

Making an appropriation from the Seattle Center Improvement Fund for design and demolition activities on the Seattle Center Resident Theater Improvement Project.

**Ordinance No. 109853-71057**

AN ORDINANCE relating to the Seattle Center Department; authorizing an agreement between Seattle Repertory Theatre, Inc. and The City of Seattle regarding design and construction of the Seattle Center Resident Theatre (SCRT) and a SCRT Licensing Agreement; making an appropriation from the Seattle Center Improvement Fund for the preparation of plans, specifications, estimates, and demolition of certain existing structures; and allocating an appropriate sum for One Percent for Art, all connected with the improvement program contemplated by Ordinance 106629 (1977 Seattle Center Capital Improvement/Bond Issue).

4-7-81 PASS 30 APR 20 1981 hold 1 week

COMPTROLLER FILE NUMBER 290564290702

**Council Bill No. 102193**

INTRODUCED: APR 06 1981	BY: Exec.
REFERRED: APR 06 1981	TO: P. C. S.
RESERVED: APR 20-81	Full Council
REPORTED: APR 27 1981	SECOND READING: APR 27 1981
THIRD READING: APR 27 1981	SIGNED: APR 27 1981
PRESENTED TO MAYOR: APR 28 1981	APPROVED: MAY 05 1981
SENT TO CITY CLERK: MAY 06 1981	PUBLISHED:
VETOED BY MAYOR:	VETO PUBLISHED:
PASSED OVER VETO:	VETO SUSTAINED:

SEE BACK COVER

. 110156 -Makes an appropriation from the Seattle Center Improvement Fund in connection with the Seattle Center Resident Theatre Project, etc.

1  
2 AN ORDINANCE relating to the Seattle Center Department;  
3 authorizing an agreement between Seattle Repertory  
4 Theatre, Inc. and The City of Seattle regarding design  
5 and construction of the Seattle Center Resident Theatre  
6 (SCRT) and a SCRT Licensing Agreement; making an  
7 appropriation from the Seattle Center Improvement Fund  
8 for the preparation of plans, specifications, estimates,  
9 and demolition of certain existing structures; and  
10 allocating an appropriate sum for One Percent for Art,  
11 all connected with the improvement program contemplated  
12 by Ordinance 106629 (1977 Seattle Center Capital  
13 Improvement/Bond Issue).

14 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

15 Section 1. As requested by the Mayor and the Director  
16 of Seattle Center in materials attached hereto, said Director  
17 is hereby authorized to execute, for and on behalf of The City  
18 of Seattle, an agreement with the Seattle Repertory Theatre,  
19 Inc., substantially in the form attached hereto and identified  
20 as "Agreement between Seattle Repertory Theatre, Inc. and The  
21 City of Seattle Regarding Design and Construction of The New  
22 Seattle Center Resident Theatre" in connection with the  
23 specified design and development activities for the Seattle  
24 Center Resident Theatre Improvement Project as generally  
25 described under Section 2 herein and more fully described by  
26 the program and concept drawings attached hereto.

27 The Director is also authorized to enter into a separate  
28 SCRT Licensing Agreement between the Seattle Repertory Theatre,  
Inc. and The City of Seattle all in conjunction with aforemen-  
tioned Project and Agreement.

Section 2. As requested by the Seattle Center Director  
and recommended by the Mayor in the materials attached hereto,  
said Director and, where appropriate, the Director of  
Construction and Land use and/or the Director of Engineering,  
under the direction of the Board of Public Works, upon  
compliance with City and State environmental and other laws,

1 are authorized to proceed with the specified design and  
2 demolition activities for the Seattle Center improvement  
3 project described below and at indicated levels of funding:

<u>Project Title</u>	<u>Activity</u>	<u>Appropriation</u>
Seattle Center Resident Theatre	PC/C*	\$ 587,820

4  
5  
6 \* PC - Preconstruction Activity includes preparation of  
7 preliminary plans, design, specifications, cost estimates,  
8 performance site work, preliminary engineering, soils test,  
9 and hiring expert consultants for such activity.

10 \* C - Construction Activity includes completion of preparation  
11 of plans, specifications and cost estimates, procurement  
12 of necessary supplies and equipment, and the letting of  
13 contracts for demolition under the direction of the Board  
14 of Public Works consistent with state law.

15 For such purposes, the sum of Five Hundred Eighty Seven Thousand  
16 Eight Hundred Twenty Dollars (\$587,820) or so much thereof as  
17 may be necessary, is hereby appropriated from the Seattle  
18 Center Improvement Fund, which sum includes Five Thousand Eight  
19 Hundred Twenty Dollars (\$5,820) constituting one percent of  
20 the sum appropriated for eligible projects as indicated in  
21 the materials attached hereto, which latter sum shall be  
22 deposited in the Municipal Arts Fund for works of art to be  
23 placed on the Seattle Center grounds as contemplated in Ordinance  
24 102210, as amended; and the City Comptroller is authorized to  
25 draw and the City Treasurer is authorized to pay the necessary  
26 warrants and make the necessary transfers.

27 Section 3. The preparation of plans and specifications,  
28 the execution of other contracts and any other acts consistent  
with the authority and prior to the effective date are hereby  
ratified and confirmed.

(To be used for all Ordinances except Emergency.)

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 27 day of April, 1981,  
and signed by me in open session in authentication of its passage this 27 day of  
April, 1981. [Signature]  
President of The City Council.

Approved by me this 6<sup>th</sup> day of May, 1981. [Signature]  
Mayor.

Filed by me this 6<sup>th</sup> day of May, 1981.

Attest: [Signature]  
City Comptroller and City Clerk.

(SEAL)

Published

By [Signature]  
Deputy Clerk.

MEMORANDUM

RECEIVED

MAR 25 1981

SEATTLE CENTER

Date: March 25, 1981  
To: Al Wyemura *AW*  
From: Dick Collins  
SUBJ: RAINIER BANK AGREEMENT

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Attached per your request is an acknowledgement from the Rainier Bank concerning the 2 questions you submitted for further clarification.

After the Rep delivered to the Center a signed construction agreement, I delivered a copy of the agreement and the clarification letter to the bank for their file. Attached is a copy of their signed acknowledgement.

I've reviewed the situation with the Bank and it now appears we have covered all questions and the project will be able to move rapidly forward.

cc: Dottie Simpson  
Bob King  
Bob Cline  
Jack Fearey

AS A RESULT OF THE RECENTLY COMPLETED  
REVISIONS TO THE SCRT PROJECT BUDGET  
AS APPROVED BY THE CITY COUNCIL

# Seattle Center Theatre Fund

417 DELLEY WAY, SEATTLE, WASHINGTON 98109 (206) 447-3289

March 17, 1981

Rick Voit  
Rainier Bancorporation  
One Rainier Square  
P.O. Box 3966  
Seattle, WA 98124

Dear Rick:

When you delivered the recent bank "clarification letter" I pointed out there was an inconsistency concerning the "three page construction agreement" which would need refinement. I pointed out the Agreement would be a considerably longer document and that a copy would be delivered to you as soon as possible. Attached for the bank records, is the document as agreed to by the Rep and the City and submitted to the City Council.

If any further change occurs, I will certainly let you know immediately.

You will notice in the Agreement that the Center identifies the total SCRT project budget as \$8,415,000, not \$7,200,000 as stated in our agreement with the bank. The following is a clarification of that budgetary item.

MACC (maximum allowable construction cost)	\$6,000,000
Other applicable expenses	<u>\$1,470,000</u>
Total	\$7,470,000
City Financial Allocation Plus	
Related Expenses	
Bond Issue Income	\$4,800,000
Bond Interest Allocated	400,000
Recent additional Bond interest allocated	<u>215,000</u>
Total Allocated	\$5,415,000
Less original design expense	- 866,000
Less demolition previously carried in other budgets	<u>- 79,000</u>
Bond balance available	\$4,470,000
Repertory Theatre's contribution	\$3,000,000

A RESIDENT THEATRE PROJECT OF THE CITY OF SEATTLE AND THE SEATTLE REPERTORY THEATRE

Rick Voit  
Rainier Bancorporation

Page 2 (cont'd)

As you can see, some additional bond monies have been allocated to the project by the City. The SRT's obligations remain the same.

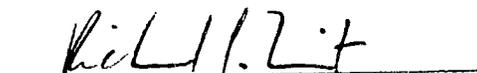
We anticipate everything moving along rapidly in the design phase and construction bids will be reviewed in early Fall 1981. If these bids are on target as expected, we will see construction begin before the end of October 1981.

