

**LEASE AGREEMENT FOR SENATOR THEATRE  
Baltimore, Maryland**

**THIS LEASE AGREEMENT** (the "Agreement") is dated as of the 18 day of ~~August~~, 2010 (the "Lease Date"), by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a body politic and corporate and a political subdivision of the State of Maryland (the "City"), acting by and through the Department of Housing and Community Development (the "DHCD") and **THE SENATOR THEATRE LLC**, a limited liability company formed under the laws of the State of Maryland ("Lessee").

**Recitals**

A. The City owns the land and improvements known as 5904-06 York Road, Baltimore, Maryland (the "Leased Premises"). The existing improvements are sometimes referred to as the "Theatre".

B. The City is authorized to lease the Leased Premises by virtue of (i) Article II, Section 15 of the Baltimore City Charter, 1964 Edition, as amended (the "Charter Provision"), and (ii) Article XIII of the Baltimore City Code, 2000 Edition, as amended (the "City Code"), which established DHCD pursuant to the Charter Provision.

C. The City desires that Lessee rehabilitate and operate the Leased Premises as a first class movie Theatre.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual obligations of the City and Lessee, and other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Lessee hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

**1.1 Definitions**

Certain terms, if capitalized, are defined in the heading and recitals to this Agreement and elsewhere in this Agreement. Unless the context or use clearly indicates another or different meaning or intent, the following definitions shall generally apply to the following capitalized word or term:

"Applicable Law" shall mean, any law, ordinance, regulation, or order of any federal, state, or local agency (including DHCD), court, or other governmental body, applicable from time to time to the acquisition, leasing, design, construction, equipping, financing, ownership, or operation of the Leased Premises or the performance of any obligations under any agreement entered into in connection with this Agreement.

"Authorized Officer" shall mean (a) in the case of the City, the Mayor, or the Commissioner of DHCD, and when used with reference to any act of or on behalf of the City, including the execution of any document of or on behalf of the City, also means any other person authorized by resolution of the Board of Estimates to perform such act or execute such document; and (b) in the case of Lessee, an authorized person of the Lessee.

"Business Day" shall mean a day other than a Saturday, Sunday, or legal holiday in the State of Maryland or in Baltimore City.

"Insurance Requirements" shall mean the applicable provisions of any casualty or liability insurance policy carried by Lessee covering the Leased Premises, and all requirements of the issuer of any such policy.

"Lease Date" shall mean the date of this Agreement.

"Mortgage" shall mean a mortgage or deed of trust, securing payment of a debt, that encumbers Lessee's leasehold interest in the Leased Premises.

"Mortgagee" shall mean the holder of, or beneficiary under, a Mortgage.

"Person" shall mean any natural person, corporation, limited liability company, partnership, joint venture, entity, association, joint-stock company, trust or unincorporated organization and any Public Authority.

"Plans and Specifications" shall mean the Construction Plans prepared for the Leased Premises, as the same may be implemented and detailed from time to time and, in accordance with Article V, as the same may have been revised from time to time prior to the date of completion of such improvements.

"Property Taxes" shall mean all real and personal property taxes, public assessments and levies, impositions, and other public charges levied or assessed by a Public Authority against all or any portion of the Leased Premises, including real property taxes.

"Public Authority" shall mean any federal, state, or local governmental or quasi-governmental subdivision, authority, agency or other instrumentality thereof.

"State" shall mean the State of Maryland.

1.2 Additional Defined Terms

The following terms are defined in the sections in this Agreement indicated below:

<u>Term</u>	<u>Section</u>
"Certificate of Completion"	5.12
"Construction Contract"	5.8
"Construction Plans"	5.4
"Design Plans"	5.2
"Event of Default"	14.3
	4.1
"Initial Term"	3.1.1
"Insurance Trustee"	10.7.1 (Exhibit C)
"Lease Date"	Opening Section

1.3 Miscellaneous Definitions and Rules of Construction

Words of any gender shall be deemed and construed to include correlative words of each other gender. Unless the context shall otherwise indicate, words importing the singular number include the plural number and vice versa, and words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof. "Including" shall mean "including, but not limited to." Any Schedule or Exhibit referred to shall mean a Schedule or Exhibit to this Agreement, and is intended to be incorporated in this Agreement.

ARTICLE II

GENERAL TERMS OF LEASE

2.1 Lease of the Leased Premises

Subject to the restrictions, covenants, conditions, terms, and provisions of this Agreement, effective on the Lease Date, the City hereby demises and leases the Leased Premises unto Lessee, and Lessee hereby takes and leases the Leased Premises from the City.

2.2 Condition of Leased Premises

The Leased Premises will be accepted by the Lessee in an "As Is" condition at the Lease Date. The City makes no guaranty or warranty as to the suitability of the Leased Premises for any purpose, to the zoning of the Leased Premises or to the physical or environmental condition of the Leased Premises. Lessee specifically waives and releases, and City expressly disclaims all warranties or representations, express, implied, statutory or otherwise (including of fitness for any purpose intended by Lessee) with respect to the Leased Premises or its condition. Lessee

specifically disclaims all rights, remedies, recourse or other basis for recovery (including any rights, remedies, recourse or basis for recovery based on negligence or strict liability) that Lessee would otherwise have against City in respect of the condition of the Leased Premises. The disclaimers in this section specifically extend to (1) matters relating to hazardous materials and compliance with environmental laws, (2) geological conditions, including subsidence, subsurface conditions, water table underground streams and reservoirs and other underground water conditions, limitations regarding the withdrawal of water, earthquake, floodway or special flood hazard, (3) drainage, (4) soil conditions, including the existence of instability, conditions of soil fill, susceptibility to landslides, and the sufficiency of any under shoring, (5) zoning and subdivision and compliance with zoning and subdivision laws, (6) the value and profit potential of the Leased Premises, (7) design, quality, suitability, structural integrity and physical condition of any improvements on the Leased Premises, and (8) compliance of the Leased Premises with any laws. Lessee has not relied upon and will not rely upon, either directly or indirectly, any statement of City or any of its affiliates or any officer, agent, employee or other person acting or purporting to act on behalf of City except for the representations and warranties expressly made by City in this Agreement. Lessee acknowledges that it has conducted or will conduct such inspections and investigations as to the condition of the Leased Premises as it deems necessary to protect its interests. Lessee acknowledges and agrees that the disclaimers, waivers and releases set forth herein are an integral part of this Agreement and that City would not have agreed to complete the lease on the terms provided in this Agreement without the disclaimers, waivers and releases set forth herein.

### 2.3 Condition of Leasehold Title

The City warrants that the Lessee's leasehold title is free and clear of all liens and encumbrances created by the City but subject, however, to the following (the "Permitted Exceptions"):

- (a) those exceptions to the title of the Leased Premises identified in the commitment issued by Lessee's title insurer if Lessee elects to obtain a leasehold title insurance policy and approved by the City (the "Permitted Exceptions"), and all other matters, if any, which affect the Leased Premises and are recorded among the Land Records as of the Lease Date;
- (b) the terms, conditions, and covenants of this Agreement;
- (c) any and all municipal utilities now in existence in, on or under the Leased Premises unless relocated by the Lessee or abandoned;
- (d) any easements to which Lessee consents in writing;
- (e) unrecorded easements, if any, on, above, or below the surface, and any discrepancies or conflicts in boundary lines or shortage in area or encroachments, in each case that a proper survey or an inspection of the Leased Premises would disclose; and

### 2.4 Notice Of Title Defect.

If Lessee claims that any encumbrance was recorded among the Land Records subsequent to the Lease Date and that it is not a Permitted Exception (a "Title Defect"), such Title Defect shall be brought to the attention of DHCD and the City's Law Department in writing thirty (30) days after the Lease Date, and the City at its sole cost and expense shall make and diligently pursue all reasonable efforts to eliminate such Title Defect at the earliest possible time.

#### 2.5 Title Defect-Lessee Option.

If after thirty (30) days from the date notice is properly given pursuant to Section 2.4 above, title to any part of the Leased Premises is not in the condition required by Section 2.3 above, Lessee may, at its option, either (i) terminate this Agreement by written notice to the City, in which event this Agreement, upon the giving of such notice, be deemed null and void with respect to the obligations of the parties thereafter accruing, or (ii) accept such title as City has, provided, however, that the City shall, if possible, eliminate such defects, at its expense at the earliest possible time after the notice given pursuant to Section 2.4 above.

#### 2.6 Use Restrictions.

The Lessee agrees for itself, and its successors and assigns, to include or incorporate by reference the following covenants as part of any deed, lease, or other conveyance of any interest in all or part of the Leased Premises:

(a) The Lessee shall develop and operate the Leased Premises solely for the operation of a first class movie theatre, special events, other forms of entertainment as may be permitted by the City, and associated amenities including restaurants.

(b) Except as shown on the Construction Plans (as hereinafter defined), no alterations to the building or structure shall be made without the prior written consent of the Commissioner of the Department of Housing and Community Development, which consent shall not be unreasonably withheld or delayed.

