Operating Reserve according to the following schedule in order to carry the following fund balances:

1. \$175,000.00 by December 31, 2008;
2. \$200,000.00 by December 31, 2009.

B. The City shall appoint a liaison between the City and KPC who will ensure compliance with all record keeping and reporting requirements set forth in this section.

C. KPC shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles ("GAAP") consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by KPC under this Agreement.

D. KPC shall provide quarterly reports in a form acceptable to the City. The reports shall include, at a minimum, unaudited financial statements (balance sheet and income and cash flow statements depicting performance against budget), profit and loss statements, box office statements (statements depicting ticket sales, admissions taxes collected, service charges, and average ticket prices), projected bookings, and fund development progress.

E. KPC shall provide an annual report, by a date to be mutually determined, to the City. The annual report shall include a budget for the forthcoming year that provides adequate funding for maintenance and operations, including funding for reserves and a development professional. The annual report shall also include a financial statement audited by an independent certified public accounting firm,

and prepared in accordance with sound accounting procedures consistently applied. The annual report shall summarize KPC's activities and status.

IX. IMPROVEMENTS, ALTERATIONS AND ADDITIONS TO THE PREMISES.

A. Tenant Improvements. KPC may make Tenant Improvements to the Premises with the consent of the City. If an Event of Default occurs, if KPC fails to perform its duties under this Agreement, or if this Agreement expires, terminates, or is otherwise not renewed, all KPC-provided or owned Tenant Improvements on the Premises shall remain in place and shall automatically and without further notice or act by the City and without compensation to KPC become the property of the City.

B. Other Improvements, Alterations and Additions. KPC shall not alter any structural features of the Premises without City approval. KPC, at its sole expense, may redecorate any interior surface of walls, ceilings, windows and doors.

C. Waiver of Artistic Rights. In the event that KPC installs an art work in the Premises that will incorporate such work into the Premises in such a way that removing such work may subject it to destruction, distortion, mutilation or other modification, KPC shall require the artist to waive any rights under federal or state law (including without limitation the Visual Artists Rights Act and the New York Arts and Cultural Affairs Law) with respect to the consequences of removing all or part of such work from the Premises. The waiver must be in writing, be signed by the City, KPC and the artist, be approved as to form by the City Attorney, and be recorded. The waiver must specifically identify the art work and the uses to which it applies.

X. QUIET ENJOYMENT.

The City covenants that it holds legal title to the Premises, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, if any, such mortgage or mortgages as are permitted by the terms of this Agreement, zoning ordinances and other building and fire ordinances and government regulations relating to the uses of such property, and easements, restrictions and other conditions of record. The City represents and warrants that it has full right and authority to enter into this Agreement and that KPC, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have, hold and enjoy the Premises for the term of this Agreement, including, but not limited to, the scheduling of KPC performances and events, management of operations, or selection of productions, employees and agents without hindrance or interference from the City, subject to the terms and provisions of this Agreement.

XI. HAZARDOUS SUBSTANCES.

KPC shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Premises, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders. The term "Hazardous Materials" refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable

local, state or federal law, regulation or order. KPC shall indemnify, defend and hold the City harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (“remedial work”) required by, or incurred by the City or any nongovernmental entity or person in reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during the term of this Agreement. The City shall indemnify, defend and hold KPC harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (“remedial work”) required by, or incurred by KPC or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during a time other than the term of this Agreement. If any remedial work is so required under any applicable federal, state or local law during the term of this Agreement, KPC shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by KPC and approved in advance in writing by the City. If KPC does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, the City may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Agreement.

XII. MAINTENANCE; CLEANING; REPAIR; AND UTILITIES.

A. City. The City is responsible for maintenance and repair of the structural components of the performing arts center which shall include the roof, the exterior walls, the foundation, the HVAC system, and the elevator. The City is also responsible for maintenance which is necessary for the structural integrity of the performing arts center, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. The City is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided that, if KPC wants special plantings or landscaping and landscape maintenance that exceed City standards, KPC will be responsible for and will pay for such plantings or features. The City is also responsible for and will pay for maintenance of the parking lot that meets City standards.

Before entering the Premises to undertake maintenance and repair work, the City shall give KPC at least twenty-four (24) hours notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the Premises for the presentation of performing arts. In the event of an emergency, however, no such notice shall be required.

B. KPC. KPC is responsible for maintenance and repair of the interior of the performing arts center which shall include tenant improvements, audio/visual systems, sound system, telephone

equipment, lighting and plumbing fixtures and appliances. KPC's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. KPC's janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning, repair or replacement of seating, curtains, carpets, flooring, and faucets; cleaning windows and walls; and servicing of audience areas and restrooms. KPC shall pay to the City an amount that provides for an annual service contract for preventative maintenance on the elevator. KPC shall timely pay all utility charges for utility service to the Premises including, but not limited to, electricity, water, storm water, sewer, garbage, and telephone.

XIII. INDEMNIFICATION.

The City shall not be liable to KPC or KPC's employees, agents, guests, invitees or visitors, or to any other person for any injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the negligence or misconduct of KPC, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the building and improvements located on the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause except injury to persons or damages to property solely caused by the negligence of the City.

KPC shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of KPC's use of the Premises, or from the conduct of KPC's business, or from any activity, work or thing done, permitted, or suffered by KPC in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

XIV. INSURANCE.

A. The City shall maintain insurance covering the building of which the Premises are a part in an amount equal to its replacement cost, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverages and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State of Washington for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state. Subject to the terms of this Agreement, such insurance shall be for the sole benefit of the City and under its sole control.

B. KPC shall notify the City immediately after a casualty occurs to the Premises or the building. (1) If the building is totally destroyed by fire or other casualty, (2) if the casualty is not insured, (3) if the cost of restoration would exceed the total Insurance proceeds and KPC's available funds, including the Operating Reserve, provided that KPC replenishes the Operating Reserve in accordance with Section VIII.A of this Agreement, or (4) if rebuilding or repairs cannot in the City's estimation be completed with three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such

damage, then the Agreement shall terminate effective upon the date of the occurrence of such damage. The City shall give notice to KPC in writing of its determination to terminate this Agreement within ninety (90) days following the date of the occurrence of such damage.

C. If the building is damaged by any peril covered by the Insurance to be provided by the City, but only to such extent that rebuilding or repairs can in the City's estimation be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage, this Agreement shall not terminate, and the City shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such building to substantially the condition in which it existed prior to such damage, except that the City shall not be required to rebuild, repair or replace any part of the partition, fixtures, additions and other improvements which may have been placed in, or about the Premises by KPC. If the building is subsequently damaged while the City is rebuilding and repairing the building, the City shall estimate whether rebuilding or repairs can be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such subsequent damage. If the Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If the City does not complete such repairs and rebuilding within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage or such subsequent damage, as appropriate, KPC may at its option terminate this Agreement by delivering written notice of termination to the City within three hundred ninety-five (395) days after the date of the notice of the damage or the subsequent damage, as appropriate, as KPC's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

D. Notwithstanding anything in this Agreement to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then the City shall have the right to terminate this Agreement by delivering written notice of termination to KPC within fifteen (15) days after such requirement is made by and such holder, whereupon all rights and obligations under this Agreement shall cease and terminate.

E. KPC shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the KPC's operation and use of the Premises.

No Limitation. KPC's maintenance of insurance as required by the agreement shall not be construed to limit the liability of KPC to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

1. Minimum Scope of Insurance

KPC shall obtain insurance of the types described below:

- a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on KPC's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

- b. Property insurance shall be written on an all risk basis.

2. Minimum Amounts of Insurance

KPC shall maintain the following insurance limits:

- a. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$5,000,000 general aggregate.
- b. Property insurance shall be written covering the full value of KPC's property and improvements with no coinsurance provisions.

3. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

- a. KPC's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of KPC's insurance and shall not contribute with it.
- b. KPC's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

4. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

5. Verification of Coverage

KPC shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of KPC.

6. Waiver of Subrogation

KPC and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7. City's Property Insurance

City shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.

XV. SIGNS.

The KPC may install signs on the exterior of the Premises, identifying the building as the Kirkland Performance Center or other mutually agreed upon name, and containing other information related to KPC, including without limitation, program information, fundraising information and special KPC announcements. The design, installation and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

XVI. ASSIGNMENT, SUBLEASE OR TRANSFER.

Obligations or rights of KPC under this Agreement may not be assigned, subleased, or otherwise transferred by KPC, without the prior written consent of the City, which consent may be withheld at the sole discretion of the City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an Event of Default. Any such assignment, sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, KPC shall cause to be delivered to the City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

XVII. CONCESSIONS AND CATERING ACTIVITY.

A. Definitions. As used in this section, unless the context clearly requires a different meaning,

1. "Concession and catering activity" means and includes the preparation, service, free distribution, or sale of food or any beverage, including any alcoholic beverage, or the free distribution or sale of any concession merchandise or service; and

2. "Concession merchandise or service" means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.

B. Grant of Right. The City grants to KPC the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one or more concessionaires to engage in such activity for and on the behalf of, or under the auspices of, KPC, at the Premises, subject to the terms of this Agreement. If KPC decides to retain any such concessionaire(s), KPC shall select such concessionaire(s). If KPC enters into any such agreement(s), KPC shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement.

C. Right Not Effective During City Use Periods. The concession and catering rights granted in this section shall not be effective during any period of time when the Premises are used by the City, unless by express request of the City, with the exception of the box office.

D. Food Service Establishment Permit Required. KPC, or any such concessionaire(s), shall ensure that all food offered for sale on or from the Premises has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle-King County Department of Public Health or its successor.

E. Licenses and Permits Required; Contingent Expiration of Right. KPC, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at not cost to the City, all licenses, permits and other authorization required in order to legally conduct the concession and catering activity contemplated herein. The City shall have no obligation to issue such licenses, permits, or other authorization. The City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of KPC, or any such concessionaire(s), to secure or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein.

XVIII. COMPLIANCE WITH LAW.

A. Lawful Use. KPC and the City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between the City and KPC.

B. Licenses and Similar Authorization. KPC, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. The City shall have no obligation to issue such licenses, permits, or authorizations. The City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.

C. Taxes. KPC shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Premises pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on KPC property, equipment, and improvements on the Premises; taxes on KPC's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A., if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from KPC's use or occupancy of the Premises or the conduct of any activity subject to tax, or the State withholds funds due to the City to enforce collection

of leasehold excise or any other tax, KPC, at its sole expense, shall contest such action and indemnify the City for all sums expended by or withheld by the State from the City in connection with such taxation; provided, that KPC may pay any such tax in lieu of contesting it or indemnifying the City. The City shall pay and shall indemnify and hold KPC harmless for all taxes imposed, that relate to City sponsored events at the Premises (except for taxes imposed on concession sales by KPC or for KPC's benefit), and for all taxes that may be imposed on KPC or KPC use of the Premises resulting from any City use under this Agreement.

D. Attendance and Safety Standards. The Kirkland Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Premises. KPC shall not sell or issue tickets or credentials for admission to the Premises in an aggregate number that exceeds the Kirkland Fire Chief's determined number. KPC shall not admit to the Premises more people than the number so determined by the Kirkland Fire Chief. KPC shall not permit any chair or movable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Premises shall not be obstructed by KPC or used for any purpose other than for ingress and egress to the Premises for persons or property. The City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Premises under this Agreement.