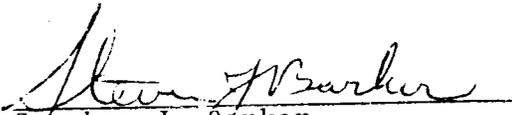
The Rep requests this letter to be added to your file as part of the documentation and would appreciate an acknowledgement copy to be submitted to the City for their file.

The Rep appreciates the interest and assistance of Rainier Bank in this important civic undertaking.

Sincerely yours

  
RICHARD D. COLLINS  
Executive Director

  
(Received and acknowledged)  
Rick Voit  
Corporate Banking Officer

  
Stephen J. Barker  
Vice-President

RDC/ec

REC'D OMB MAR 31 1981

**Your  
Seattle  
Center**

802269



John W. Fearey, Director  
Charles Royer, Mayor

March 26, 1981

The Honorable Paul Kraabel  
President  
Seattle City Council  
1106 Municipal Building  
Seattle, Washington 98104

SUBJECT: SEATTLE CENTER IMPROVEMENT PROGRAM  
SEATTLE CENTER RESIDENT THEATRE (SCRT)

Dear Councilman Kraabel:

We are herewith requesting adoption of the attached legislation making an appropriation of Five Hundred Eighty Seven Thousand Eight Hundred Twenty Dollars (\$587,820) from the Seattle Center Improvement fund for Design and Demolition Activities on the Seattle Center Resident Theatre Improvement Project.

On December 1, 1980, the City Council passed an Ordinance authorizing the Seattle Center Director to enter into an agreement with the project Architects, Naramore, Bain, Brady & Johanson (NBBJ), to provide a new program for the proposed Seattle Center Resident Theatre. The programming and conceptual design work has been completed and the concept submittal describing the latest theatre design is attached hereto. It should be noted that the concept submittal has been reviewed and approved by the Seattle Repertory Theatre and the Seattle Center.

The aforementioned parties are therefore recommending to the City Council that the new Resident Theatre program be designed and constructed. In anticipation of this desired action, the Seattle Center and Repertory Theatre have negotiated an agreement regarding design and construction of the new Theatre and a long term license agreement for the operation and maintenance of the facility. Each document is attached hereto.

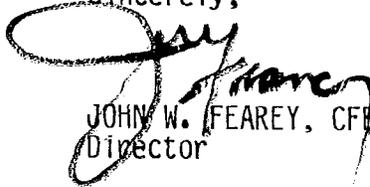
As required by the Seattle Center and the construction agreement, the Seattle Repertory Theatre has provided an assurance of financing in the form of an irrevocable letter of commitment from a local bank for Three Million Dollars. This funding contribution combined with the project funds from the 1977 Seattle Center Bond Issue ensure that all project costs as described in the construction agreement will be provided for until project completion.

The Honorable Paul Kraabel  
March 26, 1981  
Page two

Upon review and approval of the subject appropriation Ordinance and the execution of the previously noted documents, the Seattle Center will enter into an agreement with the project Architect to complete the design and prepare the construction bid documents.

At that time, the Seattle Center will submit a funding Ordinance relating to making an appropriation from the Seattle Center Improvement Fund for construction.

Sincerely,



JOHN W. FEAREY, CFE  
Director

JWF:rrs

cc: John Saven  
Allan T. Wyemura

Attachments

**Your City, Seattle**

Executive Department-Office of Management and Budget

John Saven, Director  
Charles Royer, Mayor



MAR 31 1981

COPY OF WITHIN RECEIVED

The Honorable Douglas Jewett  
City Attorney  
City of Seattle

MAR 31 1981

*Handwritten signature of Douglas N. Jewett*  
Douglas N. Jewett  
CITY ATTORNEY  
2654

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT: Seattle Center

SUBJECT: An Ordinance relating to Seattle Center; authorizing execution of agreements between City of Seattle and Seattle Repertory Theatre; making an appropriation from Seattle Center Improvement Fund

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation directly to your office for review and drafting.

After reviewing this request and drafting appropriate legislation:

- (X) File the legislation with the City Clerk for formal introduction to the City Council as an Executive Request.
- ( ) Do not file with City Council but return the proposed legislation to OMB for our review. Return to \_\_\_\_\_.

Sincerely,

Charles Royer  
Mayor

By

*Handwritten signature of John Saven*  
John Saven  
Budget Director

JS/lg/pc

Enclosure

cc: Seattle Center

An equal employment opportunity - affirmative action employer

SCRT APPROPRIATION  
REQUEST BACKUP

Previous Appropriations:

Ordinance #107481	\$ 500,000
Ordinance #109481	550,000
Ordinance #109521	
New SCRT Concept Design	
Contributions:	
Seattle Center Bond Issue	\$18,180
Seattle Repertory Theatre	<u>18,000</u>
	<u>36,180</u>

TOTAL \$ 1,086,180

Expenditures to Date:

Previous SCRT Design	866,000
Design Reimbursables	25,000
New SCRT Concept Design	
(includes 1% for Art)	36,180
1% for Art for Ordinances	
107481 and 109481 only	<u>10,500</u>

Less Total Expenditures to date <937,680>

Balance Forward \$ 148,500

3/31/81  
RFR

SCRT APPROPRIATION  
REQUEST BACKUP

Calculation of 3/26/81  
SCRT Appropriation Request:

New Design	\$ 642,000
Design Budget	660,000
Less Seattle Center Concept Design Cost	<18,000>
	<u>\$642,000</u>
Demolition	79,000
Contingency for Demolition	9,500
1% for Art	<u>5,820</u>
TOTAL	736,320
Less Balance Forward Previous Appropriations	<148,500>
Total New Appropriation Request	\$ 587,820

3/31/81  
RFR

## CITY OF SEATTLE

## APPROPRIATION REQUEST FOR CAPITAL IMPROVEMENT

1. Dept. Seattle Center Date February 23, 1981  
 Project Title Seattle Center Resident Theatre  
 Exact Location (Census Tract/Address) Seattle Center Campus

2. Is this project in the current CIP?  Yes  No  
 CIP Permanent Project Number \_\_\_\_\_  
 If not in current CIP, please explain:

## 3. SUMMARY OF PROJECT

Describe the purpose of this project, the work to be accomplished with the requested appropriation, any proposed changes to the project scope adopted in the CIP.

The construction of this new 850 seat performing arts theatre is described completely in the attached new SCRT project program.

Use additional sheets as necessary

Operating Budget Impact	Maintenance Impact	Additional Personnel Required

4. ENVIRONMENTAL REVIEW STATUS: Declaration of nonsignificant impact will be completed as a supplement to the original approved EIS.

## 5. PROJECT COST

	Project Cost Estimate*	Current Project Cost Estimate**
a. Planning/PE/Design	630	1526
Demolition		79
Construction	4259	6000
WSST		324
Manage./Admin.		134
Artwork		54
Other		297
TOTAL		8414

b. Original CIP Estimate\* Amount \_\_\_\_\_ Year \_\_\_\_\_ Increase \_\_\_\_\_ Decrease \_\_\_\_\_  
 If the project cost estimate has been revised, describe the basis for revision.

\*Cost estimate in 1979 CIP.

\*\*Complete only if different from current CIP.

+Cost estimate the first time the project appeared in the CIP.

## 6. CONSTRUCTION/SCHEDULE

a. Estimated bid date October, 1981 b. Estimated Completion April 1983

7. FUND SOURCES

- a. Identify all fund sources for the project (The sum of these fund sources should equal the total project cost).

Fund Source	Amount
Seattle Center Improvement Fund	5,415,000
Seattle Repertory Theatre, Inc.	3,000,000
TOTAL	8,415,000

- b. Identify the project's prior appropriations.

Amount	Ord. No.	Date	Fund	Purpose
500,000	107481	7/10/78	322	Design
550,000	109481		322	Design
18,000	109521		322	Design

- c. Describe the current appropriation request.

Amount	Fund Source	Purpose
587,820		Design/Demolition

- d. Describe the future appropriations required to complete the project (number, amount(s), timing, fund source(s), etc.)

An additional appropriation request will be submitted in the future which includes an amount for construction, WSST, Contingency and 1% For Art.

B. DEPARTMENTAL AUTHORIZATION.

Director, Seattle Center John W. Fearey, CFE

Title

Typed Name

Signature



9. Sent to OMB . . . Date \_\_\_\_\_ Finance Committee . . . Date \_\_\_\_\_  
 Sent to Council . Date \_\_\_\_\_ Full Council Action . . Date \_\_\_\_\_  
 Committee Assigned: \_\_\_\_\_ Ordinance # \_\_\_\_\_  
 . . Meeting Date \_\_\_\_\_

10. Council comments:

**Your  
Seattle  
Center**



John W. Fearey, Director  
Charles Royer, Mayor

March 26, 1981

Mr. John Saven  
Budget Director  
Office of Management and Budget  
200 Municipal Building  
Seattle, Washington 98104

Attention: Lucy Gaskill

SUBJECT: SEATTLE CENTER IMPROVEMENT PROGRAM  
SEATTLE CENTER RESIDENT THEATRE (SCRT)

Dear Ms. Gaskill:

We are herewith requesting adoption of the attached legislation making an appropriation of Five Hundred Eighty Seven Thousand Eight Hundred Twenty Dollars (\$587,820) from the Seattle Center Improvement fund for Design and Demolition Activities on the Seattle Center Resident Theatre Improvement Project.