(c) Upon final completion of all construction on the Leased Premises, all land not covered by structures, paved parking, loading or related service area, paved areas for pedestrian circulation, decorative surface treatment, or used or to be used for construction staging or other similar purposes for the Leased Premises, must (until such land is so covered) include planting of any, all, or a combination of the following: trees, shrubs, ground cover, grass or flowers. The kind of landscape treatment should be determined by the nature of the development, the impact of the development on the surrounding area, and should serve to improve the utility of the site, soften and relieve the effects of structure and pavement and provide a visual harmony. All screening and landscaping shall be maintained in good condition, subject, however, to reasonable periods for re-landscaping, reconstruction, further development, casualty and events of force majeure. Notwithstanding anything to the contrary, any landscape treatment installed by Lessee pursuant to a landscape plan approved by the City (or the appropriate agency thereof) shall be deemed to satisfy the conditions of this subsection.

(d) All signs on the Leased Premises shall comply with standards for signs (other than construction and other temporary signs) as set forth in the Baltimore City Zoning Ordinance each as such may be amended from time to time (including, without limitation), or any properly issued variance therefrom. Such standards regulate the size, types, placement, permanence and nonconformance of signs.

(e) The Lessee, at its sole cost and expense, at all times following completion of the renovation of the building, shall keep the building, structure, improvements, fixtures, equipment, machinery, and walkways and other paved areas constructed, installed, erected, or located on the Leased Premises, in good and safe order and condition, both inside and outside, structurally and otherwise, in accordance with prevailing local property management standards for properties similar to the Leased Premises, subject, however, to reasonable periods for renovation, repair, reconstruction, further development, casualty and events of force majeure.

(f) Parking areas, walkways, trees and shrubs, landscaped and other open and paved areas constructed, erected or installed on the Leased Premises shall be kept by the Lessee in a neat, clean, orderly and sanitary condition, including the removal of refuse, rubbish, snow, and ice, reasonable periods for renovation, repair, reconstruction, further development, casualty and events of force majeure excluded.

## 2.7 Restrictive Covenants and Federal and Local Programs

Lessee covenants and agrees to rehabilitate the Leased Premises in accordance with this Agreement. This covenant shall bind on and run with the land for the Term of this Agreement. The anti-discrimination covenants in Section 2.8 of this Agreement and the provisions of Exhibit "A-2" (City Anti-Discrimination and Equal Employment Opportunity Provisions), shall bind on and run with the land forever. Lessee covenants and agrees to include or incorporate the anti-discrimination covenants in Section 2.8 as part of any sublease of any part of the Leased Premises.

## 2.8 No Discrimination

No covenant, agreement, lease, conveyance, or other instrument shall be effected or executed by Lessee or any of its successors or assigns, whereby the Leased Premises, or any portion thereof is restricted by Lessee, or any successor in interest, upon the basis of race, color, religion, national origin, ancestry, sex, marital status, physical or mental disability, or sexual orientation in the sale, lease, use, or occupancy thereof. Lessee will comply with Federal, State, and local laws prohibiting discrimination upon the basis of race, color, religion, national origin, ancestry, sex, marital status, physical or mental disability, or sexual orientation in the sale, lease, rental, use, or occupancy of the Leased Premises (or any improvements erected or to be erected thereon), and in the operation of the Leased Premises.

2.9 Beneficiary of Covenants The City, acting through DHCD or otherwise, shall be deemed the beneficiary of all the covenants and agreements contained in this Article and elsewhere in this Agreement. Such agreements and covenants shall run in favor of the City, for

the entire period for which such covenants shall be in force and effect under this Article, without regard to whether the City has at any time been, remains, or is in ownership of any land or interest therein. The City, acting through DHCD or otherwise, shall, have the right, in the event of any breach of any such covenant of which it is a beneficiary to exercise all the rights and remedies, and to maintain any action at law or other proceedings to enforce the curing of such breach of agreement or covenants to which it is a beneficiary.

#### 2.10 City's Direct Enforcement Rights.

The City shall have the right to enforce the requirements and limitations imposed upon Lessee by Sections 2.7 (Restrictive Covenants and Federal and Local Programs) and 2.8 (No Discrimination) of this Agreement by legal proceedings filed directly against any tenant, and sublease, or other such agreement that Lessee executes with any tenant relating to the Leased Premises shall expressly provide for such direct right of enforcement. If Lessee fails to include such requirements and limitations in any such sublease, or agreement, all tenants, shall, nevertheless, be bound by such direct right of enforcement.

#### 2.11 City Joinder in Applications, Easements and Zoning Approval

Within ten (10) business days after receipt of written request from Lessee, but subject to Applicable Law, City agrees to join in any and all reasonable applications for permits or Lessee's agreements in connection with the construction, operation, and maintenance of the Leased Premises, and shall also join in any grants or easements for electric, telephone, gas, water, sewer, and other public utilities and facilities, or other facilities useful or necessary to the operation of the Theatre or the construction thereof. The City shall do so only to the extent its joinder is required because the City is the landlord of Lessee.

#### 2.12 Indemnity by Lessee

Except when caused by the negligence or willful misconduct of City, Lessee shall indemnify and save City its elected/appointed officials, employees, agent or representatives harmless against and from, and shall reimburse City for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including reasonable attorney's fees, which may be imposed upon or incurred or paid by or asserted against City its elected/appointed officials, employees, agent or representatives or City's fee or reversionary or other interest in the Leased Premises by reason of or in connection with any of the following:

- (a) Lessee's use and occupancy of the Leased Premises, including any sublease;
- (b) the conduct of Lessee's business or any work or activity or other things allowed or permitted by Lessee to be done in or on the Leased Premises;
- (c) any breach or default in the performance of any of Lessee's obligations under this Agreement;

- (d) any misrepresentation or breach of warranty by Lessee under this Agreement;
- (e) any recording fees, recordation tax, or transfer tax that may be imposed upon the recordation of this Agreement or any Memorandum of this Agreement; and
- (f) any other acts or omissions of Lessee, its agents, employees, invitees or contractors.

The Lessee's indemnification shall not apply to a circumstance where litigation is brought against the City, Lessee or members of the Lessee alleging wrongs committed by the City in exercise of its governmental powers in foreclosing and taking title to Theatre or having offered the Theatre for future development pursuant to the Request for Proposals ("RFP") issued by the City of Baltimore Development Corporation. Should such litigation be instituted against the Lessee or its members, the City agrees that it will provide legal representation to defend against such litigation through the Baltimore City Law Department, or if a conflict exists relating to representation by the Baltimore City Law Department, to provide outside counsel to be selected and retained by the City. In the event a non-appealable monetary judgment is entered against the Lessee or its members, the City will indemnify Lessee and its members in the amount of such final judgment.

The provisions of this Section 12.12 shall survive the termination of the insurance required by this Article X and shall survive the Term of this Agreement.

#### 2.13 Indemnity by City

Except when caused by the negligence or willful misconduct of Lessee, City shall indemnify and save Lessee harmless against and from, and shall reimburse Lessee for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including reasonable attorney's fees, which may be imposed upon or incurred or paid by or asserted against Lessee by reason of or in connection with any of the following:

- (a) any breach or default in the performance of any of City's obligations under this Agreement;
- (b) any misrepresentation or breach of warranty by City under this Agreement; and
- (c) any other acts or omissions of City, its elected/appointed officials, employees, agents or representatives.

The City's indemnification shall be to the extent allowable under Subsection 5-303, Courts and Judicial Proceedings Article, Annotated Code of Maryland, entitled, "Local Government Tort Claims Act."

#### 2.14 Reports



The Lessee will provide to the City such reports as the City may request in order for the City to monitor compliance by the Lessee with the provisions of this Agreement. The Lessee shall respond to such requests within a reasonable time, not to exceed ninety (90) days. The City requests for reports will be reasonable in respect of timing and the nature and amount of information requested.

2.15 Right to Encumber

The Lessee shall not have the right to pledge, transfer its leasehold interest in the Leased Premises by means of mortgage, deed of trust or similar interest without the prior written consent of the City which consent will not be unreasonably withheld by the City.

ARTICLE III

TERM OF LEASE

3.1 Term; Possession

3.1.1 The term (the "Term") of the lease and demise of the Leased Premises under this Agreement shall commence on the Lease Date and terminate on the lesser of (i) forty-three (43) years from the Lease Date or (ii) forty (40) years from the date of the granting of a Certificate of Completion for the later to be completed of the renovations to the Theatre or the construction of the Improvements.

3.2 Covenant of Quiet Enjoyment and Use

The City covenants and agrees that Lessee, upon paying the Rent and performing the covenants and agreements set forth herein on the part of Lessee to be paid, kept, and performed, subject to the restrictions, covenants, conditions, terms, and provisions of this Agreement, shall and will peacefully and quietly hold and enjoy the Leased Premises during the Term and any renewal thereof.

3.3 Ownership of Improvements

To the fullest extent permitted by applicable tax law, during the Term of this Agreement, title to the improvements upon the Leased Premises shall not vest in the City by reason of its fee simple ownership, but title shall vest in Lessee and Lessee shall be entitled to claim any depreciation on the improvements for all taxation purposes.