E. Nondiscrimination. KPC shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

F. Americans With Disabilities Act. KPC shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, including without limitation Title III of the Americans With Disabilities Act.

G. Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

XIX. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS.

KPC shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Premises. The City shall be responsible for all similar royalties, license fees and other charges in connection with the City's use of the Premises.

XX. LIENS AND ENCUMBRANCES.

KPC shall keep the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances. Notwithstanding the foregoing, KPC may finance up to \$20,000 of the total costs of the Tenant Improvements. At the City's request, KPC shall furnish the City written proof of payment of any items that would or might constitute the basis for such a lien on the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements if not paid.

XXI. DEFAULT.

A. Default. The following events shall constitute a default and material breach of this Agreement.

1. The failure to comply with any of the terms of this Agreement regarding insurance;
2. The material violation of any law, ordinance, rule or regulation which, after notice and reasonable time to cure, remains uncured;
3. The abandonment or vacating of the Premises for a period of twenty(20) days or more;
4. The absence of any KPC-scheduled performing arts event for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which the City is responsible;
5. The failure to pay any sum of money due to the City within thirty (30) days after such notice from the City that such a payment is overdue;
6. The dissolution of the KPC or the merger of KPC with another entity without the prior written approval of the City;
7. The assignment or transfer of this Agreement without the prior written consent of the City as described in Section XVI of this Agreement; and
8. The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.

B. Extension of Period to Remedy Default. Neither the City nor KPC shall be in default unless such party fails to perform an obligation required of it within thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

XXII. REMEDIES UPON DEFAULT AND MATERIAL BREACH.

Upon the occurrence of any Event of Default by KPC, the City shall have the option to pursue any one or more of the following remedies without notice or demand.

A. Accelerate all rent payments under this Agreement which shall then become immediately due and payable.

B. Terminate this Agreement, in which event KPC shall immediately surrender the Premises to the City, and if KPC fails so to do, the City may, without prejudice to any other remedy it may have for possession or unpaid rent, enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and KPC agrees to pay to the City on demand the amount of all loss and damage the City may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

C. Enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and relet the Premises for such terms ending before, on or after the expiration date of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as the City in its sole discretion may determine, and receive the rent therefor; and KPC agrees to pay to the City on demand any deficiency that may arise by reason of such reletting. The City shall have no obligation to relet the Premises or any part thereof and shall not be liable for refusal or failure to relet or in the event of reletting for refusal or failure to collect any rent due upon such reletting. If the City is successful in reletting the Premises at a rental in excess of that agreed to be paid by KPC pursuant to the terms of this Agreement, the City and KPC each mutually agree that KPC shall not be entitled, under any circumstances, to the excess rental, and KPC specifically waives any claim to the excess rental.

D. Enter upon the Premises, and do whatever KPC is obligated to do under the terms of this Agreement. KPC agrees to reimburse the City on demand for any expenses which the City may incur in thus effecting compliance with KPC's obligations under this Agreement, and KPC further agrees that the City shall not be liable for any damages resulting to the KPC from such action, whether caused by the negligence of the City or otherwise.

E. Whether or not the City retakes possession or relets the Premises, the City shall have the right to recover unpaid rent and all damages caused by KPC's default, including attorney's fees. Damage shall include, without limitation: all rentals lost, all legal expenses and other related costs incurred by the City following KPC's default, all costs incurred by the City in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting the Premises for a comparable use, all costs (including without limitation any brokerage commissions and the value of the City's time) incurred by the City, plus interest thereon from the date of expenditure until fully repaid at the rate of eighteen percent (18%) per year.

F. If KPC does not pay any installment of rent, additional rent or other charges owed the City under this Agreement as and when due, to help defray the additional cost to the City for processing late

payments KPC shall pay to the City on demand a late charge in an amount equal to five percent (5%) of the payment. The late charge shall be in addition to all of the City's other rights and remedies under this Agreement or at law and shall not be construed as liquidated damages or as limiting the City's remedies in any manner.

G. Pursuit of one remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due the City or of any damages accruing to the City by reason of KPC's breach of this Agreement. No act or thing done by the City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Premises. No agreement to terminate this Agreement or accept a surrender of said Premises shall be valid unless in writing signed by the City. No waiver by the City of any violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. The City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by the City to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of the City's right to enforce any remedies with respect to such default or any subsequent default.

H. If the City employs the services of an attorney in connection with an event of default by KPC under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its attorneys fees and costs.

XXIII. SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

A. Surrender of Premises. Upon termination or expiration of this Agreement, KPC shall surrender to the City the Premises and all keys therefor.

B. Conditions of Premises Upon Surrender. The Premises to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by KPC, except for the effects of improvements, additions, alterations, and repairs made with the concurrence of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear, and acts of God.

C. Removal of Property. Prior to the expiration of this Agreement, or within sixty (60) days after termination in the event of an earlier termination of this Agreement, KPC shall remove from the Premises, at no cost or expense to the City, all personal property owned and placed in or on the Premises by KPC, its agents, invitees, employees, contractors or successors. In removing such personal property, KPC shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the KPC to the City Manager's reasonable satisfaction, at KPC's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any

inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period.

XXIV. NO WAIVERS.

No action other than a written document by the City Manager or the KPC Board President specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

XXV. REMEDIES CUMULATIVE.

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude or waive the right to use another.

XXVI. OBLIGATION OF KPC LIMITED TO CORPORATION.

Any and all obligations of KPC under this Agreement are enforceable only against Kirkland Performance Center, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon KPC's officers, directors, trustee, members, employees, or agents.

XXVII. ADDRESSES

Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

David Ramsay
City Manager
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033-6189

and to KPC at the following address:

Dan Mayer
 Interim Executive Director
 Kirkland Performance Center
 350 Kirkland Avenue
 Kirkland, Washington 98033

Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

XXVIII. TITLES OF SECTIONS.

The titles of section and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any section.

XXIX. AMENDMENTS.

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

XXX. DISPUTE RESOLUTION.

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the KPC President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by the KPC President, and a third member selected by the first two. The City shall pay any costs or fees associated with the member it selects. KPC shall pay any costs or fees associated with the member it selects. The City and KPC shall each pay one half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice. The decision of the Resolution Panel will be announced within ten (10) City business days.

XXXI. ENTIRE AGREEMENT.

The parties hereto acknowledge that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all of the exhibits attached hereto, embodies the entire Agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties regarding the Premises except as expressly referenced herein.

IN WITNESS, WHEREOF, the authorized representatives of the parties hereto have executed this Agreement by affixing their signatures in the spaces below.

DATED this _____ day of _____, 2008.

KIRKLAND PERFORMANCE CENTER

By: _____
Dan Mayer, Interim Executive Director

Date: _____

By: _____
Doreen Marchione, Board of Directors President

Date: _____

THE CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

Date: _____

RESOLUTION R- 3815

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO THE PROPOSED KIRKLAND CENTER FOR THE PERFORMING ARTS AND DIRECTING THE SIGNING OF THE ATTACHED AGREEMENT WITH KCPA.

Whereas, Kirkland Center for the Performing Arts, a non-profit corporation for the development of a performing arts center in Kirkland, has requested use of the building which will be vacated by the library for a performing arts center; and

Whereas, the City Council has agreed that use of the old library as a theater would be of benefit to the general public; and

Whereas, KCPA is committed to fund raising to make it possible to renovate the old library for use as a performing arts center and then to involve the community with the programing to be developed with the control of KCPA; and

Whereas, an agreement with KCPA concerning the steps necessary to accomplish renovation of the old library for a theater and then a lease under which KCPA can operate the theater are beneficial to the general public,

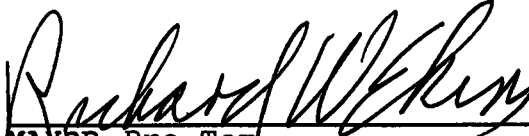
Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City of Kirkland has pledged \$500,000.00 towards the renovation of the old library for use as a theater as provided in the attached Agreement Relating to Construction and Operation of the Proposed Center for the Performing Arts with KCPA. The City Manager is authorized and directed to sign that certain Agreement on behalf of the City of Kirkland.


Section 2. The City Council intends that the City of Kirkland enter into a lease of the theater to KCPA as described in the aforementioned Agreement. The principal terms of such lease are expected to be substantially similar to those attached to the aforementioned Agreement. It is anticipated that the parties will agree on the final form of a lease to be effective at such time as the conditions outlined in the Agreement have been satisfied.

Passed by majority vote of the Kirkland
City Council in regular, open meeting this 18th
day of May, 1993.

Signed in authentication thereof this 18th
day of May, 1993.


MAYOR Pro Tem

Attest:


City Clerk

2city93\KCPAres2\gg

AGREEMENT RELATING TO CONSTRUCTION
AND OPERATION OF THE
PROPOSED CENTER FOR THE PERFORMING ARTS

THIS AGREEMENT is made and entered into on the date last below signed between the City of Kirkland ("City") and Kirkland Center for the Performing Arts ("KCPA").

WITNESSETH:

Whereas, the City is the owner of a building (hereinafter referred to as the "old library") which is situate upon the real property in King County, State of Washington, that is legally described in Attachment A;

Whereas, KCPA has been organized for the express purpose of promoting the development of and operating a performing arts center in Kirkland; and

Whereas, both parties desire that the proposed Center for the Performing Arts ("theater") be managed and operated as a place for public entertainment and cultural events in accordance with the provisions, terms and conditions of this agreement.

Now, therefore, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the theater, and as a direct benefit to the City, the parties agree as follows:

1. The parties support the renovation of the old library into an approximately 315 seat theater to be used as a performing arts center. KCPA has proposed that funding needed for the theater to be made ready for operation is \$2,500,000.00. City will pay \$500,000.00 solely towards actual construction costs of renovation after KCPA has obtained the balance of the funding needed. Once City is satisfied that KCPA has irrevocable commitments for all but \$500,000.00 of the project cost, City will pass a resolution committing to payment of \$500,000.00 in construction costs.

2. KCPA will report quarterly to City on fundraising activities. By March 31, 1994, City will review the status of KCPA project funding. By September 30, 1994, KCPA will have in hand, or by government appropriations or other commitments which City is satisfied are binding, ~~(or-in-firm-written commitments)~~; 100% of the funding required for the theater to be ready for operation, recognizing that after December 31, 1994, this Agreement will terminate

and the City will reevaluate the use of the building if KCPA has not satisfied this requirement by December 31, 1994 achieved-100%-of-funding-needed.

3. KCPA and City will each appoint three persons to a project management committee to oversee agreed upon aspects of design and construction, including major change orders. The City Council and the KCPA Board must review and approve the project design. ~~KCPA will provide to City any additional funds needed due to change orders or cost overruns before such funds are due third parties.~~ Any work, design, or change orders that may increase costs over the agreed upon budget shall require reduction in the scope of work so that actual costs of the project do not exceed said budget. Reductions to the project budget will be made as necessary in lieu of incurring cost overruns. In case of a tie vote by the committee, the City Manager (or Acting City Manager) will cast the deciding vote. This committee may authorize physical access to the project site by persons for whom KCPA so requests, for purposes such as space planning.