On December 1, 1980, the City Council passed an Ordinance authorizing the Seattle Center Director to enter into an agreement with the project Architects, Naramore, Bain, Brady & Johanson (NBBJ), to provide a new program for the proposed Seattle Center Resident Theatre. The programming and conceptual design work has been completed and the concept submittal describing the latest theatre design is attached hereto. It should be noted that the concept submittal has been reviewed and approved by the Seattle Repertory Theatre and the Seattle Center.

The aforementioned parties are therefore recommending to the City Council that the new Resident Theatre program be designed and constructed. In anticipation of this desired action, the Seattle Center and Repertory Theatre have negotiated an agreement regarding design and construction of the new Theatre and a long term license agreement for the operation and maintenance of the facility. Each document is attached hereto.

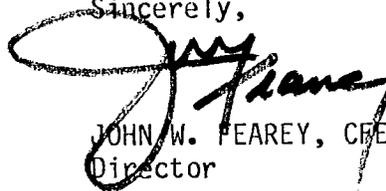
As required by the Seattle Center and the construction agreement, the Seattle Repertory Theatre has provided an assurance of financing in the form of an irrevocable letter of commitment from a local bank for Three Million Dollars. This funding contribution combined with the project funds from the 1977 Seattle Center Bond Issue ensure that all project costs as described in the construction agreement will be provided for until project completion.

John Saven  
March 26, 1981  
Page two

Upon review and approval of the subject appropriation Ordinance and the execution of the previously noted documents, the Seattle Center will enter into an agreement with the project Architect to complete the design and prepare the construction bid documents.

At that time, the Seattle Center will submit a funding Ordinance relating to making an appropriation from the Seattle Center Improvement Fund for construction.

Sincerely,



JOHN W. FEAREY, CBE  
Director

JWF:rrs

cc: John Saven  
Allan T. Wyemura

Attachments

AGREEMENT  
BETWEEN  
SEATTLE REPERTORY THEATRE  
AND  
THE CITY OF SEATTLE  
REGARDING THE DESIGN AND CONSTRUCTION OF  
THE NEW SEATTLE CENTER RESIDENT THEATRE

Revised  
3/23/81  
CMG Draft

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by and between the SEATTLE REPERTORY THEATRE (hereinafter referred to as "SRT"), a Washington nonprofit corporation, and THE CITY OF SEATTLE (hereinafter referred to as "City"), acting by and through its Seattle Center Department and the Director thereof.

WHEREAS, the City wishes to design and construct the Seattle Center Resident Theatre Project ("SCRT Project" or "Project") at the Seattle Center, pursuant and subject to provisions of the 1977 Seattle Center Bond Issue and as generally described by the January 1981 "Seattle Center Resident Theatre II - Concept Submittal" prepared by the architectural firm of Naramore Bain Brady & Johanson; and

WHEREAS, the SRT wishes to contribute funds to help pay for the construction of the Project; and

WHEREAS, the parties hereto wish to incorporate in this Agreement the terms under which each agrees to this arrangement;

NOW, THEREFORE, in consideration of the covenants set forth herein and in a License Agreement between the parties hereto agree as follows:

1. General Description of Project and of Commitments.

A. Project Feasibility. The SRT and the City agree that, prior to the award of any construction contract relating

to the SCRT Project, both parties will jointly evaluate the financial feasibility of constructing the Seattle Center Resident Theatre.

B. Theatre Design and Construction. The SRT and the City agree that, in the event that immediate construction of the Seattle Center Resident Theatre is determined to be feasible, the design and construction of the SCRT project shall be undertaken as generally consistent with the January 1981 Seattle Center Resident Theatre II - Concept Submittal and subsequent plans and specifications, each of which is incorporated herein by this reference; Provided, that such construction and the aforementioned concept submittal and subsequent plans and specifications shall be subject to Project budget limitations and further revision and refinement.

C. Project Funding. The SRT and the City agree that the City's funding of the SCRT Project, as allocated in the 1977 Seattle Center Bond Issue, is to be supplemented by a SRT contribution, pursuant to Section 3 of this Agreement; Provided, that no portion of the SRT contribution shall impose on the City or shall otherwise subject the City to any additional condition(s), requirement(s), or performance(s) unless the City expressly consents to such condition(s), requirement(s), and performance(s).

D. Parties' Contributions Toward Project Target Costs. The SRT and the City agree that the SRT's contribution toward the total Project cost shall not exceed Three Million Dollars (\$3,000,000), except as otherwise provided herein, and that the City's contribution to the total Project cost shall not exceed

Five Million Four Hundred Fifteen Thousand Dollars (\$5,415,000), except as otherwise provided herein.

E. Project Budget. The City reserves the right from time to time to make changes to specific budget category amounts to otherwise ensure that all project costs are provided for within the agreed-to Project budget total. The initial Project budget shall be as follows:

MACC (Maximum Allowable Construction Costs)	\$ 6,000,000
Washington State Sales Tax	324,000
1% for Art	54,150
New Design	660,000
Primary Contingency	297,850
Administration	134,000
Demolition	79,000
Original SCRT Design Expense	<u>866,000</u>
SCRT Project Budget Total	\$ <u>8,415,000</u>

F. Secondary Contingency. Notwithstanding any provisions herein, the SRT and the City agree that, in order to provide for unbudgeted and unanticipated Project costs, and to otherwise ensure that all Project costs are provided for until project completion, a Secondary Contingency of Three Hundred Thousand Dollars (\$300,000) shall be established.

Each party shall contribute, in addition to the contribution to be made by each party hereto pursuant to Section 1.D, hereof, equal amounts for the Secondary Contingency, which sums shall not exceed One Hundred Fifty Thousand Dollars (\$150,000); Provided, that in the event the Construction Contract award is less than the \$6,000,000 MACC Budget, each party's Secondary Contingency contribution will be reduced equally by the difference between the MACC Budget and the Construction Contract.

The SRT shall deliver to the City a written commitment for the Secondary Contingency as set forth herein, five (5) days prior to the award of the Construction Contract. All costs paid from the Secondary Contingency shall be on a 50% SRT and 50% City basis. The SRT Secondary Contingency shall be remitted to the City in a manner consistent with Section 3.D, hereof. Upon final payment of all project costs, the City shall relinquish any claim to the remaining portion of the SRT contribution to be made pursuant to this Section of this Agreement.

G. Relationship of Agreement to Other Agreements.

No agreement between the City and any other entity or person shall be affected by this Agreement.

2. City Participation and Responsibilities. The City will undertake the administration, design, and construction of the SCRT Project at the Seattle Center, subject to provisions of the 1977 Seattle Center Bond Issue, and in accordance with applicable rules and regulations as determined by the Board of Public Works and other governmental authorities having

jurisdiction over the Project, and other provisions of this Agreement. The SRT acknowledges that Board of Public Works approval is required for contract award(s), construction documents, bidding, and final acceptance of the Project.

A. Project Coordination. The City will provide all Project coordination services, including administration and consultant coordination.

B. Design Changes. The City reserves the right to make changes to the Project to maintain the Project target costs for any phase and the total Project cost; Provided, that no functionally substantial changes shall be made without prior consultation with and approval by the SRT liaison, which approval shall not be unreasonably withheld. If disapproval is not provided by the SRT liaison within twenty-four (24) hours, after initiation of consultation, such approval will be assumed.

C. Construction in Phases and on Alternative Bases. The City reserves the right, following consultation with the SRT liaison, to award one or more contracts for the SCRT Project providing for construction on the basis of phases and/or additive or deductive alternates, and to otherwise endeavor to complete said construction in such time period(s) as the City deems feasible.

D. Design Changes Initiated by SRT. The City reserves the right to approve or disapprove any proposed design changes to the Project initiated by SRT. After execution of any Project construction contract, no design or construction change

request initiated by SRT can be made except in accordance with the contract documents and after the City's approval.

E. 1% for Art. No part of the contribution(s) provided by SRT shall be deemed to be an "eligible fund" or any part of the project cost for calculating the amount to be appropriated to implement The City of Seattle's 1% for Art program established Ordinance 102210, as amended, but payment of the 1% for Art allocation may be made from any funds provided for this project, including the SRT contribution.