3.4 No Redemption

Lessee does not have any right to redeem the rent, fee, or charge reserved or to be paid by Lessee or to acquire the fee simple interest in the Leased Premises and Lessee expressly

disclaims any such right to which it may be entitled, now or hereafter, to the full extent permitted by law. Without limiting the generality of the foregoing, the parties stipulate that the Leased Premises is being leased exclusively for business, commercial, manufacturing, mercantile, or industrial purposes within the meaning of Section 8-110(a) of the Real Leased Premises Article of the Annotated Code of Maryland, and that the provisions of Section 8-110(b) of such Article (or any future statute) pertaining to the redemption of reversionary interests under leases shall be inapplicable to this Agreement.

### 3.5 Termination of Agreement

Upon the expiration of the Term of this Agreement or its earlier termination for any reason expressly set forth herein, Lessee shall vacate and surrender the Leased Premises together with the improvements and fixtures then existing on the Leased Premises to the City, free and clear of any Mortgage, and free and clear of any leases, occupancy agreements, liens, or encumbrances other than as expressly set forth in Section 2.3, and in such condition so that the Leased Premises can continue to operate as a first class Theatre. Notwithstanding such expiration or termination, the parties shall perform their respective obligations to each other that arose prior to the effective date of such termination, or that are expressly stated to remain in effect after such expiration or termination.

Lessee shall remove its personal property and equipment that is unattached to the Leased Premises (excluding such mechanical, electrical and plumbing equipment as is necessary for the proper operation of the improvements, all of which improvements and related equipment shall become the Leased Premises of the City) and shall surrender to the City complete plans and specifications for the Leased Premises. The Lessee shall deliver to the City all operating manuals, computer programs and software, and other personal Leased Premises, tangible or intangible, necessary to operation of the mechanical, electrical, and plumbing portion of the improvements or the systems within the improvements without cost to the City and free of any security interest.

Upon the expiration or earlier termination of this Agreement, the City may execute a "Notice of Termination" of this Agreement and record it among the Land Records of Baltimore City. Upon such recording, the Notice will conclusively evidence the termination of this Agreement and shall be binding upon the Lessee and its successors and assigns.

### 3.9 Recordation

Lessee shall have the right to record this Agreement or a Memorandum of Lease among the Land Records of Baltimore City at its sole cost and expense.

## ARTICLE IV

### RENT

#### 4.1 Rent

The annual rent for the Leased Premises shall be One Dollar (\$1.00) with the first five (5) years payable at the time of the execution of this Agreement.

4.2 Triple Net Lease

As further set forth in this Agreement, including Section 12.1, Lessee shall bear all costs relating to the rehabilitation of and the use and occupancy of the Leased Premises, including all utility charges, taxes which may be due and payable, and costs of repair and maintenance.

4.3 Late Charge.

In the event any payment of Rent or any other amount payable to the City under this Agreement shall be past due for more than twenty (20) days, Lessee shall pay to City as additional rent a sum equal to ten percent (10%) per annum of the amount due, calculated from the due date of such payment until the date paid (the "Late Charge") to cover City's cost for the collection and the loss of income.

4.4 General.

Wherever it is provided in this Agreement that Lessee is required to make any payment to City, including the payment to the City of a minimum amount of real estate taxes as provided in Section 12.1, such payment shall be deemed to be rent and all remedies applicable to the non-payment of rent shall be applicable thereto. All rent due hereunder, and all sums enforceable as rent by the terms hereof, shall be paid without the necessity of notice or demand at such place as City may specify in writing from time to time. A place once specified shall continue as the place at which such payments are to be made until such place of payment is changed by notice given in the manner hereinafter prescribed for the giving of notices. All amounts payable hereunder shall be paid in current legal tender of the United States as the same is then by law constituted. The extension, indulgence or change by City of the mode or time of payment of any such payment upon any occasion shall not be construed as a waiver of the provisions of the Agreement, or as requiring a similar extension, indulgence or change by City on any subsequent occasion.

ARTICLE V

RENOVATION OF THEATRE OR CONSTRUCTION OF IMPROVEMENTS

5.1 Commencement of Renovation of Theatre or Construction of New Improvements and Time-frames

5.1.1 Before Lessee begins renovation of the Theatre or construction of any new improvements ("Improvements"), it shall confer with the City of Baltimore Development Corporation, which for purposes of the Article V is acting as an agent for the Department of Housing and Community Development ("DHCD"), to facilitate the renovation of the Theatre or construction of new improvements ("Improvements"). Lessee shall confer with the City of

Baltimore Development Corporation with regard to (i) the functional and aesthetic aspects thereof and (ii) their compliance with Applicable Laws. The Lessee shall submit schematic plans (the "Schematic Plans") relating to such Improvements in such form and detail as DHCD may require in order to determine the nature of the Improvements and their compliance with Applicable Laws. If such Schematic Plans are not approved, Lessee will promptly redraw and resubmit same. Lessee shall attend periodic conferences called by BDC while Design Plans and Construction Plans as such term is defined in Sections 5.2 and 5.4 are being prepared. At least four (4) copies of all Plans must be submitted. For the renovation of the Theatre, the Lessee shall submit Construction Plans in such form and detail as DHCD may require in order to determine the nature of such renovation and its compliance with Applicable Laws.

5.1.2 Lessee shall undertake the renovation process on a schedule designed to complete the renovations of the Theatre including the northern building attached to the Theatre and have spent a minimum of One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000) within eighteen (18) months of the Lease Date.

#### 5.2 Design Plan Submission for Improvements

Any Design Plans shall consist of plans, elevations, sections, outline specifications, and material samples, all in sufficient detail to fix and describe the design scope and character of all architectural, major structural, mechanical, electrical, and engineering aspects of such Improvements (including all work relating to the outside areas of the Leased Premises, and all major structural components of the Improvements). Four (4) copies of the Design Plans shall be delivered to the DHCD as soon as reasonably practicable after the approval of the Schematic Plans.

#### 5.3 Design Plan Review and Approval

If the Design Plans, in the opinion of the DHCD, reasonably exercised, materially and substantially conform to the provisions of the Schematic Plans, and this Agreement, DHCD shall approve the Design Plans. DHCD shall not disapprove any aspect of the Design Plans that materially conform to any Schematic Plans previously approved by DHCD (except with respect to new matters presented in the Design Plans). The Design Plans shall, in any event, be deemed to have been approved by DHCD unless rejected, in whole or in part, in writing, within thirty (30) days after their submission, as not being in conformity with such criteria, specifying the reasons for the rejection. Lessee, in such event, shall submit new or corrected materials within thirty (30) days (or such longer time as may be reasonable) after written notification to it of the rejection and the provisions of this Section as to approval. Rejection and resubmission of corrected materials hereinabove provided shall continue to apply until the Design Plans have been approved by DHCD; provided, however, that in any event, Lessee shall submit Design Plans which are acceptable no later than one hundred twenty (120) days after the original submission of such Design Plans.

#### 5.4 Construction Plan Submission

Lessee shall promptly submit to DHCD for its approval final working construction drawings and specifications for the Improvements (the "Construction Plans") as soon as reasonably practicable after approval of the Design Plans. The Construction Plans for the Improvements shall be in conformity with the approved Design Plans and for either the Improvements or the renovations of the Theatre shall consist of plans, elevations, sections, detailed outline specifications, and samples, and shall fully define the scope of the work, methods of construction, materials to be used, and the size, location, and dimensions of all parts of either the Improvements or the renovations .

#### 5.5 Construction Plans Review and Approval

The provisions of Section 5.3 regarding the process and standards for approval, rejections, and resubmission of Design Plans shall likewise apply to Construction Plans.

If Lessee desires to make any material change in the Construction Plans after their approval by DHCD, Lessee shall submit the proposed change to DHCD for its approval. If the Construction Plans, as proposed to be as modified by the proposed change, conform to the requirements of Section 5.4, DHCD shall approve the proposed change and notify Lessee in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by DHCD unless rejection thereof, in whole or in part, by written notice thereof by DHCD to Lessee, setting forth in detail the reasons therefor, shall be made within thirty (30) days following submission for approval.

#### 5.6 Building Permits

As soon as reasonably practicable after approval by DHCD of the applicable Construction Plans, Lessee shall apply for all necessary building permits and thereafter Lessee shall diligently pursue such application and pay all fees and costs associated therewith. Commencing on the date hereof and continuing throughout the Term, DHCD shall, at no cost to DHCD, assist Lessee in obtaining all necessary permits and approvals in connection with the either the initial construction of the Improvements and any subsequent modification or with renovation of the Theatre.

#### 5.7 Commencement and Completion of Construction

As soon as reasonably practicable after the later of approval of the Construction Plans or the issuance of all necessary building permits, Lessee shall commence the construction of the Improvements and shall cause such Improvements to be diligently constructed and completed in accordance with the approved Construction Plans, twenty-four (24) months after the Date of Possession. The renovations to the Theatre shall be completed within eighteen months of the Lease Date.

#### 5.8 Construction Contract and Bond Requirements

Prior to the commencement of Construction of any Improvements or the renovation of the Theatre, Lessee shall furnish to DHCD with respect to such Improvements:

(a) certificates of insurance evidencing compliance with the insurance requirements, as applicable, of this Agreement;

(d) a construction progress schedule reflecting the expected completion date for the construction of the Improvements or completion of the renovations to the Theatre.