4. City will conduct value engineering of the proposed renovation, the cost for which will be included in the total project costs for architectural services. KCPA will be consulted as to criteria for selection of an architectural firm to design the renovation for a theater. City will design, bid, and construct the renovation project, and these costs will be included in the total project cost. City must be satisfied that KCPA has in hand or binding commitments for 100% of construction costs total-project-funds-must be-in-hand before the call for bids. City will call for bids on tenant improvements as an alternate project, and KCPA will be consulted as to whether one such alternate bid should be accepted. If no bid to the City for tenant improvements is accepted, then KCPA may contract for and do construction management of tenant improvements. Elements of this renovation project which are not tenant improvements include the structure, core, HVAC, plumbing, electrical and mechanical systems, elevator and stage. Examples of tenant improvements include seating, carpet, sound system, lighting and audio/visual systems.

5. The parties intend to enter into a lease no later than September 30, 1994 ~~March 31, 1994~~, the principal terms of which are substantially similar to those attached hereto as Attachment B. Effectiveness of the lease is contingent on KCPA presenting its anticipated budget, including anticipated M&O costs, to City and it being to the City Council's satisfaction. KCPA is to have cash in hand or binding commitments

(approved by the City) for at least the amount of the projected budget \$200,000- for first year operations before opening. The effective date of the lease would be the date upon which City advises KCPA that an occupancy certificate could issue for the renovated structure. ~~For illustrative purposes, Attachment B is shown with a date of March 1, 1996, however, the actual date on which the lease will be effective may be earlier or later, depending on the progress of construction.~~

6. This Agreement shall terminate no later than December 31, 1996. This Agreement shall be earlier terminated if fund raising is not accomplished by the deadlines provided hereinabove. This Agreement shall terminate upon the effective date of the lease described hereinabove.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF KIRKLAND

KIRKLAND CENTER FOR THE
PERFORMING ARTS

By: _____
Date: _____

By: _____
Date: _____

5c1ty93\kcpafun4

R-3815

Attachment A to Agreement

A portion of S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Sec. 5, Twp. 25 North, Range 5 E.W.M. described as follows: Beginning at a point in the south line of Section 5, Twp. 25 North, Range 5 E.W.M., N. $89^{\circ}39'$ E. 1511.50 Ft. from the meander corner between Section 5 and 8, said point being the southeasterly corner of Kirkland Recreation Field and running thence S. $89^{\circ}39'$ W. 84.12 Ft., thence N. $0^{\circ}31'40''$ W. 265.23 Ft. along existing fence, thence continuing along the existing fence N. $30^{\circ}23'$ W. 243.22 ft., thence N. $0^{\circ}21'$ W. 56.0 ft., thence N. $89^{\circ}39'$ E. 206.29 ft. to a point which bears N. $0^{\circ}21'$ W. from the point of beginning being on the east line of said Kirkland Recreation Field, thence S. $0^{\circ}21'$ E. 531.80 ft. to the point of beginning. Except therefrom the right-of-way of Kirkland-Redmond Short Line Road. Containing 1.18 Acres more or less.

Attachment B to Agreement

PRINCIPAL TERMS EXPECTED IN LEASE OF
CENTER FOR THE PERFORMING ARTS

This Lease is made and entered into on the date last below signed between the City of Kirkland, lessor ("City"), and the Kirkland Center for the Performing Arts, lessee ("KCPA").

Whereas, the City is the owner of a building (hereinafter referred to as the "old library") which is situate upon the real property in King County, State of Washington, legally described in Attachment A;

Whereas, KCPA has been organized for the express purpose of promoting the development of and operating a performing arts center in Kirkland; and

Whereas, both parties desire that the proposed Center for the Performing Arts ("theater") be managed and operated as a place for public entertainment and cultural events in accordance with the provisions, terms and conditions of this agreement.

Now, therefore, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the theater, and as a direct benefit to the City, the parties enter into this Lease on the following terms and conditions:

1. KCPA will lease the theater from City for \$1.00 per year. KCPA shall occupy, manage and operate the theater according to the provisions, terms and conditions of this Lease.

2. KCPA will have exclusive operational control of the facility and total artistic control of programing. City will be allowed use for City purposes of the theater at least seven days per year, on a prescheduled basis, with priority second to scheduling of arts organizations series performances, without rental charge, but will pay resulting special expenses such as but not limited to extra staffing or janitorial services. City may also use the theater additional times on a space available basis, without rental charge, but paying any special expenses. This "space available" use may not be reserved more than 60 days in advance of the use date and should not compete for KCPA rental customers.

3. This Lease implies no City commitment for financial support of KCPA operations. The City Council has the right to appoint one person as a member of the KCPA Board of Directors ~~Executive Board, which shall have equivalent authority as it did on March 23, 1993, and which shall consist of no more than 7 persons.~~

4. KCPA will actively encourage and provide for youth experiences with the performing arts.

5. KCPA will provide an annual report, by a date to be determined May 1 of each year, to the City, summarizing KCPA's activities and status, and including a financial report with specific discussion of projected annual M&O costs. KCPA will maintain a trust fund or endowment sufficient to cover shortfalls in annual operations funding.

6. City is responsible for structural maintenance, upkeep and repair which shall include the roof, foundation, core HVAC system, and elevator; provided that, KCPA will pay to City an amount which would provide for an annual service contract for preventative maintenance on the HVAC system and elevator. City is also responsible for capital maintenance on mechanical, electrical, and plumbing systems, exterior entrances and exits, and permanent stairways. KCPA will not alter any structural features without City approval. KCPA is responsible for maintenance, upkeep and repair of tenant improvements, audio/visual systems, sound system, telephone equipment, and lighting and plumbing fixtures and appliances. KCPA's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. KCPA's janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning, repair, or replacement of seating, curtains, carpets, flooring, and faucets, and drains; cleaning windows and walls; and servicing of audience areas and restrooms, ~~including correction of stopped-up toilets.~~ KCPA may redecorate any interior surfaces of walls, ceilings, windows and doors. KCPA will timely pay all utility charges including electricity, water, sewer, garbage, and telephone.

7. City is responsible for and will pay for landscaping and landscape maintenance; provided that, should KCPA want special plantings or landscaping features, KCPA will be responsible for and will pay for those.

8. City shall maintain fire and casualty insurance on the building in an amount sufficient to rebuild the theater structure; provided that, KCPA will reimburse City for any portion of the cost therefor which exceeds the standard cost for a comparable structure. KCPA shall maintain property insurance on the leasehold improvements in an amount sufficient to cover the full value of the contents of the theater, including personal property owned by third parties. KCPA shall maintain general liability insurance from an insurance company that has no less than a Bests' rating of A VII and is authorized to do business in Washington state, with limits of at least \$5,000,000.00, and with the City of Kirkland named as a co-insured under such policy.

9. KCPA will indemnify, defend, and save harmless the City or its officers, agents, or employees, for any claim, real or imaginary, filed against the City or its officers, agents, or employees, alleging damage or injury arising out of the subject matter of this Lease; provided, however, the liability of KCPA for damages or injury caused by negligence of itself or its agents or employees shall be limited to amounts equal to its percentage of fault, comparative or otherwise. that-such-provision-shall-not-apply-to-the-extent-that-damage-or-injury-results-from-the-sole-fault-of-the-city-or-its-officers,-agents,-or-employees- "Fault" as herein used shall have the same meaning as set forth in RCW 4.22.015. In any event, KCPA's obligations regarding indemnification under this paragraph shall include any unsafe condition or repair problem which-was-not-known-to-city; provided further, however, if the City knew or should have known about any unsafe condition or repair problem, any obligation of KCPA under the indemnification shall be apportioned on the basis of comparative fault.

10. KCPA shall not deny or substantially impair any person's receipt of services or benefits offered by virtue of this Lease on the grounds of race, color, sexual orientation, nationality, sensory, mental or physical handicap, or sex. KCPA shall not discriminate against any employee or applicant for employment in connection with this Lease because of age, sex, marital status, race, creed, color, sexual orientation, nationality, or the presence of any sensory, mental or physical handicap, except where there is a bona fide occupational limitation.

11. Obligations or rights under this Lease may not be assigned or otherwise transferred by either of the parties hereto, without the express written consent

of the parties. No change, alteration, modification, or addition to this lease will be effective unless it is in writing and properly signed by both parties hereto.

12. The term of this Lease shall be for ten years from its commencement date Mareh-17-1996. KCPA has the option to renew this Lease for three ten-year extensions; provided that, at the end of the initial term, and every five years thereafter, City shall have the right to renegotiate the amount of annual rent and any other terms and conditions of the Lease. City shall notify KCPA at least six months ahead of its intent and desire to reopen specified terms and conditions. KCPA shall notify City of their intent and desire to extend the term of the Lease, at least one year prior to the end of the initial term and of each extension. KCPA may terminate this Lease and vacate the building after one years notice to City; however, no "refund" or other compensation would be due from City. In the event of such termination, KCPA may remove from the theater and keep its own equipment. The parties will maintain a list of such equipment. and KCPA's interests under this provision are would not be assignable. The absence of any KCPA-scheduled performing arts event for a period of ninety days or more, when not due to repair problems or maintenance work for which City is responsible, shall constitute termination of this Lease by KCPA.

13. In the event a dispute arises as to whether the parties are complying with the terms of this Lease, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the KCPA President or their designees will meet within 3 City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by the KCPA President, and a third member selected by the first two. City shall pay any costs or fees associated with the member it selects. KCPA shall pay any costs or fees associated with the member it selects. City and KCPA shall each pay one half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within 20 calendar days after the written notice. The decision of the Resolution Panel will be announced within 10 City business days and it will be given a legal presumption of correctness as to whether the complained of commission or omission, if continued, would constitute breach of the terms of this Lease.

14. This Lease shall also include other normal and usual provisions, such as, but not limited to, reserved parking rights on City property and the sale of merchandise and beverages on the premises.

IN WITNESS WHEREOF, the parties have executed this Lease.

CITY OF KIRKLAND

KIRKLAND CENTER FOR THE
PERFORMING ARTS

By: _____
Date: _____

By: _____
Date: _____

5city93\kcpalea4

RESOLUTION R-4974

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE KIRKLAND PERFORMANCE CENTER REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER.

WHEREAS, support for the artistic and cultural development of the City of Kirkland and its residents fulfills an important public purpose; and

WHEREAS, the Kirkland Performance Center ("KPC") is organized for the express purpose of operating a performing arts center which promotes this artistic and cultural development; and

WHEREAS, the Performing Arts Center provides an essential venue for the presentation of such artistic and cultural events, and thereby fulfills this important public purpose; and

WHEREAS, the City and the KPC entered into an Agreement Between the City of Kirkland and the Kirkland Performance Center Regarding the Use and Occupancy of the Performing Arts Center ("Agreement"); and

WHEREAS, the Agreement provides that the City will dedicate to the KPC 100% of the admission taxes generated from KPC events at the Performance Center for the first five years of the term, to cover the periods of June 9, 2008 through June 30, 2013; and


WHEREAS, the City and the KPC would like to amend the Agreement to dedicate to the KPC 100% of the admission taxes generated from KPC events at the Performance Center for the entire initial term of the Agreement (from June 9, 2008 through June 30, 2018).