F. Allocation of SRT Contribution. The City shall have the sole right to allocate funds available for or otherwise to be devoted to or used on the Project, including the SRT contribution to be made pursuant to Section 3 of this Agreement.

3. SRT Financial Participation and Responsibilities. Subject only to the provisions, adjustments and/or conditions provided for in this Agreement, the SRT agrees to and shall contribute to the City Three Million Dollars (\$3,000,000) to be used solely for purposes related to the SCRT Project as determined by the City, including the payment of all direct and indirect Project costs of the City such as, but not limited to, Seattle Center and other City administrative costs, consultants' fees, taxes, and other Project development and construction costs.

A. Assurance of Financing. Immediately upon execution of this Agreement, the SRT shall deliver to the City an irrevocable commitment from one or more local national banking institutions providing interim or permanent financing of the Three Million Dollars (\$3,000,000) contribution; Provided,

no such delivery shall be required until the SRT and City have executed the Licensing Agreement, and this Agreement, and have accepted the January 1981 Seattle Center Resident Theatre II - Concept Submittal. Such commitment shall be subject to review by the City Attorney and any other individuals or entities desired by the City, and approval by the Director of Seattle Center.

B. City's Notice to SRT of Contribution Portion to Be Remitted to City. The City shall notify the SRT, in writing, of the receipt by the City of an invoice from any SCRT Project contractor, consultant, supplier, or other vendor, or the calculation of applicable City costs and the communication of the amount of such costs to the Seattle Center Director or his designee, of the amount of money to be remitted by the SRT to pay the same; Provided, that the City shall not make any demand upon the SRT for the remittance of any amount of the contribution to be made to the City pursuant to Section 3. of this Agreement until after the expenditure of all City funds to be devoted to the SCRT Project, as identified in Section 1.D and 1.E of this Agreement, excluding funds encumbered for the payment of City administrative charges and services; City-supplied materials, equipment and supplies and design costs; and City funds contributed for the Secondary Contingency.

C. SRT's Remittance of Contribution Portions. The SRT shall remit to the City's Treasurer, for deposit into the Seattle Center Improvement Fund, within five (5) City business days after the date of each written notice from the

City requesting such a remittance, such funds as are determined by the City to be necessary to pay invoices received from architects, consultants, contractors, suppliers, or others and all City costs incurred in connection with the SCRT Project.

D. No Credit for Expenditures by SRT. The SRT agrees that it will not receive a credit against any contribution to be made under this Agreement for any of its costs and expenses in connection with the SCRT Project that are incurred either prior to or after the execution of this Agreement, including but not limited to any SRT legal fees or fund-raising costs.

E. No Liens. The SRT shall not, directly or indirectly, do anything under this Agreement or otherwise that may or could cause a lien to be filed against the property or facility contemplated in this Agreement.

F. Continuation of Payments. No dispute between the City and the SRT with respect to the SCRT Project, placement of acknowledgements and recognition of donations, changes, aesthetics, or any other matter whatsoever shall be grounds for any failure or refusal by the SRT either to make the payments required by this Agreement or to make a written certification to a financial institution regarding the SRT's obligation to make any payment and the SRT's use of it's available cash resources, so that the financial institution will provide funds for the SRT's payment to the City.

4. SRT Participation in the SCRT Project Design and Construction Work.

A. Adjustments for Design Changes Initiated by SRT. Notwithstanding anything in this Agreement to the contrary, the

SRT contribution to be made pursuant to Section 3 of this Agreement shall be adjusted upwards in the amount of cost increases resulting from design alternatives or changes initiated by the SRT and approved by the City, which increases shall include all extra fees for architects and consultants, contractors' costs (materials, labor, taxes, overhead, and profit), and the City's administrative fee of five percent (5%) of the aggregate adjustments resulting from each such alternative or change. Initial calculation of credits or charges resulting from design changes or change orders shall be the responsibility of the Project Architect, subject to appeal to a local, independent cost estimator selected by the parties, the costs of which appeal shall be evenly shared by the parties to this Agreement.

B. Plan For And Approval of Form and Placement or Erection of Acknowledgements and Recognition of Contributions.

It is agreed by the City and SRT that it will be necessary to recognize and acknowledge certain gifts made by various individuals, corporations, partnerships, foundations and other entities for the SCRT project. It is anticipated that in most instances the initial discussions with respect to any such recognition and acknowledgement will be between SRT and the contributors. After consultation with the City, SRT shall propose a general plan for the recognition and acknowledgement of contributions, which plan shall detail design concepts, construction methods, specific locations for all forms of recognition, and placement and erection arrangements, and shall be subject to the approval of the City, which approval will not be unreasonably withheld.

C. Name of the Theatre. In consideration of the contribution by the SRT, the City agrees to name the facility resulting from the SCRT Project the "Bagley Wright Theatre".

D. Naming of Components. In further consideration of the contribution by the SRT, the City agrees to allow the SRT to offer the naming of the various internal rooms, areas, and components of the theatre facility as an incentive for the giving of private contributions; Provided, that each such naming shall be subject to approval by Resolution of the City Council.

E. SRT Responsibility for Design, Production & Installation Costs for Acknowledgment of Contributions. Unless otherwise agreed upon by the parties hereto, the design, creation, placement, and erection of all forms of recognition of the contributions made pursuant to Sections 4.B and 4.C and 4.D, hereof, including but not limited to signs, plaques, markers, statuary, and any other architectural and decorative details, shall be undertaken and completed by the SRT, consistent with the general plan for the same contemplated in Section 4.B, hereof; Provided, that all costs for such work shall be borne solely by the SRT and shall not be included in the contribution to be made pursuant to Section 3, hereof, except that the principal identification of the "Bagley Wright Theatre" shall be included in the Project design and total Project costs contemplated in Sections 1.D and 1.E, hereof, subject to the allowance therefor established in any Project budget or allocation made by the City pursuant to Section 2.F, hereof,

or otherwise, where such identification is made an integral architectural element of said theatre facility.

F. Resolution of Dispute(s). If the SRT and the City are unable to resolve any dispute(s) concerning design alternatives or changes of a functionally substantial nature, including the aesthetic impact of a design change or plan details regarding acknowledgement and recognition of contributions, the matter will be presented by both parties to a local, independent mediator, agreeable to both parties for resolution at the earliest possible moment, the cost of which mediation shall be equally divided by the parties to this Agreement. In the event a dispute involving a functionally substantial change remains unresolved, the mediator's findings will be forwarded to the Mayor for decision. The Mayor would view the mediator's findings as most compelling and, would, as a matter of general policy agree with the findings. The Mayor reserves the right to reject the mediator's findings if, in his judgment, the findings are not in the best interest of the City.

In the event any resolution of a dispute necessitates a change in the design or construction contracts, said request for change shall be submitted to the Board of Public Works for action.

G. SRT Review of Design, Plans, and Specifications, and Changes Therein. The SRT shall be granted the opportunity to review and comment on the overall design of the theatre spaces for compatibility of the spaces for theatre purposes and the SRT's needs, as well as on specific Project designs, plans, and

specifications. The SRT agrees to review and provide comments, as limited and set forth in this paragraph, in an expeditious and reasonable manner; Provided, that in the event that the City requires the SRT to complete its review and comment on particular items on or by a particular date, the City shall notify the SRT, in writing, of the specific date by which such review must be completed and comment must be provided; and in the event that no SRT comment is received by the City on or by the end of any such specified review period or specified date, then the SRT shall be deemed to have waived its opportunity to review and comment on the item(s) made available to it for review and comment, and the City may proceed as if the SRT had reviewed and commented favorably on the reviewable item(s).

H. No SRT Right to Approve Contractors. The SRT does not reserve and is not granted under this Agreement any right to approve the qualifications or use by the City of any architect; contractor; supplier; or City officer, employee, or agent selected to work on the SCRT Project.

5. Withdrawal from Project.

A. Rights to Withdraw. Either party may withdraw from the SCRT Project and this Agreement and its responsibilities hereunder by providing to the other party prior written notice of such withdrawal, specifying the effective date thereof, which notice shall serve to terminate this Agreement as well as any License Agreement between the parties hereto regarding the Seattle Center Resident Theatre; Provided, that both the SRT and the City may exercise such right of withdrawal only as follows:

(1) At any time prior to the City's award of a contract relating to the construction of the SCRT Project; and

(2) At any time prior to the completion of construction and the payment to the City of the total SRT contribution required for the payment of design and construction and related costs, but only following the giving of such notice at least thirty (30) days prior to the effective date thereof and in the event of (a) a delay of the SCRT Project extending beyond six (6) months, not caused by the party seeking withdrawal, that makes completion of the SCRT Project impossible or unfeasible; or (b) a fire, a flood, earthquake, or other act of God, war, riot, or insurrection that results in the theatre or a substantial portion thereof being damaged, destroyed, or otherwise rendered unusable, unless such eventuality is adequately covered by the Contractor's insurance.