#### 5.9 Progress Reports

Upon commencement of the Construction of any Improvements or the renovation of the Theatre, Lessee shall provide such oral or written progress reports as DHCD may request in writing, from time to time during construction.

#### 5.10 Compliance with Law

Lessee shall comply with all Applicable Laws with respect to any and all of the work or operations to be done, performed, or carried on by Lessee under the provisions of this Agreement.

#### 5.11 Extension of Time

Subject to the provisions of this Agreement, the times within which Lessee must submit Design Plans, Construction Plans and the times within which Lessee must commence and complete the development of the Leased Premises, and the construction of the Improvements thereon or renovation of the Theatre, may be extended in writing by DHCD, acting on behalf of the City, in the reasonable discretion of DHCD, upon good and sufficient cause therefor being shown by Lessee, for such period of time as DHCD deems advisable. Any such extension of time shall be in writing and in such form as will enable it to be recorded among the Land Records of Baltimore City. Such extension shall be such period of time that Lessee reasonably requires to complete the construction of the Improvements or the renovation of the Theatre; provided, subject to the provisions of Section 17.1 of this Agreement, Lessee makes diligent progress towards the completion of the construction of the Improvements or renovation of the Theatre.

#### 5.12 Certificate of Completion

DHCD, on behalf of the City, promptly after completion of the Improvements or completion of the renovations to the Theatre in accordance with the provisions of this Agreement (other than the provisions concerning the time frame by which such work (and the Plans) are to be commenced and completed) shall furnish Lessee (and if requested, any lender of Lessee) with an appropriate instrument (the "Certificate of Completion") so certifying, which shall be in such form as would enable it to be recorded among the Land Records of Baltimore City. Such certification by DHCD, on behalf of the City, shall be a conclusive determination of satisfaction

of the agreements and covenants in this Agreement with respect to the obligations of Lessee, its successors and assigns, and every successor in interest of the Leased Premises, to construct the Improvements or completion of the renovations to the Theatre and dates for the beginning and completion thereof, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Lessee to any Mortgagee. If DHCD, on behalf of the City, shall refuse or fail to provide such Certificate of Completion in accordance herewith, within thirty (30) days after written request therefor by Lessee, then DHCD, on behalf of the City, shall within such thirty (30) day period provide Lessee with a written statement indicating in adequate detail in what respects Lessee has failed to complete the Improvements or the renovation to the Theatre in accordance with the provisions of the Agreement, or is otherwise in material default, and what measures and acts, in the opinion of DHCD, Lessee must take or perform in order obtain such Certificate of Completion. No such Certificate shall be unreasonably withheld or delayed by DHCD, on behalf of the City. If DHCD, shall refuse or fail to provide any such Certificate of Completion within thirty (30) days after Lessee has provided evidence to DHCD that it has taken or performed the measures or acts required by the City, then DHCD, on behalf of the City, shall be conclusively deemed to have issued such Certificate of Completion.

#### 5.13 Restriction on Alterations

After completion of Construction of any Improvements or the completion of the renovations to the Theatre, Lessee shall not make any material alterations, additions, or improvements to the Improvements or the Theatre, including any major structural components of any building, construct additional Improvements on the Leased Premises, or demolish any Improvements or the Theatre, and all work must be done in conformity with the requirements of this Agreement, especially Article V; without DHCD's prior approval. Lessee shall have the right to make any non-material alterations, additions, or improvements to the Improvements or the Theatre, and make any non-structural alterations, additions, or improvements to the interior of any Improvements, but such work shall be performed in conformity with the requirements of this Agreement and Applicable Law and in a first-class and workmanlike manner with materials, parts, and equipment of a quality equal to the original.

#### 5.14 Appointment of DHCD's Agent

DHCD hereby appoints BDC as its agent to receive any and all submissions and to grant any and all approvals with respect to the Plans (but not with respect to granting building permits, furnishing a Certificate of Completion, and the like).

### ARTICLE VI

INTENTIONALLY DELETED

## ARTICLE VII

### MBE/WBE AND OFFICE OF EMPLOYMENT DEVELOPMENT PROGRAMS

#### 7.1 Minority and Women's Business Enterprises and Equal Employment Opportunity Programs

7.1.1 Construction-oriented Programs. Lessee shall comply with the City's minority business enterprise and women's business enterprise programs and equal employment opportunity program in connection with the engagement of Lessee's Contractor and, in turn, their subcontractors, if applicable, for the construction of any Improvements or renovation of the Theatre. In no event, may compliance by Lessee with any provision of Article 5, Subtitle 28 (Minority and Women's Business Enterprises) of the Baltimore City Code or Section 2.8 of this Agreement be waived. In addition, Lessee specifically covenants and agrees that it shall execute and deliver the "Commitment to Comply" affidavit signed by the Lessee and attached to this Agreement as a part of Exhibit "A-1".

#### 7.2 Job Training and Employment and Career Development Programs

7.2.1 Post-construction Programs. Lessee (in coordination with the City) shall prepare, and submit for approval by DHCD, an employment and career development plan which details Lessee's employment, hiring, and training needs and the educational and informational opportunities that the project provides. Lessee shall cooperate with the City's Office of Employment Development to establish appropriate recruitment, training, and referral services in accordance with such Plan. Lessee shall also comply with Baltimore City Residents First executive order enacted by the Mayor attached to this Agreement as Exhibit "A-3", to ensure that city dollars contribute to the local economy and improve the lives of employable City residents. The Lessee shall contact the Mayor's Office of Employment Development ("MOED") immediately upon execution this Agreement to schedule a meeting with MOED.

## ARTICLE VIII

### OPERATIONAL STANDARD

#### 8.1 OPERATION OF THEATRE.

Upon completion of renovation of the Theatre, Lessee shall cause the Theatre to be operated in accordance with the following standards:

(i) Lessee shall not permit, commit, or suffer waste or impairment of the Theatre, or the Improvements (if constructed);



(ii) Lessee shall, operate, maintain, repair, and manage the Theatre according to such standards as generally prevail in the Baltimore City area in connection with the operation of high quality Theatre of comparable size, use and design, and the Theatre shall be maintained in a neat and orderly fashion.

(iii) Lessee shall not knowingly permit any portion of the Theatre to be used for any "adult-entertainment business", "adult book or video store", or "peep show establishment", as such terms are defined by the Baltimore City Zoning Ordinance, as in effect from time to time.

## 8.2 Repairs and Maintenance

The Theatre and any Improvements to be located on the Leased Premises shall be kept and maintained, at Lessee's sole cost and expense, with no lessening of efforts in the latter years of the Term, in a high quality state of repair and appearance, reasonable wear and tear excepted. Lessee shall make, or shall cause to be made, regular, necessary, and prudent repairs and replacements, as appropriate, to the Theatre and any Improvements (including the HVAC systems).

## 8.3 Refuse

Lessee shall at all times provide and maintain facilities on the Leased Premises for the storage and collection of garbage and refuse, none of which shall at any time be stored outside or visible from outside the Leased Premises, unless suitably screened.

## 8.4 Environmental Covenants. Lessee covenants with the City that regarding the future use of the Leased Premises:

(a) That it shall not "Generate Hazardous Substances" as defined herein at, to, or from the Leased Premises unless the same is in accordance with applicable laws, customary in small amounts for Lessee's intended use, or specifically approved in advance by the City in writing;

(b) To comply with all obligations imposed by applicable law, and regulations promulgated thereunder, and all other restrictions and regulations upon the Generation of Hazardous Substances by Lessee (whether or not at, to, or from the Leased Premises);

(c) To deliver promptly to the City true and complete copies of all notices received by Lessee from any governmental authority with respect to the Generation by Lessee of Hazardous Substances (whether or not at, to, or from the Leased Premises); and

(d) To complete fully, truthfully, and promptly any questionnaires sent by the City with respect to Lessee's use of the Leased Premises and Generation of Hazardous Substances.

## 8.5 Indemnification.

(a) Lessee agrees to indemnify and defend the City (with legal counsel reasonably acceptable to the City) from and against any reasonable costs, fees, or expenses (including, without limitation, environmental assessment, investigation, and environmental remediation expenses, third party claims, environmental impairment expenses, and reasonable attorneys' fees and expenses) incurred by the City in connection with Lessee's Generation of Hazardous Substances at, to, or from the Leased Premises in violation of applicable law or in connection with Lessee's failure to comply with its covenants set forth in this Section. Lessee shall obtain prior approval from the City (which approval shall not be unreasonably withheld) before retaining counsel for the City's defense in connection with any matter set forth in this Section. This indemnification by Lessee shall survive the termination or expiration of this Agreement.

(b) City agrees to indemnify and defend the Lessee (with legal counsel reasonably acceptable to the Lessee) from and against any reasonable costs, fees, or expenses (including, without limitation, environmental assessment, investigation, and environmental remediation expenses, third party claims, environmental impairment expenses, and reasonable attorneys' fees and expenses) incurred by the Lessee in connection with the Generation of Hazardous Substances at, to, or from the Leased Premises in violation of applicable law prior to the Lease Date. City shall obtain prior approval from the Lessee (which approval shall not be unreasonably withheld) before retaining counsel for the Lessee's defense in connection with any matter set forth in this Section. This indemnification by City shall survive the termination or expiration of this Agreement for a period of three (3) years.