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City the amendment entitled "First Amendment to the Agreement Between the City of Kirkland and the Kirkland Performance Center Regarding the Use and Occupancy of the Performing Arts Center" substantially similar to the amendment attached hereto as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this 16th day of April, 2013.

Signed in authentication thereof this 16th day of April, 2013.


MAYOR

Attest:


City Clerk

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
KIRKLAND AND THE KIRKLAND PERFORMANCE CENTER REGARDING
THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER**

This FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE KIRKLAND PERFORMANCE CENTER REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER (this "Amendment") is made and entered as of _____, 2013 (the "Effective Date") by and between the Kirkland Performance Center ("KPC") and the City of Kirkland, ("City").

RECITALS

A. The KPC and the City entered into that certain Agreement Between the City of Kirkland and the Kirkland Performance Center Regarding the Use and Occupancy of the Performing Arts Center dated March 10, 2009 ("Agreement").

B. The Agreement (Section VII.A) provides that the City will dedicate to the KPC one hundred percent (100%) of the admission taxes generated from KPC events at the Facility to support the public purposes served by the Facility for the first five years of the term, to cover the periods of June 9, 2008 through June 30, 2013.

C. The KPC and the City would like to amend the Agreement to provide that the City will dedicate one hundred percent (100%) of the admission taxes generated from KPC events at the Facility for the entire initial term of the Agreement (June 9, 2008 through June 30, 2018).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the KPC and the City agree as follows:

AGREEMENT

1. Admission Taxes. Section VII.A of the Agreement is hereby amended to read as follows:

The City agrees to dedicate to KPC one hundred percent (100%) of the admissions taxes generated from KPC events at the Facility to support the public purposes served by the Facility for the entire initial term of this Agreement to cover the periods of June 9, 2008 through June 30, 2018.

2. Full Force and Effect. Except as modified herein, the Agreement shall remain in full force and effect and is hereby ratified and affirmed.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Any party may execute this Amendment by

facsimile signature and the other party shall be entitled to rely on such facsimile signature as evidence that this Amendment has been duly executed by such party.

DATED as of the date first above written.

CITY OF KIRKLAND

By: _____
Print Name: _____
Title: _____
Date: _____

KIRKLAND PERFORMANCE CENTER

By: _____
Name: _____
Title: _____
Date: _____

KIRKLAND PERFORMANCE CENTER

Financial Statements

For the Year Ended June 30, 2016

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Independent Auditor's Report

**To the Board of Directors
Kirkland Performance Center
Kirkland, Washington**

We have audited the accompanying financial statements of Kirkland Performance Center (A Nonprofit Organization), which comprise the statement of financial position as of June 30, 2016, and the related statements of activities and changes in net assets and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including an assessment of the risks of the material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



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Bellevue WA
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Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Kirkland Performance Center as of June 30, 2016, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Clark Nuber P.S.

Certified Public Accountants
May 22, 2017

KIRKLAND PERFORMANCE CENTER

Statement of Financial Position

June 30, 2016

Assets

| | |
|--|----------------------------|
| Current Assets: | |
| Cash and cash equivalents | \$ 410,229 |
| Accounts receivable | 47,619 |
| Pledges receivable, net | 22,893 |
| Prepaid expenses and other assets | <u>24,406</u> |
| Total Current Assets | 505,147 |
| Other Assets: | |
| Investments | 462,086 |
| Beneficial interest in assets held by a foundation | 74,383 |
| Theater property and equipment, net | <u>1,574,539</u> |
| Total other assets | <u>2,111,008</u> |
| Total Assets | <u>\$ 2,616,155</u> |
| Liabilities and Net Assets | |
| Current Liabilities: | |
| Accounts payable | \$ 18,855 |
| Accrued expenses | 57,262 |
| Line of credit | 64,775 |
| Unearned revenue | <u>174,685</u> |
| Total Liabilities | 315,577 |
| Net Assets: | |
| Unrestricted | 1,629,429 |
| Temporarily restricted | 206,169 |
| Permanently restricted | <u>464,980</u> |
| Total Net Assets | <u>2,300,578</u> |
| Total Liabilities and Net Assets | <u>\$ 2,616,155</u> |

See accompanying notes.

KIRKLAND PERFORMANCE CENTER

Statement of Activities and Changes in Net Assets
For the Year Ended June 30, 2016

| | Unrestricted | Temporarily Restricted | Permanently Restricted | Total |
|---|---------------------|---------------------------|---------------------------|---------------------|
| Support, Revenue and Other | | | | |
| Changes in Net Assets: | | | | |
| Theater performances | \$ 974,994 | \$ - | \$ - | \$ 974,994 |
| Contributions | 84,205 | 128,937 | | 213,142 |
| Special events | 218,656 | | | 218,656 |
| Government grants | 94,169 | | | 94,169 |
| Investment return | 5,699 | 480 | | 6,179 |
| Other | 18,335 | | | 18,335 |
| Loss on disposal of theater property and equipment | (114,457) | | | (114,457) |
| Net assets released from temporary restrictions | 195,405 | (195,405) | | |
| Total Support, Revenue and Other Changes in Net Assets | 1,477,006 | (65,988) | | 1,411,018 |
| Expenses: | | | | |
| Program | 1,019,811 | | | 1,019,811 |
| Management and general | 261,644 | | | 261,644 |
| Fundraising | 240,727 | | | 240,727 |
| Total Expenses | 1,522,182 | | | 1,522,182 |
| Change in Net Assets | (45,176) | (65,988) | | (111,164) |
| Net assets, beginning of year | 1,674,605 | 272,157 | 464,980 | 2,411,742 |
| Net Assets, End of Year | \$ 1,629,429 | \$ 206,169 | \$ 464,980 | \$ 2,300,578 |

See accompanying notes.

KIRKLAND PERFORMANCE CENTER

Statement of Cash Flows
For the Year Ended June 30, 2016

Cash Flows From Operating Activities:

| | |
|--|--------------|
| Changes in net assets | \$ (111,164) |
| Adjustments to reconcile changes in net assets to net cash provided by operating activities- | |
| Depreciation | 86,409 |
| Loss on disposal of property and equipment | 114,457 |
| Loss on investments | 6,757 |
| Decrease (increase) in assets: | |
| Accounts receivable | (19,822) |
| Pledges receivable | 29,780 |
| Prepaid expenses | (7,160) |
| Increase (decrease) in liabilities: | |
| Accounts payable | (27,842) |
| Accrued expenses | 7,122 |
| Unearned revenue | 100,811 |

Net Cash Provided by Operating Activities **179,348**

Cash Flows From Investing Activities:

| | |
|--|----------|
| Purchase of theater property and equipment | (19,961) |
| Proceeds from disposal of property and equipment | 60,000 |
| Purchase of investments | (22,563) |
| Proceeds from sales of investments | 53,944 |

Net Cash Provided by Investing Activities **71,420**

Cash Flows From Financing Activities:

| | |
|-----------------------------------|-----|
| Proceeds from line of credit, net | 802 |
|-----------------------------------|-----|

Net Cash Provided by Financing Activities **802**

Net Increase In Cash and Cash Equivalents **251,570**

Cash and cash equivalents, beginning of year 158,659

Cash and Cash Equivalents, End of Year **\$ 410,229**

Supplementary Cash Flow Information:

| | |
|--|----------|
| Theater property and equipment purchases in accounts payable at year end | \$ 4,500 |
| Cash paid for interest | \$ 1,813 |

See accompanying notes.

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 1 - Summary of Significant Accounting Policies

Nature of Activities - The Kirkland Performance Center (the Center) is a nonprofit corporation established in 1991. The Center operates a 400 seat performing arts theater in Kirkland, Washington which provides cultural enrichment by offering a home for the presentation support and promotion of the performing arts.

Basis of Presentation - The financial statements of the Center have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Net assets of the Center and changes therein are classified and reported as follows:

Unrestricted Net Assets - Include all net assets on which there are no donor-imposed restrictions for use, or on which donor-imposed restrictions were temporary and have expired. At June 30, 2016, the Center had designated net assets of \$13,000 for capital purchases.

Temporarily Restricted Net Assets - Include all net assets received by donations under which the donors imposed some restriction on use. Such restrictions are time or purpose dependent and will expire when the Center makes use of the net assets sometime in the future for the restricted purpose. At June 30, 2016, the Center had temporarily restricted net assets of \$206,169 (See Note 6).

Permanently Restricted Net Assets - Include all net assets received by donations wherein the donors imposed a permanent restriction on the use of the gift. The donors require the gift to be invested and only the income from such investments be used to support the intended cause. At June 30, 2016, the Center had permanently restricted net assets of \$464,980 whose earnings can be used for general purposes when appropriated by the Board of Directors.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law. Expirations of temporary restrictions on net assets (i.e. the donor-stipulated purpose has been fulfilled or the stipulated time period has elapsed) are reported as reclassifications between the applicable classes of net assets.

Contributions that the donor requires to be used to acquire long-lived assets (e.g. furniture and equipment, building improvements) are reported as temporarily restricted. When the long-lived assets are acquired, the Center reflects the expiration of the donor-imposed restriction as a reclassification included in net assets released from restrictions.

Cash and Cash Equivalents - For purposes of the statement of cash flows, the Center considers all bank accounts and unrestricted highly liquid investments with an initial maturity of three months or less to be cash and cash equivalents. At times, cash and cash equivalents may exceed federally insured limits.

Restricted Cash - Pursuant to the theater use and occupancy agreement with the City of Kirkland (the City) described in Note 10, the Center should strive to maintain a \$200,000 cash operating reserve at June 30, 2016; however, the balance maintained was \$0. According to the agreement, the Center may use this cash with board of director (the Board) approval (the City must be notified of any withdrawals).

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 1 - Continued

If the cash reserve is maintained below the requirement, the Center must provide the City with a plan to replenish this reserve. Since the theater use and occupancy agreement does not state the repercussion of inadequate reserve, management has not determined the effect on the operations of the Center.

Accounts Receivable - Accounts receivable consist primarily of amounts due from facility rental charges. All account balances are due in less than one year. Based on management's judgment, an allowance for doubtful accounts would not be material and has not been recorded. The Center does not generally require collateral for any of its accounts receivable.

Pledges Receivable - Pledges receivable are recognized as revenues in the period received and as assets or decreases of liabilities or expenses depending on the form of the benefits received. Conditional promises to give are recognized only when the conditions on which they depend are substantially met and the promises become unconditional.

Theater Property and Equipment - Theater property and equipment with useful lives greater than one year and a cost of at least \$500 are capitalized and carried at cost. When retired or otherwise disposed of, the related carrying value and accumulated depreciation are removed from the respective accounts and the net difference, less any amount realized from disposition, is reflected in earnings. Maintenance and repairs are charged to expense. Costs of significant improvements and renewals are capitalized. The Center provides for depreciation using the straight-line method over the estimated useful lives of the assets, which range from 5 to 40 years. Depreciation expense was \$86,409 for the year ended June 30, 2016.