B. Continuance of the Project Following Notice of Withdrawal. In the event of SRT withdrawal from the Project, the City, at its discretion, may continue with the design and/or construction of the SCRT Project and may use the design prepared by Naramore Bain Brady & Johanson, at the site contemplated in the License Agreement or elsewhere.

C. Discharge of Payment Obligation Upon Withdrawal of a Party. In the event of either party's withdrawal from the SCRT Project or this Agreement pursuant to Section 5.A, hereof, Project-related expenses incurred and liabilities accrued but not yet paid at the time of withdrawal shall be paid as set

forth by this agreement under Sections 1.D, 1.E, 2.F, and Section 3 hereof; Provided that, notwithstanding any other provision of this Agreement, in the event of a withdrawal by either party to this Agreement prior to the award of a construction contract, regardless of the cause or reason therefor, the SRT shall pay to the City in a manner consistent with Section 3.C, hereof, Two Hundred Thousand Dollars (\$200,000) for design costs incurred prior to withdrawal from the SCRT Project. Upon receipt of payment for the aforementioned design costs, the City shall relinquish all claims it may have under this Agreement to any remaining portion of the SRT contribution to be made pursuant to Section 3 of this Agreement.

6. Liaison.

A. Identification of Liaison. Upon the effective date of this Agreement, the SRT shall inform the City, in writing, of the identity of one individual and an alternate who shall serve as the SRT's principal contact with the City and as the SRT's representative for the purpose of liaison between the City and the SRT with respect to any and all matters related to this Agreement and its implementation, which person(s) shall have the authority to commit the SRT. The SRT may substitute from time to time, as it deems necessary, any other individual for the initially identified liaison representative by providing written notice thereof to the City prior to the substitution becoming effective.

B. Scheduled Liaison Meetings. The SRT and the City agree to schedule, not less frequently than bi-weekly, Project meetings between the SRT liaison and the Seattle Center Director

or his designee, including the Architect and subconsultants, as appropriate, to facilitate continuing discussions between the parties regarding the status of the SCRT Project; Provided, that other individuals representing the City, the SRT, and others may be invited to any such meeting by either party.

C. Limitation on Contact Between SRT and Contractors.

Neither the SRT nor any of its officers, employees, agents, or representatives shall have any direct or indirect contact and discussion with respect to such Project, or any aspect thereof, with any contractor employed by or under contract with the City or any of its contractors for work on the SCRT Project, without first obtaining written authorization for such contact and discussion from the Seattle Center Director or his designee. All questions, concerns, and other matters relating to the SCRT Project that are of interest to the SRT shall be discussed initially with the Seattle Center Director or his designee.

D. Limitation on Contact Between SRT's Donors and City. The SRT shall endeavor to limit contact and discussions regarding the SCRT project between the City and individuals, partnerships, firms, corporations, trusts, foundations, and others that desire to or do donate funds to make up any portion of the SRT's contribution to be made pursuant to Section 3 of this Agreement, and all such contacts and discussions shall be coordinated by and in the presence of the SRT liaison, if possible.

E. Access to SCRT Project Prior to Acceptance by City as a Completed Project. All access to the site of the SCRT

Project by representatives and guests of the SRT shall be subject to the approval and control, at all times, of the Seattle Center Director or his designee(s). The Seattle Center Director shall designate at least one individual who, in addition to himself, may authorize such access, which access may be limited and subject to reasonable conditions for safety and other purposes.

F. Notification Regarding Inability to Perform.

The SRT shall notify the City, in writing, immediately upon the occurrence of any event or situation that may result in the failure or inability of the SRT or any of its financial guarantors to satisfy any of its obligations under this Agreement, which notice shall specify, in detail, the possible failure or inability and the reasons therefor.

7. Amendments. The parties hereto expressly reserve the right to amend this Agreement from time to time as they deem necessary; Provided, that no such amendment or any other form of modification or supplementation of the terms of this Agreement shall be effective and binding on the parties hereto unless it is in writing and signed by an authorized representative of each of the parties hereto.

8. Continuation of Efforts. The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute.

9. Entire Agreement. This document embodies the entire agreement between the parties hereto with respect to the financing of the SCRT Project; there are no other understandings or agreements, written or oral, other than a Licensing Agreement,

between the parties relating to the subject matter hereof.

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

11. Relationship with Licensing Agreement. This Agreement is contingent upon the execution of a License Agreement between the SRT and the City authorizing the occupation and use of certain portions of the Seattle Center Resident Theatre to be constructed pursuant to this Agreement.

In witness whereof, the parties hereto have entered into this Agreement by having their authorized representatives affix their signatures below:

SEATTLE REPERTORY THEATRE

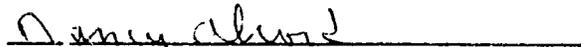
By



Robert Cline  
Chairman

SEATTLE REPERTORY THEATRE

By

  
Nancy Alvord, President

THE CITY OF SEATTLE

By \_\_\_\_\_

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JAN 31 1981

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BAGLEY WRIGHT THEATRE AT  
SEATTLE CENTER LICENSING AGREEMENT

THIS LICENSING AGREEMENT is entered into by THE CITY OF SEATTLE (hereinafter called "City"), acting by and through the Director of the Seattle Center Department, and the SEATTLE REPERTORY THEATRE, a nonprofit corporation organized under the laws of the State of Washington (hereinafter called "SRT").

WHEREAS, the SRT and the City have entered into an agreement regarding the design and construction of the new Seattle Center resident theatre, in consideration of certain privileges granted to it in said agreement and this Agreement; and

WHEREAS, the production of various theatrical performances by the SRT on the premises hereinafter described during the term of this Agreement will not only substantially enhance the cultural activity at the Seattle Center but also will result in the further stimulation and development of public and private business activity at the Seattle Center, and will thereby contribute to the economic and cultural improvement and benefit of the City and its residents; NOW, THEREFORE,

IN CONSIDERATION of the mutual promises, covenants, and conditions set forth in this Agreement and the entering into of the aforementioned agreement regarding the design and construction of the new Seattle Center resident theatre, the parties hereto agree as follows:

1. GRANT OF LICENSES; PREMISES. The City hereby grants to the SRT a license to occupy and use, subject to all terms

and conditions hereof, certain areas within the Seattle Center resident theatre to be constructed on Lots 1 through 12, Block 34, D.T. Denny's Home Addition to the City of Seattle, as recorded in Volume 3 of Plats, page 115, Records of King County, Washington, and to be called the "Bagley Wright Theatre at Seattle Center", which areas may be more particularly described as follows:

A. Non-Exclusive Areas. Areas identified as element 1 in the "Project Facilities Summary Description" attached hereto;

B. SRT Priority Areas. Areas identified as element 2 in the "Project Facilities Summary Description" attached hereto; and

C. SRT Exclusive Areas. Areas identified as element 3 in the "Project Facilities Summary Description" attached hereto;

all of which areas may be referred to as the "Premises."

2. EXCLUDED AREAS. No licensee, including the SRT, shall have access to or the use of any of the Premises components identified as element 4 in the "Project Facilities Summary Description" attached hereto, except as specifically authorized in writing by the City.

3. PURPOSE. Said Premises shall be used by the SRT only for theatrical performances of the Seattle Repertory Theatre, and production activity in preparation therefor or in connection therewith, and as otherwise permitted by the City, which other

uses, at the option of the City, may be authorized by a separate agreement between the parties hereto.

4. PERIODS OF USE. This license to the SRT and the rights of access and use granted hereunder shall be limited to the following periods of use:

A. Non-Exclusive and SRT Priority Areas. Those dates occurring during each theatrical season, beginning with the 1983-84 season and ending with the 2008-09 season, that are agreed to by the SRT and the City and specified in annual season endorsements to this Agreement. (Dates and areas not booked for SRT occupancy and use during any such theatrical season are reserved by and to the City, which shall have the right to license the use of the same to persons and entities other than the SRT.) Provided, that the City, from time to time, may request the SRT to release the booking granted by any such annual season endorsement and permit the use of specified Non-Exclusive and SRT Priority Area(s) by persons and entities other than the SRT, which release(s) and permission shall not be unreasonably withheld and shall be acknowledged in writing by the SRT; Provided, further, that in the event any such Area booking is so released, the SRT shall also permit the movement from or in such Area(s) of all SRT property and equipment therein to enable such other user the reasonable use of the released Area(s), which property and equipment movement shall be agreed upon by the SRT, the City, and the other user as to its extent, timing, and the allocation of and arrangements for the payment of costs associated therewith.