#### 8.6 Definitions.

The term "Hazardous Substance" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) any "oil, petroleum products, and their by-products" as defined by The Annotated Code of Maryland, Environment, Title 4, Subtitle 4 (1996 Replacement Volume) as amended from time to time, and regulations promulgated thereunder; (d) any "controlled hazardous substance" or "hazardous substance" as defined by The Annotated Code of Maryland, Environment, Title 7, Subtitle 2 (1996 Replacement Volume), as amended from time to time, and regulations promulgated thereunder; (e) any "infectious waste" as defined by The Annotated Code of Maryland, Title 9, Subtitle 2 (1996 Replacement Volume), as amended from time to time, and regulations promulgated thereunder; (f) any substance the presence of which on the Leased Premises is prohibited, regulated, or restricted by any law or regulation similar to those set forth in this definition; and (g) any other substance which by law or regulation requires special handling in its Generation. The term "to Generate" means to use, collect, generate, store, transport, treat, or dispose of; provided, however, that the term "to Generate" expressly excludes the mere ownership, occupancy, or use by the Lessee, its successors and assigns, of the Leased Premises, and/or any part thereof, on or from which Hazardous Substances were Generated by third parties prior to the commencement of such ownership, occupancy, or use. It is the intention

of the parties that the Lessee does not, by this Agreement, assume any liability whatsoever for the acts or omissions of any other party whatsoever except a Successor Lessee.

#### 8.7 Effect of Operational Standards

The covenants of this Article VIII are in addition to, and not in lieu of, any similar or other provisions of Applicable Law.

### ARTICLE IX

#### ANTI-SPECULATION, ASSIGNMENT AND SUBLEASE PROVISIONS; TRANSFERS BY CITY AND RIGHT OF FIRST REFUSAL

##### 9.1 Policy Against Speculation.

(a) The Lessee represents and agrees that its lease of the Leased Premises and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of the operation of a first class Theatre and not for speculation in landholding. The Lessee further recognizes that, in view of: (i) the importance of the renovation and operation of the Theatre to the general welfare of the community; and (ii) the efforts of the BDC on behalf of the City for the purpose of making such development possible; the qualifications and identity of the Lessee are of particular concern to the City and are two of several criteria influencing the City to enter into this Agreement with the Lessee.

Accordingly, the Lessee has provided to the City contemporaneously with its execution of this Agreement, a disclosure of the identity of all individuals and entities who are owners, directly or indirectly, of an ownership interest in The Senator Theatre LLC as of the Lease Date (the "Initial Ownership Disclosure"), as set forth in Exhibit B.

(b) (i) The term "Ownership Transfer" means a sale or other disposition by an individual or entity that is an owner, directly or indirectly, of an ownership interest in The Senator Theatre LLC, with or without consideration.

(ii) The term "Disposition" means a sale, lease, assignment, grant, conveyance, or other disposition (including the grant of a mortgage, deed of trust, or security interest) by Lessee (or any successor in interest) of Lessee's leasehold interest in the Leased Premises or in its rights under this Agreement.

(iii) The term "Transferee" means a person who receives a Disposition or Ownership Transfer.

##### 9.2 Restriction Against Disposition And Ownership Transfer.

For the foregoing reasons, Lessee agrees that neither itself nor any of its successors in interest to, or assignee of, all or any part of the Leased Premises, shall make or permit to be made (i) any Disposition of such Leased Premises (or portion thereof, as applicable) or Lessee's rights under this Agreement, or (ii) any Ownership Transfer of a direct or indirect ownership interest in The Senator Theatre LLC, without first obtaining the prior written consent of the City to the proposed Disposition or Ownership Transfer, and the City may withhold such consent in its sole and absolute discretion.

### 9.3 Permitted Dispositions And Ownership Transfers.

(a) Notwithstanding Section 9.2 or anything else to the contrary, the following Ownership Transfers and Dispositions (each, a "Permitted Disposition") shall not require the prior written consent of the City:

(i) the grant of a mortgage or deed of trust (whether securing a direct obligation of Lessee, or a guaranty of obligations of another person or entity), that encumbers Lessee's interest in the Leased Premises (or an interest therein) that secures only a loan permitted under Section 13.1.

(ii) a sub-lease to a prospective tenant of space in the Theatre; and

(iii) a transfer of Lessee's rights and obligations under this Agreement to an entity (hereinafter called a "Successor Lessee") for the purpose of such entity taking title to, and developing the Leased Premises, provided that such entity is initially owned by the same owners set forth in the Initial Ownership Disclosure and that each such owner has the same ownership interest in such entity as it does in Lessee, as set forth in the Initial Ownership Disclosure (but changes in such ownership may be made as set forth in Section 9.3(a)(iv)).

### 9.4 Conditions To The Approval Of Assignment Or Transfer.

Without limiting the right of the City to give or withhold its consent to a Disposition or Ownership Transfer, other than a Permitted Disposition, the City's consent not to be unreasonably withheld or delayed, the City shall be entitled to require, as conditions to the consent required in Section 9.2 above, that:

(i) Any proposed Transferee shall have the qualifications and financial responsibility, satisfactory to DHCD, to fulfill the obligations undertaken in this Agreement by the Lessee;

(ii) Any proposed Transferee, by instrument in writing, shall have, for itself, its successors and assigns and expressly for the benefit of the City and DHCD expressly assumed all of the obligations of the Lessee not previously performed under this Agreement and shall have agreed to be subject to all of the conditions and restrictions to which the Lessee is subject hereunder with respect to the Leased Premises, or a portion thereof, which is the subject of the

Disposition or which is owned by the entity in which an Ownership Transfer is proposed (the "Subject Leased Premises"); and

(iii) There has been submitted to DHCD for review, and DHCD has approved, all instruments and other legal documents involved in effecting the Disposition or Ownership Transfer.

#### 9.5 Procedure For Approval.

In the event that pursuant to the provisions of this Article IX the approval of the City is required for a Disposition or Ownership Transfer and a request for the City's approval of a Disposition or Ownership Transfer is made, the City shall approve or deny such request for approval within sixty (60) days of the City's receipt of such request. DHCD may disapprove of any such request, but any approval may only be given by the Board of Estimates of the City. If the City disapproves such request, the City must give its reasons in writing, it being acknowledged, that the City's approval shall not be unreasonably withheld or delayed. If the disapproval is by the Board of Estimates, no such writing will be provided.

No such Disposition with respect to the Leased Premises or any portion thereof or approval by the City thereof shall be deemed to relieve Lessee, or any other party bound in any way by this Agreement or otherwise, from any of its obligations with respect thereto, and no such Disposition shall limit any of the remedies of the City hereunder, except as specifically provided herein; provided, however, that if the City approves a Disposition of all of the Leased Premises, Lessee shall be relieved of all further liability except for defaults under the Agreement arising prior to such Disposition.

#### 9.6 Effect Of Prohibited Disposition.

Any Disposition or Ownership Transfer which is not a Permitted Disposition, or which is made without the City first having given its consent, shall not only be a default by Lessee under this Agreement, but shall also be null, void, and of no effect whatsoever.

#### 9.7 Confirmation Of Permitted Dispositions.

Upon request of Lessee from time-to-time, the City shall issue a certificate to the Lessee and any Transferee (or potential Transferee) confirming, if true, that a Disposition or Ownership Transfer is a Permitted Disposition. Within thirty (30) days of Lessee's submission to the City of such a request, together with such details of the Disposition or Ownership Transfer in question as the City may reasonably require to issue such a certificate, with a copy of same to the City Law Department. the City shall execute and deliver to Lessee such a certificate, which certificate shall be in a form and substance that are reasonably acceptable to the City. The Commissioner of DHCD is authorized to execute and deliver such a certificate under this Section.

#### 9.9 Permitted Subleases

Lessee may enter into subleases for portions of the Theatre which are ancillary to but exclude the main screen (the "Additional Space") without restriction.

All subleases shall be subordinate to this Agreement regardless of any consent the City gives to such sublease.

9.10 Transfer of Fee Ownership By the City.

Nothing contained in this Agreement shall prevent the City from transferring or otherwise disposing of its fee simple interest in the Leased Premises, provided, however, that the rights and interest of the transferee shall be subject to this Agreement and any and all liens and encumbrances permitted under this Agreement.

ARTICLE X

INSURANCE

Lessee shall procure and maintain the insurance described on Exhibit C.

ARTICLE XI

PROTECTION AGAINST MECHANICS' LIEN AND OTHER CLAIMS

11.1 Lessee to Discharge Mechanics' Liens

If any mechanics' lien shall at any time be filed against the Leased Premises (or any interest therein) by reason of any work or materials supplied by or on behalf of Lessee or any Tenant, Lessee shall promptly take and diligently prosecute appropriate action to have the same bonded or discharged. Upon Lessee's failure to do so within twenty (20) days after any such lien is filed, the City, upon at least five (5) business days prior written notice (during which period Lessee may bond or discharge such lien), in addition to any other right or remedy that it may have, may take such action (including payments) as may be reasonably necessary to remove such liens, and Lessee shall pay the amount paid by the City in connection with such action, and all reasonable legal and other costs and expenses incurred by the City in connection therewith (including reasonable counsel fees, court costs, and other necessary disbursements). Any such amounts paid by the City and the amount of any such expenses or costs incurred by the City (plus interest upon such amounts at the Prime Rate) shall be payable by Lessee to the City not later than first day of the next calendar month and if not paid by Lessee to the City within ten (10) days after the date Lessee receives written notice from the City of the amount thereof and demand for payment of the same, shall be treated as a lien upon the Leased Premises.