Donated equipment is recorded as contributions at their estimated fair value at the date of donation, and include the lease costs related to the performance theater as described in Note 10. Such donations are reported as increases in unrestricted net assets unless the donor has restricted the donated asset to a specific purpose. Equipment restricted to a specific purpose, without a donor's stipulation as to how long the donated asset must be maintained, are released from restriction over time each year for the amount of depreciation expense related to that donated asset. Assets with a donor imposed restriction are released based on that donor restriction.

Beneficial Interest in Assets Held by a Foundation - The beneficial interest in assets held by a foundation represents an endowment grant deposited with Kreielsheimer Remainder Foundation (the Foundation) by a donor for the benefit of the Center. The Foundation makes annual distributions to the Center. The distributions are available for general operating purposes. The beneficial interest is stated at the fair value of the underlying assets of cash and marketable securities. The original donation was recorded as a permanently restricted donation, while the annual investment income is recorded as unrestricted income at the direction of the donor for operating purposes.

Unearned Revenue - Ticket sales occurring prior to the year to which they apply are recorded as unearned revenue. Revenue is recognized when performances are held.

Donated Goods and Services - Donated goods are recorded as support at their estimated fair value at the date of donation. Donated services are recognized as revenue and corresponding expense when (a) the services received create or enhance nonfinancial assets, or (b) require specialized skills, are performed by people with those skills and would otherwise be purchased by the Center. The Center had donated professional services of \$7,381 for the year ended June 30, 2016 and are included in contributions on the statement of activities and changes in net assets.

Advertising Expense - The Center advertises to promote its performances. The costs of advertising and marketing are expensed as incurred. During the year ended June 30, 2016, these costs totaled \$25,891.

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 1 - Continued

Expense Allocation - The costs of providing various programs and other activities have been summarized on a functional basis in the statement of activities and changes in net assets. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Income Tax Status - The Internal Revenue Service has recognized the Center as a tax-exempt organization pursuant to Internal Revenue Code section 501(c)(3). As such, the Center is generally exempt from Federal income taxes, except to the extent of unrelated business activities.

Subsequent Events - Subsequent events were evaluated through May 22, 2017, which is the date the financial statements were available to be issued.

Note 2 - Pledges Receivable

Pledges receivable consisted of the following at June 30, 2016:

| | |
|--|--------------------------------|
| Pledges due in one year or less | \$ 25,437 |
| Less allowance for uncollectible pledges | <u>(2,544)</u> |
| Total Pledges Receivable, Net | <u><u>\$ 22,893</u></u> |

Note 3 - Investments

Investments consisted of the following at June 30, 2016:

| | |
|---------------------------|---------------------------------|
| Cash | \$ 4,084 |
| Certificates of deposit | 108,481 |
| Equity mutual funds | 323,424 |
| Fixed income mutual funds | <u>26,097</u> |
| Total Investments | <u><u>\$ 462,086</u></u> |

Investment return consisted of the following for the year ended June 30, 2016:

| | |
|--|-------------------------------|
| Interest and dividends | \$ 13,487 |
| Change in value of beneficial interest | (551) |
| Realized and unrealized loss on investments, net | <u>(6,757)</u> |
| Total Investment Return | <u><u>\$ 6,179</u></u> |

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 4 - Fair Value Measurement

U.S. GAAP defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. To increase consistency and comparability in fair value measurements, U.S. GAAP uses a fair value hierarchy that prioritizes the inputs to valuation approaches into three broad levels. The hierarchy gives the highest priority to quoted prices in active markets (Level 1) and the lowest priority to unobservable inputs (Level 3).

Valuation Techniques - Financial assets and liabilities valued using Level 1 inputs are based on unadjusted quoted market prices within active markets. Financial assets and liabilities valued using Level 2 inputs are based primarily on quoted prices for similar assets or liabilities in active or inactive markets. Financial assets and liabilities using Level 3 inputs were primarily valued using management's assumptions about the assumptions market participants would utilize in pricing the asset or liability. Valuation techniques utilized to determine fair value are consistently applied.

Following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used at June 30, 2016.

Cash and Certificates of Deposit - Valued at cost plus accrued interest, which approximates fair value.

Mutual Funds - Valued at quoted market prices in active markets, which represent the net asset value (NAV) of shares held by the Center at yearend.

Funds Held in Trust - Valued using the net asset value (NAV) provided by the fund. The NAV is based on the fair value of the underlying assets owned by the fund, minus its liabilities, and then divided by the number of units outstanding at the valuation date.

Fair Values Measured on a Recurring Basis - Fair values of assets and liabilities measured on a recurring basis were as follows at June 30, 2016:

| | <u>Level 1</u> | <u>Level 2</u> | <u>Level 3</u> | <u>Total</u> |
|---------------------------|-------------------|-------------------|------------------|-------------------|
| Cash | \$ 4,084 | \$ - | \$ - | \$ 4,084 |
| Certificates of deposit | | 108,481 | | 108,481 |
| Funds held in trust | | | 74,383 | 74,383 |
| Equity mutual funds | 323,424 | | | 323,424 |
| Fixed income mutual funds | 26,097 | | | 26,097 |
| | <u>\$ 353,605</u> | <u>\$ 108,481</u> | <u>\$ 74,383</u> | <u>\$ 536,469</u> |

Level 3 investments represent the funds held in trust for which the Center cannot withdraw the investments, but instead receives income from investments. The table below presents information about the change in the beneficial interest, which is measured at fair value:

| | |
|--|-------------------------|
| Balance, June 30, 2015 | \$ 78,494 |
| Distributions | (3,560) |
| Change in value in beneficial interest | <u>(551)</u> |
| Balance, June 30, 2016 | <u>\$ 74,383</u> |

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 5 - Theater Property and Equipment

Theater and equipment consisted of the following at June 30, 2016:

| | |
|--|-----------------------------------|
| Theater improvements and equipment | \$ 3,732,176 |
| Office equipment and furniture | <u>35,469</u> |
| | 3,767,645 |
| Less accumulated depreciation | <u>(2,193,106)</u> |
| Total Theater Property and Equipment, Net | <u><u>\$ 1,574,539</u></u> |

Note 6 - Temporarily Restricted Net Assets

Temporarily restricted net assets consisted of the following at June 30, 2016:

| | |
|--|---------------------------------|
| Endowment earnings | \$ 70,336 |
| Artist sponsorships and education | 112,940 |
| Pledges receivable, time restricted | <u>22,893</u> |
| Total Temporarily Restricted Net Assets | <u><u>\$ 206,169</u></u> |

Note 7 - Line of Credit

The Center has a \$100,000 revolving line of credit with a bank at June 30, 2016, secured by a certificate of deposit. The balance outstanding at June 30, 2016 was \$64,775. Bank advances bear interest at 2.45%. The line was renewed through February 2018 at which time all principal and interest are due.

Note 8 - Special Events

The Center holds an annual gala and auction. Special events revenue and expenses were as follows for the year ended June 30, 2016:

| | |
|------------------------------------|---------------------------------|
| Special events revenue | \$ 218,656 |
| Less costs of direct donor benefit | <u>(85,771)</u> |
| Special Events Revenue, Net | <u><u>\$ 132,885</u></u> |

Note 9 - Endowment

The Center's endowment includes donor-restricted endowment funds. As required by U.S. GAAP, net assets associated with endowment funds are classified and reported based on the existence or absence of donor-imposed restrictions.

Interpretation of Relevant Law - The Center's Board of Directors has interpreted the Washington State Prudent Management of Institutional Funds Act ("PMIFA") as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary.

KIRKLAND PERFORMANCE CENTER

Notes to Financial Statements For the Year Ended June 30, 2016

Note 9 - Continued

As a result of this interpretation, the Center classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, and (b) the original value of subsequent gifts to the permanent endowment.

Investment Return Objectives, Risk Parameters and Strategies - The Center has adopted investment and spending policies, approved by the Board, for endowment funds while also maintaining the purchasing power of those endowment assets over the long term. Accordingly, the investment process seeks to achieve an after-cost total real rate of return including investment income as well as capital appreciation, which exceeds the annual distribution with acceptable levels of risk. Endowment assets are invested in a well-diversified asset mix, which includes equity and debt securities, which is intended to result in a consistent inflation-protected rate of return that has sufficient liquidity to make an annual distribution based on growth of the funds, while allowing growth if possible. Therefore, the Center expects its endowment assets, over time, to produce an average rate of return of approximately 7% annually. Actual returns in any given year may vary from this amount. Investment risk is measured in terms of the total endowment fund. Investment assets and allocation between asset classes and strategies are managed to not expose the fund to unacceptable levels of risk.

Spending Policy - The Center has a policy of appropriating for distribution each year an amount based upon the endowment's total return above the average of the previous five years annual Consumer Price Index. In establishing this policy, the Center considered the long-term expected return on its investment assets, the nature and duration of the individual endowment funds, many of which must be maintained in perpetuity because of donor restrictions and the possible effects of inflation. The Center expects the current spending policy to allow its endowment funds to grow at a nominal average rate of 4% annually. This is consistent with the Center's objective to maintain the purchasing power of the endowment assets as well as to provide additional real growth through new gifts and investment return.

Changes in endowment net assets as of June 30, 2016 were as follows:

| | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u> |
|--|---------------------|-----------------------------------|-----------------------------------|-------------------|
| Endowment net assets, July 1, 2015 | \$ - | \$ 109,628 | \$ 464,980 | \$ 574,608 |
| Investment income | | 480 | | 480 |
| Appropriation of endowment assets for expenditure | | (39,772) | | (39,772) |
| Endowment Net Assets, June 30, 2016 | \$ - | \$ 70,336 | \$ 464,980 | \$ 535,316 |

Note 10 - Use and Occupancy Agreement

The Center operates the performing arts theater under a use and occupancy agreement with the City. The City agreed to lease the theater to the Center for a period of 10 years with three 10-year options for no charge in exchange for construction costs of approximately \$2,669,000 paid by the Center for construction of the theater. These construction costs are, in essence, prepaid lease costs and are being amortized over the 40-year anticipated lease term.

The construction costs are included with Theater Property and Equipment, and the related accumulated amortization (amounting to \$967,557 at June 30, 2016) is included with accumulated depreciation in these financial statements. According to the agreement, the City will retain a security interest in all of the Center's equipment, furniture and fixtures that are used in the operation of the theater.

KIRKLAND PERFORMANCE CENTER

**Notes to Financial Statements
For the Year Ended June 30, 2016**

Note 10 - Continued

The agreement also requires the Center to restrict a portion of its cash for operating reserves. Upon the occurrence of an event of default, as defined, the City may terminate the agreement. The Center may terminate the agreement with a one-year notice to the City.

Note 11 - Leases

The Center has two operating leases for office equipment which require monthly payments of \$288 per month through August 2021 and \$80 per month through January 2019. Minimum rental payments to be made each year are as follows:

For the Year Ending June 30,

| | | |
|------------|----|----------------------|
| 2017 | \$ | 4,123 |
| 2018 | | 4,412 |
| 2019 | | 4,013 |
| 2020 | | 3,456 |
| 2021 | | 3,456 |
| Thereafter | | <u>288</u> |
| | \$ | <u><u>19,748</u></u> |

Note 12 - Retirement Plan

The Center has a 401k retirement plan covering all eligible salaried employees. The Center matches employee contributions up to 3% of the employee's annual wages. Contributions for the year ended June 30, 2016 were \$9,099.