B. SRT Exclusive Areas. From and after the date of availability identified by the Seattle Center Director pursuant to Subsection 4.C., immediately below, through May 31, 2009.

C. Initial Occupancy Dates. The SRT also may, but need not, occupy and have access to and use of the Premises or any portion thereof prior to the initial access and use commencement date specified in Subsection 4.A., above, in the event the Premises are completed and accepted by the City and the Seattle Center Director has determined, in the exercise of reasonable discretion, that the Premises or any portion thereof is ready for occupancy and has notified the SRT of the date of such availability.

D. Theatrical Season Definition. For the purposes of this Agreement, the term "theatrical season" means that period in any two consecutive years during which the SRT is producing, rehearsing, or performing dramatic work(s). The SRT shall have the sole right to determine the beginning and ending dates of its theatrical season(s); Provided, that each theatrical season shall be separated from another by at least thirty (30) consecutive days; and Provided, further, that no theatrical season shall extend for more than three hundred five (305) consecutive days.

E. Annual Season Endorsement. The SRT shall submit to the City no later than thirty (30) days prior to the commencement date of any proposed theatrical season in each year from and after 1983, through 2008, a proposed annual season endorsement to this Agreement, specifying in detail which of the Non-Exclusive

and SRT Priority Areas of the Premises, as described herein, the SRT desires to have booked for its use and the requested dates of such bookings. Upon agreement by the City thereto, each such annual endorsement shall be initialed by an authorized representative of each of the parties hereto. Such annual season endorsements shall be attached to the record copies of this Agreement and, by this reference, are incorporated herein.

F. Right of First Refusal. The SRT shall have the right of first refusal over the use of the portions of the Premises identified in Subsections 4.A. and 4.B., hereof, from and after the expiration of this Agreement, which use shall be conditioned upon such terms as shall be mutually agreed upon by the parties hereto.

5. LICENSE FEE.

A. Maximum Fee. In consideration of the license granted herein, the SRT shall pay the City, the following fee: Twenty-five percent (25%) of the net operating cost of the Premises for each calendar year or portion thereof that the Premises are occupied by the SRT; Provided, that the maximum amount to be paid by the SRT during the first calendar year or any portion thereof in which the Premises are occupied by SRT shall not exceed Seventy-one Thousand Dollars (\$71,000); and for the nine (9) calendar years thereafter, the maximum license fee to be paid by the SRT pursuant to this subsection shall be as follows:

Year 2	\$76,000	Year 6	\$104,000
Year 3	82,000	Year 7	112,000
Year 4	89,000	Year 8	122,000
Year 5	96,000	Year 9	132,000
		Year 10	142,000

The license fee payable by the SRT in any year following the tenth year or partial year in the term of this Agreement shall not exceed the sum of the preceding year's total license fee and the product of such fee multiplied by the percentage increase in the Consumer Price Index ("C.P.I.") for all urban consumers, Seattle-Everett, All Items, 1967 = 100, as determined by the United States Department of Labor, Bureau of Labor Statistics, or its successor, during the immediately preceding year. (By way of illustration only, in the event the total license fee paid by the SRT for use of the Premises during the thirteenth year of the term of this Agreement is \$177,000 and the percentage increase in the C.P.I. during the thirteenth year is 16%, the maximum license fee payable for use of the premises during the fourteenth year would be \$205,320, computed as follows:  $\$177,000 \times 16\% = \$28,320 + \$177,000 = \$205,320$ ). Provided, that in the event the aforementioned index is discontinued, the parties shall select another, similar index that reflects consumer price changes; and Provided, further, that in the event of a change in the index base (1967 = 100), the parties hereto shall utilize each revised index base during the period it is used by the Federal Government and shall apply whatever conversion factor is necessary to establish the percentage increase in the C.P.I. in or between any year(s) during which the index base is changed.

B. Definition of "net operating cost". "Net operating cost" as used herein means the aggregate of following costs: the costs of utilities; heating; air-conditioning; janitors and laborers; custodial supplies; general security personnel; care and maintenance of landscaping within the block on which the Premises are erected; direct supervisory labor; elevator maintenance; and other expenses directly related to the operation, maintenance, and use of the Premises; less revenues received by the City from (1) other licensee's license fees and (2) concession sales, except from any gift shop located on the Premises and operated by or for the benefit of the SRT.

C. Timing and amounts of fee payments. One-twelfth (1/12th) of the maximum license fee for each calendar year or portion thereof during the term of this Agreement shall be paid monthly by the SRT, on or by the first City business day of each and every month of such period without any invoice from the City; Provided, that the license fee portions payable for the first two months of any calendar year from and after the eleventh year, shall not be due until thirty (30) days after the date of the City's invoice to the SRT, which in no event shall be earlier than ten (10) days after the publication of the C.P.I. for the preceding year. Within ninety (90) days after the close of the City's fiscal year, the City shall calculate the amount of the license fee due for the preceding year or portion thereof, and shall credit the SRT for any excess license fee paid to date.

D. Off-season use fee. Notwithstanding any other provision hereof, the SRT shall also pay to the City the then-current license or use fees for any SRT use of the Premises components specified in Subsections 1.A. and 1.B., hereof, that occurs at times not specified in the annual season endorsements attached to and incorporated into this Agreement, which fee shall be due and payable thirty (30) days after the date of an invoice therefor.

E. Disputed Fees. In the event of a dispute regarding the SRT's liability for any portion of a sum that the City claims is due and payable to it pursuant to this Agreement, the SRT shall pay to the City, in a timely manner, whatever portion of such sum is not in dispute, and shall submit to arbitration under Section 34, hereof, any questioned fee claimed by the City.

6. NO SUBORDINATE USE AGREEMENTS WITHOUT PERMISSION.  
The SRT shall not lease, assign, or otherwise authorize any other individual or entity to use the areas of the Premises specified in Subsection 1.A. and 1.B., hereof. The SRT may lease, assign, or otherwise authorize an individual or another entity to use the areas of the Premises specified in Subsection 1.C., hereof, but only upon the prior express written authorization of the City, which authorization will not be unreasonably withheld; Provided, that any such authorization may be conditioned on the payment of additional fees or other consideration and the agreement by any such subordinate user to be subject to all of the SRT's responsibilities and obligations hereunder; Provided, further, that no subordinate use authorized hereunder

shall relieve the SRT from its responsibilities and obligations as a Licensee under this Agreement.

7. PERSONAL LICENSE ONLY. This license is personal to the SRT and shall not inure to the benefit of its successors and assigns except as provided in Section 6, hereof.

8. ENTRY BY THE CITY AND RIGHT TO MAKE ALTERATIONS, ADDITIONS, IMPROVEMENTS AND REPAIRS. The City reserves, and shall at all times have, the right to enter the Premises to inspect the same; to submit said Premises to prospective licensees or tenants; to post notices of nonresponsibility; and to alter, add to, improve, and repair the Premises and any portion thereof whenever the City deems such action necessary or desirable, without abatement of fees or charges unless the SRT is required to suspend its production and performance activities for the period of such action as a direct consequence of such City alteration, addition, improvement, or repair work. The City may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. The City shall use its best efforts to minimize interference with egress and ingress to the Premises and with the SRT's production and performance activities; temporary interference therewith for alteration, addition, improvement, or repair shall not be deemed a breach of this Agreement. The SRT hereby waives any claim for damages or for any injury or inconvenience to or interference with the SRT's business, any loss of occupancy/ or quiet enjoyment of

Premises, and any other loss occasioned thereby, except in the event of any suspension of SRT's production and performance activities as provided above. For the aforesaid purposes, the City shall at all times have and retain a key with which to unlock all of the doors in, upon, and about the Premises, excluding the SRT's vaults, safes, and files, and the City shall have the right to use any and all means which the City may deem proper to obtain entry to the Premises in an emergency, without liability to the SRT except for any failure to exercise due care for the SRT's property; and any entry to the Premises obtained by the City by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction of the SRT from the Premises or any portion thereof.

9. CONCESSION RIGHTS.

A. City's Rights. The City reserves to itself and its authorized caterer(s) and concessionaire(s) the exclusive right to sell or give away food and beverages; to operate checkrooms; and to take photographs, all in connection with the SRT's use of the Premises. The SRT may engage in or undertake the sale of such merchandise or similar articles only after obtaining the written consent of the City, which consent may be conditioned on the payment of additional consideration and otherwise as may be agreed upon by the parties to this Agreement.