11.2 Payment of Materialmen and Supplies

Lessee shall make, or cause to be made, prompt payment of all money due and legally owing to all persons doing any work performed by Lessee (or caused to be performed by Lessee) in connection with the renovation of the Theatre or the construction of any Improvements.

### 11.3 Right to Dispute

Nothing in this Article XI shall limit the right of Lessee to contest, in good faith, by legal proceedings or otherwise, whether any amount claimed or alleged to be due and owing to any such person is legally due and owing and to withhold payment of such amounts pending resolution of such dispute; provided, however, any mechanics liens must be bonded in accordance with Section 11.1.

### 11.4 City's Interest Not Subject to Mechanics' Liens

There shall be no mechanics' liens upon the City's interest in the Leased Premises or any part thereof, arising through Lessee, and no person who furnished work, labor services or materials, to the Leased Premises or any Improvements, and claiming directly or indirectly through or under Lessee, or through or under any act or omission of Lessee, shall ever become entitled to a lien which is superior to the City's interest in the Leased Premises. Nothing contained in this Agreement constitutes any consent or request by the City, express or implied, for the performance of any labor or services or the furnishing of any materials or other Leased Premises in respect to the Leased Premises, or any Improvements, nor as giving Lessee any right, power or authority to contract for or permit the rendering of any labor or services or the furnishing of any materials or other Leased Premises that would give rise to any claim against the City.

## ARTICLE XII

### REAL ESTATE TAXES

#### 12.1 Real Estate Taxes

12.1.1 The Lessee shall pay by September 30 of each year after the Lease Date all real estate taxes levied, assessed or imposed against the Leased Premises that are then due and payable. The Lessee shall pay such amount by September 30 despite any Applicable Law which may allow the Lessee to pay all or part of such real estate taxes at a later time during the tax year in which they become due; but this provision does not limit Lessee's rights under Section 12.2.

12.1.2 "Real estate taxes" shall include: all general and special assessments; any other municipal or governmental charges levied or paid on an annual basis and included in real estate tax bills; and any governmental imposition in lieu of or in substitution for real estate taxes.

12.1.3 Any real estate tax relating to a fiscal period of the Public Authority making the tax a part of which period is included within the Term and a part of which is included in a period of time before the Lease Date or after the expiration of the Term, shall be adjusted (whether or

not such tax shall be assessed, levied, confirmed, imposed or become a lien upon the Leased Premises, or become payable during the Term) so that the Lessee shall pay only that portion of such tax which that part of such fiscal period included in the period of the Term bears to such fiscal period.

#### 12.2 Deferral or Contest

The Lessee shall be entitled to defer the payment or to contest the validity or allocation (in whole or in part) of any real estate taxes which the Lessee is obligated to pay under this Agreement, if the payment of the real estate taxes would extinguish the right to contest it, provided that the applicable dollar amount set forth in Section 12.1.1 is paid by September 30 of the applicable year, and provided further that so long as the validity or amount thereof shall be contested by the Lessee in good faith and by appropriate proceedings. The City agrees to consent to and/or formally join in any such proceedings, if and to the extent such consent and/or joinder is required by law for the prosecution thereof provided such contest is conducted at Lessee's sole expense, and City is held harmless as to any cost, expense, liability or penalty resulting therefrom.

#### 12.3 Evidence of Payment.

The Lessee, upon written request, shall furnish, or cause to be furnished to the City, copies of the official receipts of the appropriate taxing authority, or other proof satisfactory to the City, evidencing the payment of any real estate taxes which were due and payable pursuant to Section 12.

### ARTICLE XIII

#### MORTGAGE FINANCING

##### 13.1 Right to Mortgage

13.1.1 Except in strict accordance with this Section 13, Lessee shall not create any mortgage or other encumbrance or lien upon Lessee's leasehold interest in the Leased Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to Lessee's leasehold interest in the Leased Premises. Lessee acknowledges that the City has agreed subject to Board of Estimates approval to make two loans to the Lessee to be secured by a Deed of Trust on the Leased Premises. The first loan is in the amount of One Hundred Thousand Dollars (\$100,000) and the second loan is in the amount of Six Hundred Thousand Dollars ((\$600,000) (the "City Loans"). The Deed of Trust securing the City Loans shall be the only lien permitted against the Leased Premises. Any other lien shall require the prior written approval of the City, which approval will not be unreasonably withheld by the City.

13.1.2 Lessee shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Leased Premises (or Lessee's leasehold interest therein), whether by



voluntary act of Lessee or otherwise. Such notices shall be in writing and, in the event of a voluntary act, in advance of such act.

### 13.2 Mortgagee Estoppel Certificate.

Upon request of Lessee from time-to-time, the City shall execute an estoppel certificate for the purposes of confirming the status of this Agreement. Within thirty (30) days of Lessee's submission to the City, with a copy to the City Law Department, of a proposed draft of such an estoppel certificate, the City shall either (i) execute and deliver to Lessee such estoppel certificate benefiting the identified party, or (ii) shall execute such estoppel certificate benefiting the identified party with such modifications as the City may in its reasonable judgment require so as to conform such estoppel certificate to the requirements of this Section (including, without limitation, that such estoppel certificate be consistent with the terms and provisions of this Agreement that apply to mortgagees and mortgages). The Commissioner of DHCD is authorized to sign and deliver such an estoppel certificate after it is approved as to form and legal sufficiency by the City Law Department.

## ARTICLE XIV

### DEFAULT

#### 14.1 City Default Limitation

The City is a municipal corporation and can exercise only those powers granted it by law, and in the event the City is prevented, restricted, or delayed in any of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Agreement as a result of any legal proceedings, unless instituted by the City, it shall not be liable for any costs, damages, injuries, or liabilities caused to or suffered or incurred by Lessee, in connection with, or as a result of any such legal proceedings or any such prevention, restriction, or delay.

#### 14.2 City Default

(a) The failure of the City to perform, observe, or comply with any material covenant, term, or condition of this Agreement to be performed, observed, or complied with by the City shall constitute a default of this Agreement only if not cured within ninety (90) days after written notice is given to the City (which notice shall specify the respects in which Lessee contends that the City has failed to perform any such covenant, term, or condition).

(b) If an Event of Default by the City shall occur, Lessee, to the fullest extent permitted by law, shall have the right to maintain any and all actions at law or suits in equity or other proceedings to enforce the curing or remedying of such default but Lessee hereby expressly waives any right to sue for and collect damages of any sort (actual, special, consequential, or punitive) resulting from such default.

#### 14.3 Lessee Default

Upon the occurrence of any one of the following defaults by Lessee which is not cured within the time specified as to each (the term "Event of Default" shall mean such an occurrence after the expiration of any permitted cure periods), then the City may immediately terminate all rights of Lessee in and to this Agreement and exercise any remedies provided in this Agreement, or at law or in equity:

(a) Failure of Lessee to perform, observe, or comply with any covenant, term, or condition of this Agreement to be performed, observed, or complied with by Lessee, which is not cured within ninety (90) days after written notice thereof; or

(b) Failure of the Lessee to pay all sums due to the City under the two City loans; or

(c) If any representation or warranty of Lessee given to the City in writing shall not have been correct in all material respects as of the date it is given; or

(d) the filing by Lessee of a petition commencing a voluntary proceeding under the Federal Bankruptcy Code or any other federal, state, or local law or statute pertaining to bankruptcy or insolvency; a general assignment by Lessee for the benefit of creditors; an admission in writing by Lessee of its inability to pay debts as they become due; the filing by Lessee of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or other relief under any present or future statute, law, or regulation, pertaining to bankruptcy or insolvency or the filing by Lessee of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against it in any such proceeding; the seeking or consenting to, or acquiescence by Lessee in, the appointment of any custodian, trustee, receiver, or liquidator of it, or any part of its Leased Premises; and the commencement against Lessee of an involuntary proceeding under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute pertaining to insolvency, which case or proceeding is not dismissed or vacated within sixty (60) days; and

(e) A default by any guarantor of the City Loans of his/her obligations.

#### 14.4 City's Right to Complete Construction

Upon the occurrence of a Event of Default by Lessee and the termination of this Agreement prior to the issuance of a Certificate of Completion for any Improvements then under Construction, the City shall have the right, exercisable upon ten (10) days prior written notice, to:

(a) negotiate an arrangement with any construction lender or funding agency by which the City is permitted to complete any Improvements with the proceeds of the construction loan being available for such purposes;

(b) exercise the rights of Lessee under its contracts with contractors and architects, to the extent permitted by such contractors and architects;

(c) obtain all necessary plans, studies, and reports within the possession of Lessee, necessary or desirable for the completion of the Improvements, subject only to legal availability thereof; and

(d) obtain an assignment from Lessee of all other licenses, permits, approvals, and authorizations held by or in the name of Lessee, necessary or desirable to permit the completion of such Improvements.