City of Kirkland Contributions to Kirkland Performance Center 1998-2018

| | 1998* | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|------------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------|----------------|----------------|----------------|
| Operational Maintenance | n/a | 10,706 | 15,355 | 16,796 | 16,052 | 11,338 | 9,126 | 11,874 | 9,472 | 10,802 | 17,153 |
| Capital Maintenance/Repairs | n/a | - | 38,146 | - | - | - | 4,174 | - | - | 1,202 | 26,160 |
| Admissions Tax Rebate | 14,538 | 28,034 | 29,812 | 26,286 | 30,482 | 22,020 | 31,558 | 33,579 | 32,482 | 39,954 | 45,974 |
| Tourism Grants From Lodging Fund** | | | | | | | | 10,000 | 10,000 | 8,000 | 8,000 |
| Outside Agency Contributions | - | - | - | 25,000 | 25,000 | 25,000 | 50,000 | 50,000 | 50,000 | 50,000 | 50,000 |
| Total | 14,538 | 38,740 | 83,313 | 68,082 | 71,534 | 58,358 | 94,858 | 105,453 | 101,954 | 109,958 | 147,287 |

*Excludes original City capital contribution to construction of facility of \$975,000.

**Excludes 4Culture pass through grants

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017* | 2018* | Total*** |
|----------------------------------|----------------|----------------|---------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Operational Maintenance | 18,159 | 9,491 | 12,467 | 14,925 | 12,440 | 9,244 | 33,465 | 17,137 | 20,053 | 20,009 | 296,064 |
| Capital Maintenance/Repairs** | 16,178 | 53,786 | 2,731 | 1,857 | - | 15,000 | 60,167 | - | 229,450 | 81,800 | 530,652 |
| Admissions Tax Rebate | 28,002 | 34,355 | 32,375 | 25,330 | 27,177 | 31,929 | 37,234 | 41,694 | 40,000 | 40,000 | 672,814 |
| Tourism Grants From Lodging Fund | 8,000 | 6,000 | 5,000 | 6,000 | 7,000 | 8,500 | - | 3,500 | 101,000 | - | 181,000 |
| Outside Agency Contributions | 50,000 | 34,000 | 34,000 | 34,000 | 34,000 | 50,000 | 50,000 | 50,000 | 50,000 | 50,000 | 761,000 |
| Total | 120,339 | 137,632 | 86,573 | 82,112 | 80,617 | 114,673 | 180,866 | 112,331 | 440,503 | 191,809 | 2,441,530 |

*Budget or estimate

**2014 Capital Maintenance includes \$15,000 for a special request for a storage loft and table excludes original City capital contribution to construction of \$975,000.

***Table does not recognize that the facility is provided rent free.

RESOLUTION R-5315

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE ATTACHED AGREEMENT BETWEEN THE KIRKLAND PERFORMANCE CENTER AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF THE PERFORMING ARTS CENTER.

1 WHEREAS, the City of Kirkland ("City") is interested in the
2 artistic and cultural development of the City and its residents; and

3
4 WHEREAS, the Kirkland Performance Center ("KPC") is
5 organized for a express purpose of operating a performing arts
6 center; and

7
8 WHEREAS, the City and KPC cooperated in the
9 development and construction of the performing arts center; and

10
11 WHEREAS, the performing arts center provides an
12 essential venue for the presentation of public entertainment and
13 cultural events, and thereby fulfill an important public purpose;
14 and

15
16 WHEREAS, it is in the best interests of the City, as
17 Landlord, and KPC, as Tenant, for KPC to continue to lease and
18 have exclusive operational control of the performing arts center,
19 reserving the right of the City to use the performing arts center;
20 and

21
22 WHEREAS, it is in the best interests of the City and KPC
23 for KPC to have total artistic and content control of performances
24 at the performing arts center; and

25
26 WHEREAS, the parties intend that KPC operate the
27 performing arts center in a manner consistent with the important
28 public purpose of presenting public entertainment and cultural
29 events, and

30
31 WHEREAS, the parties desire to document the terms and
32 conditions they have agreed upon with respect to the use and
33 occupancy of the performing arts center.

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NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is authorized and directed to execute on behalf of City an agreement substantially similar to that attached as Exhibit "A", which is entitled "Agreement By and Between the City of Kirkland, Washington and the Kirkland Performance Center Regarding the Use and Occupancy of the Performing Arts Center."

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2018.

Signed in authentication thereof this ____ day of _____, 2018.

Amy Walen, Mayor

Attest:

Kathi Anderson, City Clerk

AGREEMENT

by and between

The City of Kirkland, Washington

and

The Kirkland Performance Center

regarding the
use and occupancy
of the
Performing Arts Center

July 1, 2018 through June 30, 2028

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**AGREEMENT BY AND BETWEEN THE CITY OF KIRKLAND, WASHINGTON
AND THE KIRKLAND PERFORMANCE CENTER**

THIS USE AND OCCUPANCY AGREEMENT is dated as of, July 1, 2018 and entered into by and between the CITY OF KIRKLAND (hereinafter referred to as the “City”), a Washington municipal corporation, and the KIRKLAND PERFORMANCE CENTER (hereinafter referred to as “KPC”), a Washington non-profit corporation.

WHEREAS, The City is interested in the artistic and cultural development of the City and its residents;

WHEREAS, KPC is organized for a express purpose of operating a performing arts center;

WHEREAS, the City and KPC cooperated in the development and construction of the performing arts center;

WHEREAS, both parties agree that the performing arts center provides an essential venue for the presentation of public entertainment and cultural events, and thereby fulfill an important public purpose;

WHEREAS, both parties agree that it would be in the best interests of the City, as Landlord, and KPC, as Tenant, for KPC to lease and have exclusive operational control of the performing arts center, and subject to the terms of this Agreement, reserving the right of the City to use the performing arts center;

WHEREAS, both parties agree that it would be in the best interests of the City and KPC for KPC to have total artistic and content control of performances at the performing arts center;

WHEREAS, both parties intend that KPC operate the performing arts center in a manner consistent with the important public purpose of presenting public entertainment and cultural events, and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the performing arts center;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and as a direct benefit to the City, the parties agree as follows:

ARTICLE 1 – DEFINITIONS

All words in this Agreement bearing initial capitals, other than proper nouns, article headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the Design and Construction Agreement as set forth below. Any sums set forth below are subject to modification by a written amendment to this Agreement in the form attached as Exhibit C. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

- 1.1 Agreement means this Use and Occupancy Agreement, as from time to time amended in accordance with the terms hereof.
- 1.2 Approval means the prior written consent of a party hereto or designated representatives thereof.
- 1.3 Cash Equivalents means funds of KPC which have been invested in financial instruments or investment funds that have maturity dates which are convertible to cash on demand (with or without penalties for early withdrawal).
- 1.4 City means the City of Kirkland.
- 1.5 City Manager means the City Manager of the City of Kirkland, or his or her designee.
- 1.6 Facility means the performing arts center to be developed pursuant to this Agreement.
- 1.7 Kirkland Performance Center or KPC means the Kirkland Performance Center, a Washington non-profit corporation.
- 1.8 Tenant Improvements means all property (such as equipment, fixtures and furnishings, whether the property is physically affixed to the Facility or not) which is used in the scheduling or presentation of events at the Facility, including, but not limited to, lighting, sound system, curtains, seating, carpeting, phone system, lift, piano, stage rigging, and computerized box office system. Tenant Improvements does not mean the structure and core of the Facility; HVAC, plumbing, electrical and mechanical systems; elevator; and stage.
- 1.9 Use and Occupancy Agreement means the Use and Occupancy Agreement to be executed prior to the award of the Construction Contract.

ARTICLE 2 – LEASE AND DESCRIPTION OF PREMISES

The City, as Landlord, hereby leases to KPC, and KPC, as Tenant, hereby leases from the City, subject to the terms and conditions hereof, the Premises, located at 350 Kirkland Avenue, Kirkland, Washington 98033.

ARTICLE 3 – TERM OF AGREEMENT

- 3.1 Effective Date of Agreement. This effective date of this Agreement shall be July 1, 2018.
- 3.2 Term. The Term of this Agreement shall expire on June 30, 2028 , which is ten (10) years, after July 1, 2018 the Effective Date of this Agreement, unless terminated earlier pursuant to the provisions hereof.
- 3.3 Option for Extension of Term. KPC may extend the term of this Agreement for two (2) additional consecutive terms of ten (10) years; provided that, every five (5) years thereafter, the parties have the option to renegotiate the amount of annual rent and other terms and conditions (except KPC retention of total artistic control of performances) of this Agreement. If the parties fail to agree on a satisfactory amount of annual rent or other terms and conditions of this Agreement, the parties agree to use non-binding mediation before the City may terminate this Agreement. If the parties fail to agree on annual rent or other terms and conditions of this Agreement through mediation, the City may terminate this Agreement.

- 3.3.1 Not later than six (6) months before the expiration of this Agreement, the City shall notify KPC of the City's exercise of its option to renegotiate the amount of annual rent, and other terms and conditions of this Agreement.
- 3.3.2 Not later than one (1) year before the expiration of this Agreement, KPC shall notify the City of KPC's exercise of its option to extend the initial term of this Agreement and of each extension. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than KPC.
- 3.4. Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the City may terminate this Agreement. Upon not less than one (1) year's notice to the City, KPC may terminate this Agreement. In the event that this Agreement is terminated, KPC shall surrender the Premises to the City. The City shall not owe KPC any "refund" or other compensation for contributions made by KPC for the design and construction of the performing arts center, or tenant improvements to the performing arts center.

ARTICLE 4 – AUTHORIZED USE OF PREMISES

- 4.1 Exclusive possession and operational control. KPC shall have exclusive possession and operational control of the Premises, subject to the terms of this Agreement reserving the right of the City to use the performing arts center. KPC shall also have total artistic control of performances, also subject to the terms of this Agreement. KPC shall use the Premises for the presentation of performing arts, as well as for meetings of KPC Board members, staff, and other personnel directly associated with KPC, KPC classes and other KPC educational programs, presentations, KPC fund-raising endeavors, rehearsals, and other related activities, KPC offices, and such other activities as are incidental to the foregoing. KPC shall also use the Premises to actively encourage and provide for youth experiences with the performing arts. KPC may use the Premises for business and community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the priority use of the Premises for the presentation of performing arts. KPC may use the Premises to engage in concession and catering activity only as provided in this Agreement. KPC may use the Premises for additional purposes with the prior written approval of the City Manager.
- 4.2 Use of Meeting Room.
- 4.2.1 KPC shall has the right to use the Peter Kirk Community Center Lobby Meeting Room for up to ten days per year on a space available basis. These "KPC" dates must be reserved more than ninety (90) days in advance of the use date, and shall not compete with dates programmed or requested by Peter Kirk Community Center customers.
- 4.2.2 Conditions of Use include:
- 4.2.2.1 KPC staff will need to check the key in and out from the Peter Kirk Community Center staff. This will include a walk through prior to and after use to assess any damage.