B. Gala and Special Events Exception. Notwithstanding the foregoing provision, the SRT may, at its option, hold one (1) gala opening for the initial opening of the Premises and not to exceed three (3) special one-day events in each calendar year, during which the SRT shall have the right to exercise concession rights equal to the City's, subject to the conditions set forth in Subsection 9.C., hereof. In addition, the SRT may operate a gift shop for the benefit of SRT; provided, that all goods and services available through or in such shop shall be subject to the approval of the Director.

C. Conditions on SRT Concession Activity.

The SRT may, at its option, utilize a private caterer other than the City's authorized caterer for a gala opening or any special event authorized by Subsection 9.B., hereof; Provided, that in the event such a private caterer is so used,

(1) The SRT shall pay to the City within thirty (30) days after such event 14% of the gross sales of food and non-alcoholic beverages (unless such food is donated to SRT) and 25% of the gross sales of alcoholic beverages (unless the liquor therefor is donated to the SRT);

(2) Immediately following such event, the SRT at no expense to the City, shall restore the Premises to their condition immediately prior to such gala opening or special event;

(3) Neither the SRT or its caterer shall use equipment belonging to the City's authorized caterer without permission of such;

(4) The SRT shall notify the City, in writing, at least thirty (30) days in advance of any such gala opening or special event and identify any caterer other than the City's authorized caterer to be used;

(5) At any such gala opening or special event, any sit-down or buffet food service shall be confined to the rehearsal area, and/or the stage;

(6) In the lobby and lounge areas no food shall be allowed but beverages will be permitted.

10. CONTROL OF BUILDINGS AND GROUNDS. All common and other facilities provided by the City in or about the Seattle Center, including parking areas, are subject to the exclusive control and management by the City. It may, therefore:

(a) Increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the Seattle Center walks, buildings, and parking areas and make improvements, alterations, or additions to the building in which the Premises are a part;

(b) Regulate all traffic within the Seattle Center, including the operation and parking of vehicles of the SRT and its invitees, employees, and patrons; and

(c) Impose a reasonable charge for admission to the Seattle Center and facilities therein, provided, that no such admission charge may be applied or imposed on ticket holders for SRT events other than regular charges for parking in Seattle Center parking facilities or Monorail transportation;

all without affecting the obligations of the parties hereunder.

11. EQUIPMENT, FACILITIES AND UTILITIES.

A. Basic Services. The City shall provide to the Premises general heating and lighting, and air-conditioning where existent, and shall make available water and toilet facilities in the Premises. Any of the SRT's equipment that requires additional utility facilities must be installed at the SRT's expense and only in accordance with plans and specifications approved by the City in writing in advance of such installation. The SRT shall not install on the Premises any equipment that exceeds or overloads the capacity of any utility facilities for such location.

B. Additional Services. Additional equipment, utilities and services available through the City shall be specified, from time to time, in Part C, hereof; (the then-current "Event Services Manual" or its successor). The SRT shall secure from the City all such additional equipment, utilities and services unless the City determines otherwise, and the SRT shall pay as an additional charge the then-applicable costs therefore, as specified in Part C, which charges shall not be treated as part of the "net operating costs."

12. SECURITY, ADMISSION, AND SUPPORT PERSONNEL. All security, admission, and support personnel necessary to operate the Premises and to assist in the protection of persons and property during the SRT's use of the Premises shall be secured through the City, in types and numbers and at times designated

by the City, except that, subject to the City's approval, the SRT may provide any and all such personnel. Notwithstanding any other provision hereof, the SRT shall pay, as an additional charge, the costs of all personnel secured through the City, at the rates specified in the then-applicable Part C, which charges shall not be treated as part of the "net operating costs."

13. ELECTRICAL AND ELECTRONIC EQUIPMENT. All electrical wiring and electric and electronic equipment required by the SRT in excess of that provided by the City for the Premises shall be installed and operated in conformance with all applicable statutes, ordinances, and codes by a contractor approved by the City. All such equipment and wiring shall be removed by such a contractor upon the expiration or earlier termination of this Agreement. All such installation and removal shall be at no expense to the City.

14. SOUND SYSTEMS. The City shall provide, as a part of the Premises, a standard sound system as described in Part C, hereof. Any additional sound-reinforcement and sound effects systems installed shall be provided by the SRT at no expense to the City. The installation of all such equipment shall be subject to the approval by the City.

15. MAINTENANCE AND REPAIRS. The City shall keep the roof, exterior walls, foundation, and building structure of the

Premises, as well as the fixtures, equipment, and appurtenances, installed by the City therein, in a good condition and state of maintenance and repair except for normal wear and tear. The SRT shall notify the City of any necessary maintenance and repair and shall undertake no maintenance or repair by itself without the City's prior written consent. The City shall not be liable for any failure to undertake or complete any such maintenance or repair unless such failure shall persist for an unreasonable time after notice of the need for such maintenance or repair has been given by the SRT to the City. Except as otherwise specifically provided for herein, there shall be no abatement of the fees and charges for the Premises and no liability of the City by reason of any injury or interference with the SRT's activities arising from the maintenance or the making of any repairs, alterations, or improvements in or to the Premises or any part thereof or the failure to undertake or complete such activity.

16. INDEMNIFICATION. The SRT shall indemnify and hold the City harmless from any and all losses, claims, actions, or damages suffered by any person or persons by reason of or resulting from any negligence of the SRT or its agents, employees, or patrons or on account of any act or omission of the SRT in its use or occupancy of the Premises, including trademark, patent, and copyright infringement; and in the event any suit or action is brought against the City, the SRT shall, upon notice of the commencement thereof, defend the same, at no cost and expense to the City, and promptly satisfy any final

judgement adverse to the City or to the City and the SRT jointly; Provided, that in the event the City determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. The above liability shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost, or expense may have been, or may be alleged to have been, contributed to by the negligence of the City or its officers, employees, or agents; Provided, however, that nothing contained in this section shall be construed as requiring the SRT to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its officers, employees, or agents.

17. INSURANCE.

A. General Comprehensive Liability Insurance. As a condition precedent to the initial and continued occupation and use of the Premises, the SRT shall at no expense to the City, secure and maintain during the full term of this Agreement, general comprehensive liability insurance issued by one or more companies authorized to do business in the State of Washington, which insurance shall be subject to the approval of the City Attorney as to company, form, and coverage, and which insurance must fully protect the City from any and all claims and risks in connection with any activity performed by the SRT by virtue of this Agreement and provide the following minimum coverages:

Minimum Limits

\$1,000,000 per occurrence, no deductible, or in such other amount as is required by the Seattle Center Director in the exercise of his discretion to protect the City and the public.

Each such policy or an endorsement thereto must contain the following provisions:

"The City of Seattle is an additional insured for all coverages provided by this policy of insurance and shall be fully and completely protected by this policy and for any and every injury, death, damage, and loss of any sort sustained by a person, organization, or corporation in connection with any activity performed by the Seattle Repertory Theatre by virtue of the provisions of that Agreement between The City of Seattle and the Seattle Repertory Theatre entitled 'Bagley Wright Theatre at Seattle Center Licensing Agreement'."

"The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced, or otherwise changed in any respect without providing at least thirty (30) days prior written notice to The City of Seattle."

Evidence, to the reasonable satisfaction of the City, of the SRT's compliance with the requirements of this section shall be submitted to the City prior to the initial occupancy of any portion of the Premises, and thereafter within a reasonable time after the SRT's receipt of a request for such evidence, which time shall in no event exceed four (4) City business days.

In the event of the SRT's failure, for any reason, to secure and maintain insurance or to provide evidence of the

same, all as required by this section, the City is authorized, but shall not be required, to secure and maintain the same to protect the interests of the City and the public, and to charge to the SRT all premium and related costs therefore, including the City's administrative costs in undertaking such action, which charges shall be paid by the SRT, without any protest or dispute whatsoever, within thirty (30) days after the date of any invoice therefore; alternatively, the failure of the SRT to comply with any of the terms of the above provisions may be considered a material breach of this Agreement.

B. Other Insurance.

(1) Because both the City and the SRT are contributing substantial amounts to construction of the Premises, and the SRT has a long-term interest in the use of the Premises, it is recognized that both the City and the SRT have an insurable interest. The parties recognize that the City is normally a self-insurer and may wish to remain in that category.