#### 14.5 City's Right to Institute Proceedings

(a) In the case of an Event of Default by Lessee, the City shall have the right to institute such actions or proceedings it may deem desirable for effectuating the purposes of this Article.

(b) Upon a termination of this Agreement by City, Lessee shall then immediately quit and surrender the Leased Premises to City, and City may enter upon the Leased Premises, by force, summary proceedings, or otherwise. In any of such events, City shall be entitled to the benefit of all provisions of the ordinances and Public Local Laws of Baltimore City and of the Public General Laws of the State of Maryland dealing with the speedy recovery of lands and tenements held over by tenants or proceedings in forcible entry and detainer. Upon any entry or re-entry by City, with or without legal process, City shall also have the right (but not the obligation) to relet all or any part of the Leased Premises, from time to time. No re-entry by City with or without a declaration of termination shall be deemed to be an acceptance or a surrender of this Agreement or as a release of the Lessee's liability for damages under this Section.

(c) Lessee further agrees (i) notwithstanding re-entry by City with or without termination pursuant to the provisions above, or (ii) if this Agreement is otherwise annulled or terminated by reason of an Event of Default, or (iii) if City retakes possession with or without process of law or re-enters with or without a declaration of termination, or (iv) if City, following any of the foregoing events, elects to let or relet the Leased Premises (whether once or more than once during the remainder of the Term, and upon such conditions as are satisfactory to City), that Lessee shall, nevertheless, in each instance, remain liable for the performance of any covenant of this Agreement then in default, together with the cost of seizure and repossession of the Leased Premises and reasonable attorney's fees incurred by City as a result of the breach of this Agreement.

#### 14.6 Cumulative Remedies

Except as expressly limited by this Agreement, the specified remedies to which the parties to this Agreement may resort under this Article are cumulative and are in addition to, and not in lieu of, all other remedies to which the parties hereto may be lawfully entitled at law or in equity in case of any default or threatened default by the other party of any provision of this

Agreement. The initiation of any remedy by any party to this Agreement shall not constitute or be deemed an election of remedies by it and such party may invoke two or more remedies hereunder concurrently or consecutively.

#### 14.7 Waiver

Failure of either party to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving party.

### ARTICLE XV

#### REPRESENTATIONS

#### 15.1 Lessee.

Lessee makes the following affirmative representations as of the Lease Date:

(i) Lessee (i) is a limited liability company duly organized under the laws of the State of Maryland and is authorized and in good standing to engage in business in the State of Maryland, and (ii) and has been duly authorized by all proper and necessary member action as may be required, to execute and deliver this Agreement;

(ii) this Agreement, when executed and delivered on behalf of Lessee, will constitute the legal, valid, and binding obligation of Lessee enforceable in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights, or, to the extent that certain remedies hereunder require or may require enforcement by a court of equity such principles of equity as the court having jurisdiction may apply;

(iii) the execution, delivery, and performance by Lessee of this Agreement will, to Lessee's knowledge, not violate any provision of Applicable Law, rule, or regulation pertaining to Lessee's ability to enter into this Agreement, or any judgment, order, or decree binding upon it;

(iv) there are no actions, suits, or proceedings pending against Lessee or, to the knowledge of Lessee, threatened against Lessee before or by any court, governmental body or agency, or other tribunal or authority, which is reasonably likely to be adversely determined against Lessee, and if so adversely determined, would have a materially adverse effect on the authority or ability of Lessee to perform its obligations under this Agreement, or which question the legality, validity, or enforceability hereof or thereof;

(v) neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and

conditions of this Agreement, conflicts with or would result in a breach of any of the terms, conditions, or provisions of any restriction or any agreement or instrument to which Lessee is now a party or by which it is bound, or constitutes a default under the terms of any of the foregoing;

(vi) Lessee is not a "foreign person" as such term is defined in Section 897 of the Internal Revenue Code of 1986, as amended, and Lessee will deliver to the City at each Settlement an affidavit, given under penalty of perjury, (i) providing Lessee's taxpayer identification number, and (ii) stating the Lessee is not a foreign person; and

(vii) Lessee, is not a party or a potential party to any pending, threatened, or, to Lessee's knowledge, contemplated bankruptcy or similar proceeding under any law which has resulted or may result in alteration of or grant of relief from claims of creditors against Lessee.

## 15.2 City.

The City represents and warrants that, as of the Lease Date:

(i) the City is a political subdivision of the State of Maryland and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power, and authority to enter into and perform its obligations under this Agreement;

(ii) the City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City and constitutes legal, valid, and binding obligations of the City, enforceable in accordance with their terms, but subject to applicable bankruptcy laws, insolvency, reorganization, moratorium or similar laws affecting creditors' rights, or, to the extent that certain remedies require enforcement by a court of equity, such principles of equity as the court having jurisdiction may apply. All persons whose signatures or consents are required as a condition to the City's execution of this Agreement and consummation of the transactions contemplated hereby have also signed this Agreement, thereby ratifying same;

(iii) the execution, delivery, and performance by the City of this Agreement will not violate any provision of applicable laws, rules, or regulations pertaining to the City's ability to enter into this Agreement, or any judgment, order, or decree binding upon the City, the violation of which might have a materially adverse effect upon the City;

(iv) there are no actions, suits, or proceedings pending against the City, or to the City's knowledge, threatened against the City, before or by any court, governmental body or agency, or other tribunal or authority that would, if adversely determined, have a materially adverse effect on the authority or ability of the City to perform its obligations under this Agreement, or which question the legality, validity, or enforceability hereof.

ARTICLE XVI

EMINENT DOMAIN

16.1 Entire Leased Premises Taken by Eminent Domain

If the fee simple title in, or permanent possession of all of the Leased Premises is taken by a governmental or other authority under the power of eminent domain, then this Agreement shall terminate (or be suspended for the duration of the temporary taking) as of the taking date. The award of damages (including all damages received in such proceedings by Lessee and the City) shall be paid as follows, in the following order of priorities:

First: to the City any amount of the award allocable to taking of the land constituting the Leased Premises;

Second: to apply and be distributed to the payment of any indebtedness secured by the City's Deed of Trust or other permitted lien on the leasehold estate of Lessee; and

Third: to the Lessee.

Each party shall pay its own expenses incurred with respect to any condemnation.

16.2 Partial Taking of Leased Premises by Condemnation

(a) In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the parties acting jointly to avoid proceedings of such taking, then (i) this Agreement and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (ii) Lessee shall remodel, repair, and restore the Theatre and any Improvements to a comparable condition as existed prior to condemnation, taking into consideration the fact of the condemnation; provided, however, that in so doing Lessee shall not be required to expend more than the amount of any such award actually received by Lessee; less all costs and expenses (including reasonable attorneys' fees) incurred in the collection of same.

The award of damages (including all damages received in such proceedings by Lessee and the City) shall be paid as follows, in the following order of priorities:

First: to the City any amount of the award allocable to taking of the land constituting the Leased Premises;

Second: to Lessee the amount required to enable Lessee to remodel, repair, and restore the Theatre and any Improvements so that they will be comparable to the improvements prior to condemnation, taking into consideration the fact of the condemnation;

Third: The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by the City's Deed of Trust or other permitted lien on the leasehold estate of Lessee; and

Fourth: to the Lessee.

Each party shall pay its own expenses incurred with respect to any condemnation.

(b) If reconstruction is not feasible, or if operating the Theatre is no longer economically viable, in each case as determined by Lessee in its reasonable discretion, then this Agreement shall terminate as of the date of such taking and the award or awards of damage shall be paid as follows, in the following order of priorities:

First: to the City any amount of the award allocable to taking of the land constituting the Leased Premises;

Second: to apply and be distributed to the payment of any indebtedness secured by the City's Deed of Trust and any other permitted lien on the leasehold estate of Lessee; and

Third: to the Lessee.

Each party shall pay its own expenses incurred with respect to any condemnation.

## ARTICLE XVII

### MISCELLANEOUS

#### 17.1 Force Majeure

For the purpose of any of the provisions of this Agreement, neither the City nor the Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations under this Agreement, including, without limitation, the beginning and completion of the renovation to the Theatre or the construction of the Improvements, or progress in respect thereto, in the event of delay in the performance of such obligations due to acts of God, acts of the public enemy, terrorism, acts of government (excluding, however, the City, with respect to any default by the City), acts of the other party, fires, floods, epidemics, quarantine, restrictions, strikes, boycotts, freight embargoes, unusually severe weather, acts of sabotage, malicious mischief, vandalism, insurrection, mob violence, civil commotion, inability to procure or general shortage of, labor, equipment, facilities, materials, or supplies in the open market upon commercially reasonable terms (notwithstanding good faith and diligent efforts), delays of contractors, subcontractors or suppliers due to such causes, or defaults of independent (i.e., not affiliated with Lessee) contractors, independent subcontractors or independent suppliers (provided that remedies are being diligently pursued against same); it being the purpose and intent of this Section that in the event of the occurrence of any such delays, the time or times for the performance of the obligations of the parties, including, without limitation, of the Lessee

with respect to the renovation of the Theatre or the construction of Improvements, shall be extended for the period of the delay; provided, however, that the party seeking the benefit of the provisions of this Section must, as a condition precedent to obtaining the benefit of this Section, within fifteen (15) days after said party has actual knowledge of the beginning of any such delay, have first notified the other party in writing of the cause or causes thereof, which entitles such party to an extension of time. For the purpose of this Section, any such notice from the Lessee shall be given to DHCD, and any such extension of time shall be in writing and in such form as will enable it to be recorded among the Land Records of Baltimore City. A party may not rely on its own acts or omissions as grounds for its delay of performance.