4.2.2.2 KPC shall pay for operational expenses arising from its use of the Premises including, but not limited to, janitorial services, security false alarms, and damage assessed during walk through.

4.2.2.3 KPC will have staff present at all times during use.

ARTICLE 5 – CITY USE

5.1 The City reserves the right to use the Premises with the exception of KPC’s Administrative Offices up to seven (7) days per year on a space available basis. These “City use” dates must be reserved more than sixty (60) days in advance of the use date, and shall not compete with dates requested by KPC rental customers. The City also reserves the right to use the Premises on additional days on a space available basis. These “additional City use” dates may not be reserved more than sixty (60) days in advance of the use date and shall not compete with dates requested by KPC rental customers.

5.2 The City shall be allowed to use the Premises without rental charge, but shall pay operational expenses arising from its use of the Premises including, but not limited to, extra staffing or janitorial services.

ARTICLE 6 – RENT

In consideration of the value of KPC’s contribution to development and operation of the performing arts center, the value of KPC’s tenant improvements to the performing arts center, the value of KPC’s maintenance and operation of the Premises, the value of KPC’s payments of all utility charges, and subject to the terms and conditions of this Agreement, KPC hereby covenants and shall pay no rent for the Premises during the Term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Article 3.3 of this Agreement.

ARTICLE 7 – ADMISSIONS TAXES

7.1 The City agrees to dedicate to KPC one hundred percent (100%) of the admissions taxes generated from KPC events at the Facility to support the public purposes served by the Facility for the first five (5) years of this Term, to be reviewed every additional five (5) years of this Agreement, to cover the periods of July 1, 2018 through 2028 and extension of terms.

7.2 The City agrees to pay to KPC such admissions taxes within thirty (30) days of receipt; provided, however, that KPC must pay to the City such admissions taxes in accordance with applicable provisions of the Kirkland Municipal Code and State law. Additionally, the payment of admission taxes is contingent upon upholding the terms of this agreement. Special attention should be brought to Article 8, Reserve, Record Keeping and Reporting below.

ARTICLE 8 – RESERVE, RECORD KEEPING AND REPORTING

8.1 KPC will make its best efforts to keep a minimum of \$200,000 in Operating Reserves.

8.2 The City shall appoint a liaison between the City and KPC who will ensure compliance with all record keeping and reporting requirements set forth in this article.

- 8.3 KPC shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles (“GAAP”) consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by KPC under this Agreement.
- 8.4 KPC shall provide a report in September of each year that includes the following: a budget for the forthcoming year that provides adequate funding for maintenance and operations, unaudited financial statements with a balance sheet, income statements depicting performance against budget, profit and loss statements, box office statements (statements depicting ticket sales, admission taxes collected, service charges and average ticket price), projected bookings and fund development progress. Bi-annually, in odd years beginning in 2019, the report shall include a financial statement audited by an independent certified public accounting firm for the previous two (2) year period, and prepared in accordance with GAAP. The annual report shall summarize KPC’s activities and status.
- 8.5 The City requests the completion of a business plan within two (2) years after the start date of this Agreement to be updated periodically as market conditions change. A business plan typically includes a market analysis, SWOT analysis, business model, financial plan and strategic planning.

ARTICLE 9 – IMPROVEMENTS, ALTERATIONS AND ADDITIONS TO THE PREMISES

- 9.1 Tenant Improvements. KPC may make Tenant Improvements to the Premises with the consent of the City. If an Event of Default occurs, if KPC fails to perform its duties under this Agreement, or if this Agreement expires, terminates, or is otherwise not renewed, all KPC-provided or owned Tenant Improvements on the Premises shall remain in place and shall automatically and without further notice or act by the City and without compensation to KPC become the property of the City.
- 9.2 Other Improvements, Alterations and Additions. KPC shall not alter any structural features of the Premises without City approval. KPC, at its sole expense, may redecorate any interior surface of walls, ceilings, windows and doors.
- 9.3 Waiver of Artistic Rights. In the event that KPC installs an art work in the Premises that will incorporate such work into the Premises in such a way that removing such work may subject it to destruction, distortion, mutilation or other modification, KPC shall require the artist to waive any rights under federal or state law (including without limitation the Visual Artists Rights Act and the New York Arts and Cultural Affairs Law) with respect to the consequences of removing all or part of such work from the Premises. The waiver must be in writing, be signed by the City, KPC and the artist, be approved as to form by the City Attorney, and be recorded. The waiver must specifically identify the art work and the uses to which it applies.

ARTICLE 10 – QUIET ENJOYMENT

The City covenants that it holds legal title to the Premises, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, if any, such mortgage or mortgages as are permitted by the terms of this Agreement, zoning ordinances and other building and fire ordinances and government regulations relating to the uses of such property, and easements, restrictions and other conditions of record. The City represents and warrants that it has full right and authority to enter into this Agreement and that KPC, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have, hold and enjoy the Premises for the term of this Agreement,

including, but not limited to, the scheduling of KPC performances and events, management of operations, or selection of productions, employees and agents without hindrance or interference from the City, subject to the terms and provisions of this Agreement.

ARTICLE 11 – HAZARDOUS SUBSTANCES

KPC shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Premises, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders. The term “Hazardous Materials” refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. KPC shall indemnify, defend and hold the City harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (“remedial work”) required by, or incurred by the City or any nongovernmental entity or person in reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during the term of this Agreement. The City shall indemnify, defend and hold KPC harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (“remedial work”) required by, or incurred by KPC or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any hazardous material on, under, in, above, to, or from the Premises that occurred or originated during a time other than the term of this Agreement. If any remedial work is so required under any applicable federal, state or local law during the term of this Agreement, KPC shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one (1) or more contractors under the supervision of a consulting engineer, each selected by KPC and approved in advance in writing by the City. If KPC does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, the City may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Agreement.

ARTICLE 12 – MAINTENANCE, CLEANING, REPAIR AND UTILITIES

12.1 City. The City is responsible for maintenance and repair of the structural components of the performing arts center which shall include the roof, the exterior walls, the foundation, the HVAC system, and the elevator. The City is also responsible for maintenance which is necessary for the structural integrity of the performing arts center, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. The City will coordinate a routine meeting with KPC to discuss and schedule future up and coming maintenance work. The City is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided, that if KPC wants special plantings or landscaping and landscape maintenance that exceed City standards, KPC will be responsible for and will pay for such plantings or features. The City is also responsible for and will pay for maintenance of the parking lot that meets City standards.

12.1.1 The City make its best efforts to coordinate Maintenance work with KPC so as not to interfere with KPC’s operations. At minimum the City shall give KPC at least

twenty-four (24) hour notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the premises for the presentation of the performing arts. In the event of an emergency, however, no such notice shall be required.

- 12.2 KPC. KPC is responsible for maintenance and repair of the interior of the performing arts center which shall include tenant improvements, audio/visual systems, sound system, telephone equipment, lighting and plumbing fixtures and appliances. KPC's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. KPC's janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning, repair or replacement of seating, curtains, carpets, flooring, and faucets; cleaning windows and walls; and servicing of audience areas and restrooms. KPC shall timely pay all utility charges for utility service to the Premises including, but not limited to, electricity, water, storm water, sewer, garbage, and telephone.

ARTICLE 13 – INDEMNIFICATION

- 13.1 The City shall not be liable to KPC or KPC's employees, agents, guests, invitees or visitors, or to any other person for any injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the negligence or misconduct of KPC, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the building and improvements located on the Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises, or due to any other cause except injury to persons or damages to property solely caused by the negligence of the City.
- 13.2 KPC shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of KPC's use of the Premises, or from the conduct of KPC's business, or from any activity, work or thing done, permitted, or suffered by KPC in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

ARTICLE 14 – INSURANCE

- 14.1 The City shall maintain insurance covering the building of which the Premises are a part in an amount equal to its replacement cost, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverage and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State of Washington for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state. Subject to the terms of this Agreement, such insurance shall be for the sole benefit of the City and under its sole control.
- 14.2 KPC shall notify the City immediately after a casualty occurs to the Premises or the building. (1) If the building is totally destroyed by fire or other casualty, (2) if the casualty is not insured, (3) if the cost of restoration would exceed the total Insurance proceeds and KPC's available funds, including the Operating Reserve, provided that KPC replenishes the Operating Reserve in

accordance with Article 8.1 of this Agreement, or (4) if rebuilding or repairs cannot in the City's estimation be completed with three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage, then the Agreement shall terminate effective upon the date of the occurrence of such damage. The City shall give notice to KPC in writing of its determination to terminate this Agreement within ninety (90) days following the date of the occurrence of such damage.

- 14.3 If the building is damaged by any peril covered by the Insurance to be provided by the City, but only to such extent that rebuilding or repairs can in the City's estimation be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage, this Agreement shall not terminate, and the City shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such building to substantially the condition in which it existed prior to such damage, except that the City shall not be required to rebuild, repair or replace any part of the partition, fixtures, additions and other improvements which may have been placed in, or about the Premises by KPC. If the building is subsequently damaged while the City is rebuilding and repairing the building, the City shall estimate whether rebuilding or repairs can be completed within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such subsequent damage. If the Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If the City does not complete such repairs and rebuilding within three hundred sixty-five (365) days after the date upon which the City is notified by KPC of such damage or such subsequent damage, as appropriate, KPC may at its option terminate this Agreement by delivering written notice of termination to the City within three hundred ninety-five (395) days after the date of the notice of the damage or the subsequent damage, as appropriate, as KPC's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.
- 14.4 Notwithstanding anything in this Agreement to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then the City shall have the right to terminate this Agreement by delivering written notice of termination to KPC within fifteen (15) days after such requirement is made by and such holder, whereupon all rights and obligations under this Agreement shall cease and terminate.
- 14.5 KPC shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the KPC's operation and use of the Premises.
- 14.6 No Limitation. KPC's maintenance of insurance as required by the agreement shall not be construed to limit the liability of KPC to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- 14.6.1 Minimum Scope of Insurance. KPC shall obtain insurance of the types described below:
- 14.6.1.1 Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on KPC's Commercial General Liability insurance policy using ISO Additional Insured-Managers or

Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

- 14.6.1.2 Property insurance shall be written on an all risk basis.
- 14.6.2 Minimum Amounts of Insurance. KPC shall obtain the following insurance limits:
- 14.6.2.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$5,000,000 general aggregate.
- 14.6.2.2 Property insurance shall be written covering the full value of KPC's property and improvements with no coinsurance provisions.
- 14.6.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:
- 14.6.3.1 KPC's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of KPC's insurance and shall not contribute with it.
- 14.6.3.2 KPC's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 14.6.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 14.6.5 Verification of Coverage. KPC shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of KPC.
- 14.6.6 Waiver of Subrogation. KPC and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.
- 14.6.7 City's Property Insurance. City shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.

ARTICLE 15 – SIGNS

The KPC may install signs on the exterior of the Premises, identifying the building as the Kirkland Performance Center or other mutually agreed upon name, and containing other information related to KPC, including without limitation, program information, fundraising information and special KPC announcements. The design, installation and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

ARTICLE 16 - ASSIGNMENT, SUBLEASE OR TRANSFER

Obligations or rights of KPC under this Agreement may not be assigned, subleased, or otherwise transferred by KPC, without the prior written consent of the City, which consent may be withheld at the sole discretion of the City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an Event of Default. Any such assignment, sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, KPC shall cause to be delivered to the City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

ARTICLE 17 – CONCESSIONS AND CATERING ACTIVITY

- 17.1 **Definitions.** As used in this article, unless the context clearly requires a different meaning:
- 17.1.1 “Concession and catering activity” means and includes the preparation, service, free distribution, or sale of food or any beverage, including any alcoholic beverage, or the free distribution or sale of any concession merchandise or service; and
- 17.1.2 “Concession merchandise or service” means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.
- 17.2 **Grant of Right.** The City grants to KPC the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one (1) or more concessionaires to engage in such activity for and on the behalf of, or under the auspices of, KPC, at the Premises, subject to the terms of this Agreement. If KPC decides to retain any such concessionaire(s), KPC shall select such concessionaire(s). If KPC enters into any such agreement(s), KPC shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement.
- 17.3 **Right Not Effective During City Use Periods.** The concession and catering rights granted in this article shall not be effective during any period of time when the Premises are used by the City, unless by express request of the City, with the exception of the box office.
- 17.4 **Food Service Establishment Permit Required.** KPC, or any such concessionaire(s), shall ensure that all food offered for sale on or from the Premises has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle-King County Department of Public Health or its successor.

- 17.5 Licenses and Permits Required; Contingent Expiration of Right. KPC, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to the City, all licenses, permits and other authorization required in order to legally conduct the concession and catering activity contemplated herein. The City shall have no obligation to issue such licenses, permits, or other authorization. The City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of KPC, or any such concessionaire(s), to secure or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein.

ARTICLE 18 – COMPLIANCE WITH LAW

- 18.1 Lawful Use. KPC and the City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between the City and KPC.
- 18.2 Licenses and Similar Authorization. KPC, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. The City shall have no obligation to issue such licenses, permits, or authorizations. The City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.
- 18.3 Taxes. KPC shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Premises pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on KPC property, equipment, and improvements on the Premises; taxes on KPC's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A., if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from KPC's use or occupancy of the Premises or the conduct of any activity subject to tax, or the State withholds funds due to the City to enforce collection of leasehold excise or any other tax, KPC, at its sole expense, shall contest such action and indemnify the City for all sums expended by or withheld by the State from the City in connection with such taxation; provided, that KPC may pay any such tax in lieu of contesting it or indemnifying the City. The City shall pay and shall indemnify and hold KPC harmless for all taxes imposed, that relate to City sponsored events at the Premises (except for taxes imposed on concession sales by KPC or for KPC's benefit), and for all taxes that may be imposed on KPC or KPC use of the Premises resulting from any City use under this Agreement.
- 18.4 Attendance and Safety Standards. The Kirkland Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Premises. KPC shall not sell or issue tickets or credentials for admission to the Premises in an aggregate number that exceeds the Kirkland Fire Chief's determined number. KPC shall not admit to the Premises more people than the number so determined by the Kirkland Fire Chief. KPC shall not permit any chair or movable

seat or other obstruction to the erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Premises shall not be obstructed by KPC or used for any purpose other than for ingress and egress to the Premises for persons or property. The City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Premises under this Agreement.

- 18.5 Nondiscrimination. KPC shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.
- 18.6 Americans with Disabilities Act. KPC shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, including without limitation Title III of the Americans with Disabilities Act.
- 18.7 Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

ARTICLE 19 – ROYALTIES, LICENSE FEES AND SIMILAR PAYMENTS

KPC shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Premises. The City shall be responsible for all similar royalties, license fees and other charges in connection with the City's use of the Premises.

ARTICLE 20 – LIENS AND ENCUMBRANCES

KPC shall keep the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances. Notwithstanding the foregoing, KPC may finance up to \$20,000 of the total costs of the Tenant Improvements. At the City's request, KPC shall furnish the City written proof of payment of any items that would or might constitute the basis for such a lien on the Premises, the Tenant's interest in this Agreement, and the Tenant Improvements if not paid.

ARTICLE 21 – DEFAULT

- 21.1 Default. The following events shall constitute a default and material breach of this Agreement:
- 21.1.1 The failure to comply with any of the terms of this Agreement regarding insurance;
 - 21.1.2 The material violation of any law, ordinance, rule or regulation which, after notice and reasonable time to cure, remains uncured;
 - 21.1.3 The abandonment or vacating of the Premises for a period of twenty (20) days or more;

- 21.1.4 The absence of any KPC-scheduled performing arts event for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which the City is responsible;
 - 21.1.5 The failure to pay any sum of money due to the City within thirty (30) days after such notice from the City that such a payment is overdue;
 - 21.1.6 The dissolution of the KPC or the merger of KPC with another entity without the prior written approval of the City;
 - 21.1.7 The assignment or transfer of this Agreement without the prior written consent of the City as described in Article 16 of this Agreement; and
 - 21.1.8 The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.
- 21.2 Extension of Period to Remedy Default. Neither the City nor KPC shall be in default unless such party fails to perform an obligation required of it within thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

ARTICLE 22 – REMEDIES UPON DEFAULT AND MATERIAL BREACH

Upon the occurrence of any Event of Default by KPC, the City shall have the option to pursue any one (1) or more of the following remedies without notice or demand.

- 22.1 Accelerate all rent payments under this Agreement which shall then become immediately due and payable.
- 22.2 Terminate this Agreement, in which event KPC shall immediately surrender the Premises to the City, and if KPC fails so to do, the City may, without prejudice to any other remedy it may have for possession or unpaid rent, enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and KPC agrees to pay to the City on demand the amount of all loss and damage the City may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.
- 22.3 Enter upon and take possession of the Premises and expel or remove KPC and any other person who may be occupying such Premises or any part thereof, and relet the Premises for such terms ending before, on or after the expiration date of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as the City in its sole discretion may determine, and receive the rent therefor; and KPC agrees to pay to the City on demand any deficiency that may arise by reason of such reletting. The City shall have no obligation to relet the Premises or any part thereof and shall not be liable for refusal or failure to relet or in the event of reletting for refusal or failure to collect any rent due upon such reletting. If the City is

successful in reletting the Premises at a rental in excess of that agreed to be paid by KPC pursuant to the terms of this Agreement, the City and KPC each mutually agree that KPC shall not be entitled, under any circumstances, to the excess rental, and KPC specifically waives any claim to the excess rental.

- 22.4 Enter upon the Premises, and do whatever KPC is obligated to do under the terms of this Agreement. KPC agrees to reimburse the City on demand for any expenses which the City may incur in thus effecting compliance with KPC's obligations under this Agreement, and KPC further agrees that the City shall not be liable for any damages resulting to the KPC from such action, whether caused by the negligence of the City or otherwise.
- 22.5 Whether or not the City retakes possession or relets the Premises, the City shall have the right to recover unpaid rent and all damages caused by KPC's default, including attorney's fees. Damage shall include, without limitation: all rentals lost, all legal expenses and other related costs incurred by the City following KPC's default, all costs incurred by the City in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting the Premises for a comparable use, all costs (including without limitation any brokerage commissions and the value of the City's time) incurred by the City, plus interest thereon from the date of expenditure until fully repaid at the rate of eighteen percent (18%) per year.
- 22.6 If KPC does not pay any installment of rent, additional rent or other charges owed the City under this Agreement as and when due, to help defray the additional cost to the City for processing late payments KPC shall pay to the City on demand a late charge in an amount equal to five percent (5%) of the payment. The late charge shall be in addition to all of the City's other rights and remedies under this Agreement or at law and shall not be construed as liquidated damages or as limiting the City's remedies in any manner.
- 22.7 Pursuit of one (1) remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due the City or of any damages accruing to the City by reason of KPC's breach of this Agreement. No act or thing done by the City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Premises. No agreement to terminate this Agreement or accept a surrender of said Premises shall be valid unless in writing signed by the City. No waiver by the City of any violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. The City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by the City to enforce one (1) or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of the City's right to enforce any remedies with respect to such default or any subsequent default.
- 22.8 If the City employs the services of an attorney in connection with an event of default by KPC under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its attorney's fees and costs.

ARTICLE 23 – SURRENDER OF PREMISES AND REMOVAL OF PROPERTY

- 23.1 Surrender of Premises. Upon termination or expiration of this Agreement, KPC shall surrender to the City the Premises and all keys therefor.

- 23.2 Conditions of Premises upon Surrender. The Premises to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by KPC, except for the effects of improvements, additions, alterations, and repairs made with the concurrence of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear, and acts of God.
- 23.3 Removal of Property. Prior to the expiration of this Agreement, or within sixty (60) days after termination in the event of an earlier termination of this Agreement, KPC shall remove from the Premises, at no cost or expense to the City, all personal property owned and placed in or on the Premises by KPC, its agents, invitees, employees, contractors or successors. In removing such personal property, KPC shall take due care to not damage or injure the Premises, and any such damage or injury shall be immediately repaired by the KPC to the City Manager's reasonable satisfaction, at KPC's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period.

ARTICLE 24 – NO WAIVERS

No action other than a written document by the City Manager or the KPC Board President specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

ARTICLE 25 – REMEDIES CUMULATIVE

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one (1) remedy shall not be taken to exclude or waive the right to use another.

ARTICLE 26 – OBLIGATION OF KPC LIMITED TO CORPORATION

Any and all obligations of KPC under this Agreement are enforceable only against Kirkland Performance Center, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon KPC's officers, directors, trustee, members, employees, or agents.

ARTICLE 27 – ADDRESSES

- 27.1 Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Kurt Triplett
City Manager
City of Kirkland
123 Fifth Avenue
Kirkland, Washington, 98033-6189

27.2 and to KPC at the following address:

Jeff Lockhart
Executive Director
Kirkland Performance Center
350 Kirkland Avenue
Kirkland, Washington, 98033

27.3 Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

ARTICLE 28 – TITLES OF ARTICLES

The titles of articles and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any article.

ARTICLE 29 – AMENDMENTS

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

ARTICLE 30 – DISPUTE RESOLUTION

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the KPC President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one (1) member selected by the City Manager, one (1) member selected by the KPC President, and a third member selected by the first two. The City shall pay any costs or fees associated with the member it selects. KPC shall pay any costs or fees associated with the member it selects. The City and KPC shall each pay one half (1/2) of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice. The decision of the Resolution Panel will be announced within ten (10) City business days.

ARTICLE 31 – ENTIRE AGREEMENT

The parties hereto acknowledge that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all of the exhibits attached hereto, embodies the entire Agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties regarding the Premises except as expressly referenced herein.

IN WITNESS, WHEREOF, the authorized representatives of the parties hereto have executed this Agreement by affixing their signatures in the spaces below.

DATED this _____ day of _____, 2018.

CITY OF KIRKLAND

KIRKLAND PERFORMANCE CENTER

By: _____

By: _____

Kurt Triplett, City Manager

Jeff Lockhart, Executive Director

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Jeff Lockhart is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Executive Director of the Kirkland Performance Center, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

[Print Name]
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Kurt Triplett is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the City Manager of the City of Kirkland, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

[Print Name]
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____