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### 17.2 No Partnership or Joint Venture

It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or a joint venture between the City and Lessee or as constituting Lessee as the agent or representative of the City for any purpose or in any manner under this Agreement, it being understood that Lessee is an independent contractor hereunder.

### 17.3 Notice

A notice, communication, or request under this Agreement by either the City or DHCD to Lessee or by Lessee to the City or DHCD shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

(a) in the case of a notice, communication, or request to the City or DHCD, as follows:

City Law Department  
100 City Hall  
100 North Holliday Street  
Baltimore, Maryland 21202  
Attn: City Solicitor

with copies to:

City of Baltimore Development Corporation  
1600 Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201  
Attn: President

and

Department of Housing and Community Development



417 East Fayette Street, Room 1346  
Baltimore, Maryland 21202  
Attn: Commissioner

(b) in the case of a notice, communication, or request to Lessee, as follows:

The Senator Theatre LLC  
5904-06 York Road  
Baltimore, Maryland 21212

With copies to:

The Senator Theatre LLC  
c/o The Charles Theatre  
1711 N. Charles Street  
Baltimore, Maryland 21201

and Zelig Robinson, Esq.  
Thomas & Libowitz, P. A.  
100 Light Street, Suite 1100  
Baltimore, Maryland 21202

or addressed in such other way in respect to any of the foregoing parties as that party may, from time to time, designate in writing, dispatched as provided in this Section. Any such notice, communication, or request shall include a copy of the particular Section of this Agreement to which such notice, communication, or request relates and, if any specific time period has been established for action, review, and approval, or other response, such time period shall be stated in capital letters.

Copies of any insurance-related notices to the City shall also be sent to: Office of Risk Management, Department of Finance, Suite 512, MECU Building, 401 East Fayette Street, Baltimore, Maryland 21202.

The submission of plans and other design-related communications in accordance with Article V may be delivered directly and only to DHCD or City of Baltimore Development Corporation, as Lessee may be instructed from time-to-time.

#### 17.4 Recording Costs and Documentary Stamps

This Agreement, and any modification thereof and any additions thereto or Memorandum of this Agreement and any ancillary document relevant to this transaction, may at Lessee's option be recorded among the Land Records of Baltimore City at any time after, but not before, the Lease Date. The cost of any such recordation, and the cost of the applicable Baltimore City and State recordation and transfer taxes shall be paid in full by Lessee.

#### 17.5 Executed in Maryland

The Agreement shall be taken and deemed to have been fully made and executed by the City and Lessee in the State of Maryland for all purposes and intent.

#### 17.6 Conflicts of Interest

No member, official, representative, or employee of the City, DHCD, or City of Baltimore Development Corporation shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative, or employee participate in any decision relating to this Agreement which affects such person's personal interest or the interests of any corporation, partnership, or association in which such person is, directly or indirectly, interested.

#### 17.7 Representatives Not Individually Liable

No member, official, representative, or employee of the City, DHCD, or City of Baltimore Development Corporation shall be personally liable to Lessee or any successor in interest in the event of any default or breach by the City or DHCD for any amount which may become due to Lessee or successor or on any obligations under the terms of the Agreement. No shareholder, member, director, trustee, agent, donor, partner, representative, or employee of Lessee shall be personally liable to the City in the event any default or breach by Lessee for any amount which may become due to the City or on any obligations under the terms of this Agreement.

#### 17.8 Beds of Streets

The City reserves unto itself all of its right, title, and interest in and to the beds of all streets, alleys, or lanes herein mentioned and referred to. All references herein to any street, alley, or lane are for purposes of description only and are not intended to dedicate same to public use, and any implied intent of dedication or dedication of the streets, alleys, or lanes by reference to them is hereby denied and revoked.

#### 17.9 Titles of Articles and Section

Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

#### 17.10 Counterparts

This Agreement is executed in six (6) copies, each of which shall be deemed to be an original. In the event of any conflict between the copy that is recorded in the Land Records and any other copy, the recorded copy shall control.

#### 17.11 Approvals and Consents

Wherever in this Agreement the approval, certification, or consent of any party is required, such approval shall not be unreasonably withheld or delayed unless otherwise specified. Unless a shorter time period is specified in this Agreement, the City shall give or withhold (provided such withholding is reasonable under the circumstances) such approvals, certifications, or consents (a) within thirty (30) days if prior to the issuance of a Certificate of Completion and (b) within ninety (90) days if after such issuance, time being of the essence.

#### 17.12 Ancillary Documents

Any Authorized Officer for the City each is hereby authorized to execute any and all other documents necessary or appropriate to effectuate this transaction, provided such documents do not materially alter the relationship of the parties or the principal elements of this Agreement, and to grant such approvals and consents on behalf of the City as are provided in any Section of this Agreement.

#### 17.13 Broker

The City and Lessee each represent and warrant for itself that it has not dealt with any broker in connection with this Agreement and each covenants and agrees to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

#### 17.14 Third Party Beneficiary

Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary, except as may be otherwise specifically provided for in Article XIII or elsewhere herein.

#### 17.15 Payment or Performance on Saturday, Sunday, or Holiday

Whenever the provisions of this Agreement call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

#### 17.16 Amendments

Any amendment to this Agreement must be duly authorized by all necessary action and signed by both parties.

#### 17.17 Incorporation into Agreement

The recitals, and all exhibits, and schedules referred to in this Agreement form a part of this Agreement, whether or not expressly so stated.

#### 17.18 Applicable Law and Venue

This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any lawsuit, action, or proceeding arising under this Agreement shall only be brought in the courts of Maryland in the circuit or district within which Baltimore City is located and Lessee waives any objection to venue.

#### 17.19 Conflict of Terms

It is the intention of the City and Lessee that if any provision of this Agreement is capable of two constructions, one of which would render such provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

#### 17.20 Invalidity of Particular Provisions

If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable.

#### 17.21 No Waiver

No failure on the part of the City or Lessee to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

#### 17.22 Compliance with Laws

Lessee shall, at all times, be subject to all Applicable Law pertinent to the Leased Premises, this Agreement, and Lessee's actions in connection with the Leased Premises and this Agreement. Nothing in this Section 17.22 or any other part of this Agreement, however, shall be construed to (i) limit or prevent Lessee from challenging at law or in equity the applicability of any Applicable Law or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. No provision of this Agreement shall be construed to require Lessee to comply with any Applicable Law during the period that Lessee may be pursuing a bona fide challenge of the applicability, lawfulness, or enforceability of such Applicable Law (unless such Law requires compliance during any such challenge). If Lessee's

challenge is successful, Lessee shall not be required by the provisions of this Agreement to comply with such Applicable Law.

17.23 Date of Agreement

The date of this Agreement shall be the date upon which this Agreement has been approved by the Board of Estimates of the City.

17.24 Covenants Run with the Land

All of the terms, covenants, conditions, and easements contained in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the permitted successors and assigns of the City and Lessee as fully as upon such parties and may be enforced as if assumed, whether or not expressly assumed.

17.25 Time of the Essence

Time is of the essence in the performance of the obligations of Lessee and the City under this Agreement.

17.26 Entire Understanding

This Agreement expresses the entire understanding between the City and Lessee with respect to the matters set forth herein and therein and neither party shall be bound by any terms, covenants, or agreements not herein or therein contained.

IN WITNESS WHEREOF, the Mayor and City Council of Baltimore has caused this Lease Agreement For Senator Theatre to be executed in its name by Paul T. Graziano, Commissioner, Housing and Community Development, and its Corporate Seal be affixed, duly attested, and The Senator Theatre LLC has caused this Lease Agreement for the Senator Theatre to be duly executed by The Senator Theatre LLC.

WITNESS/ATTEST:

\_\_\_\_\_  
Custodian of the City Seal

MAYOR AND CITY COUNCIL OF  
BALTIMORE

*Paul T. Graziano* (SEAL)  
Paul T. Graziano, Commissioner  
Housing and Community Development

WITNESS/ATTEST:

THE SENATOR THEATRE LLC

By: *James E. Cusack*  
James E. Cusack, Authorized  
Member

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

*Clayton J. Fenwick*      8/18/10  
Chief Solicitor                      Date

APPROVED:

BOARD OF ESTIMATES

Clerk      **AUG 25 2010** Date

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, ~~2009~~<sup>2010<sup>SB</sup></sup>, before the subscriber, a Notary Public of the State of Maryland, in and for the city/county of Baltimore personally appeared Paul T. Graziano, Commissioner, Department of Housing and Community Development and acknowledged the foregoing Lease Agreement for the Senator Theatre to be the corporate act and deed of the Mayor and City Council of Baltimore.

As WITNESS my hand and Notarial Seal

*Sandra E. Blake*  
Notary Public