(2) The City, at its option, may elect to insure the Premises for its replacement cost, with the SRT named as an additional party insured. If the City does so elect, the SRT shall pay to the City within thirty (30) days after the date of an invoice therefor, such portion of the premium costs, as may reflect the SRT's proportionate contribution towards the "SCRT Project" as identified in, and consistent with, the provision of the separate agreement entered into by the City of Seattle and the Seattle Repertory Theatre regarding the financing and construction of the Bagley Wright Theatre at

Seattle Center, plus the value of any SRT trade fixtures, equipment and furnishings installed on the Premises, as affected by different risks resulting from SRT activities on the Premises, which premium portion shall be subject to renegotiation from time to time as shall be necessary and appropriate. This payment shall be in addition to any other payments owed to the City by the SRT. The remaining portion of the insurance premium paid by the City shall not be deemed part of the "net operating cost" under Subsection 5.A. The proceeds of such insurance shall be used to repair, restore, or replace the Premises either at the same site, or if the City and the SRT agree, at an alternate site. If the parties both agree not to repair, restore, or rebuild, the SRT shall be entitled to an amount of the insurance proceeds as may reflect the SRT's proportionate contributions toward the "SCRT Project" as described in this section.

18. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, the SRT and the City hereby mutually release each other from liability and waive all right of recovery against each other from any loss from perils insured against under their respective insurance policies, including any extended coverage endorsements thereto; Provided, that this release and waiver shall be inapplicable if it would have the effect of invalidating any insurance coverage of the City or the SRT.

19. LAWFUL USE. The SRT shall ensure that it, and shall use its best efforts to ensure that every person it admits to the

Premises, abides by and conforms and complies with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; rules and regulations of the Seattle Center, Fire, Health, and Police Departments; and licenses, permits, and authorizations required by any such jurisdiction. Whenever the SRT or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by the SRT or any person admitted to the Premises, the SRT shall desist immediately from and/or prevent or correct such violation. The final judgement of any court or administrative body of competent jurisdiction or the admission by the SRT in any action against the SRT, whether the City is a party thereto or otherwise, that the SRT has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between the City and the SRT.

20. NONDISCRIMINATION. The SRT shall comply with all applicable, Federal, State, and City laws, ordinances, rules, and regulations regarding nondiscrimination in employment, the provision of services to the public in a nondiscriminatory manner, and affirmative action, including but not limited to applicable provisions of Chapter 20.44 of the Seattle Municipal Code and City Ordinance 109116 (the Seattle Fair Employment Practices Ordinance), as amended, and any successive ordinances and instructions for contract compliance therewith as may be published from time to time by the appropriate City administrative agency.

21. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS. The SRT shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Premises or any portion thereof.

22. LIENS AND ENCUMBRANCES. The SRT shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the City's request, the SRT shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

23. TAXES. The SRT shall collect and pay, before delinquency, all taxes imposed upon the SRT and upon persons it admits to the Premises, in accordance with applicable laws and ordinances, including but not limited to admission taxes and leasehold excise taxes; and if the State makes a demand upon the City for payment of any such tax or withholds funds due to the City to enforce collection or payment, the SRT, at its own cost and expense, shall contest the State's demand or action and, in the event any such tax is found to be due, shall pay the same, together with accrued interest and related costs, and shall indemnify the City for all sums expended or withheld in connection therewith.

24. PROMOTIONAL AND DIRECTIONAL INFORMATION. No promotional, directional, or other communicative material shall be posted or exhibited in or on the Premises or elsewhere on the Seattle

Center grounds by or on behalf of the SRT except material that relates to the use to be made of the Premises licensed hereunder and except upon the regular bulletin boards and other facilities provided by or available from the City for such purpose. The SRT or its authorized representative shall remove any such material to which the Seattle Center Director or his designee objects, immediately following receipt of such objection. Any promotional material imprinted or published or otherwise produced by or on the behalf of the SRT that makes reference to the Premises including but not limited to advertisements, posters, programs and commemorative or souvenir items, except tickets, shall identify the Premises only in full, as the "Bagley Wright Theatre at Seattle Center"; and the last three (3) words of such identification shall not be printed or otherwise reproduced in a type size that is substantially smaller than that used for the remainder of the Theatre name.

25. ATTENDANCE AND SAFETY STANDARDS. The SRT shall not admit to the Premises a larger number of persons than can safely and freely move about in said Premises, which number shall be determined by the City in the exercise of reasonable discretion. The SRT shall permit no chairs or movable seats to be or remain in the passageways or fire exits in the Premises and shall keep all passageways and fire exits clear at all times. The SRT shall not obstruct or use for purposes other than ingress to or egress from the Premises any sidewalk, entry, passageway, vestibule, hallway, elevator, abutting street, or other way of access to said Premises.

26. DAMAGE OR DEFACEMENT OF SEATTLE CENTER PREMISES. The SRT shall not damage or in any manner deface the Premises or any building or the grounds of the Seattle Center and shall not cause or permit anything to be done such that that Premises or any other Seattle Center building or grounds shall be in any manner damaged or defaced. In the event that, during the period of the SRT's use, the Premises or any building or the grounds of the Seattle Center are damaged or defaced by the act, default, or negligence of the SRT or its employees, contractors, or agents, the SRT shall pay the City, within thirty (30) days after the date of an invoice therefor, the actual sum deemed by the City to be necessary to restore such property to its condition immediately prior to its damage or defacement, unless the SRT disputes the responsibility for or the cost of, such repair work, in which event the issue shall be submitted to arbitration as provided in Section 34, hereof.

27. ACCEPTANCE OF PREMISES. By entering into and occupying the Premises, or any portion thereof, the SRT accepts the same in its condition as of the date of such occupation and covenants that no representations, statements, or warranties, express or implied, have been made by or on behalf of the City with respect thereto or the use or occupancy that may be made thereof, except as may be contained herein.

28. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. The SRT shall make no alteration, addition, or improvement to the Premises, or any portion thereof, including but not limited to the cutting of a trap in the stage floor, without the prior

written consent of the City, which consent will not be unreasonably withheld, but may be conditioned upon, among other things, the insuring of the City against liability for personal injury and death and damage to property; the protection of the City against merchants' or materialmen's liens; and, where appropriate, the restoration of the Premises to its condition prior to such change. Every SRT alteration, addition, and improvement including restoration work shall be performed all at no cost to the City. All structural alterations, additions, and leasehold improvements shall immediately become the property of the City, upon affixation to the Premises.

It is recognized that the SRT may install in and on the Premises, from time to time, certain fixtures and equipment, including but not limited to lighting, sound, electronic, scene shop, construction, and box office equipment and musical instruments, which shall not be deemed to be additions or leasehold improvements. The SRT may remove such fixtures and improvements at any time, but no later than the expiration or earlier termination date of this Agreement, all at the SRT's expense. Any dispute between the City and the SRT as to the ownership of any such equipment and fixtures shall be submitted to arbitration.

29. UNUSABILITY. In the event the Premises, or a substantial portion thereof, are rendered unusable by some disaster, casualty, or event not caused by or resulting from an act or omission of the SRT, the SRT shall notify the City, within thirty (30) days after such condition is discovered, specifying with particularity the portion(s) rendered unusable

and the reason(s) therefore, if known. The SRT shall not continue the occupancy or use of the Premises, or any portion thereof, found to be unsafe for such occupancy or use after such finding has been officially made. Inasmuch as the license fees and charges payable under this Agreement are based upon costs associated with and resulting from the occupancy and use of the Premises, in the event the SRT continues to occupy and use any portion of the Premises following the damage or destruction of any portion thereof, there shall be no abatement of the license fees and charges payable hereunder, and the same shall be paid as if no damage or destruction had occurred. SRT occupancy and use under such circumstances shall not continue for more than three (3) years, notwithstanding any other provision of this Agreement; and upon the expiration of such three (3) year period, this Agreement shall expire. In the event the Premises are so substantially damaged or destroyed that the SRT is required to totally discontinue the occupancy and use thereof, then the SRT's obligation to pay fees and charges for the occupancy and use of the Premises shall be suspended until such time as the City notifies the SRT that the Premises are again available for occupancy and use. In the event of any casualty leading to a partial or total destruction of the Premises, the City covenants and agrees that it will promptly repair, restore, or rebuild the Premises at the City's expense; Provided, that the City shall not be obligated to restore the Premises or any damaged or destroyed portion thereof to a

better condition than the Premises or such portion had immediately prior to such damage or destruction, except as may be required by legislative enactments such as the electrical code, unless the SRT provides the additional funds for such improvements.

30. SECURITY DEPOSIT. Not less than five (5) City business days prior to the commencement of the SRT's occupancy or use of the Premises or any section thereof pursuant to this Agreement, the SRT shall deliver to the City Treasurer, as a security deposit, (1) cash in the sum of Ten Thousand Dollars (\$10,000) or (2) an assignment of one or more certificates of deposit totaling at least the same amount, or (3) an irrevocable letter or line of credit from a recognized lending institution (a Seattle Bank) in at least the same amount; Provided, that any such assignment(s) or letter or line of credit shall be subject to the approval of the City Attorney as to form. In addition, during the term of this Agreement, the SRT, immediately following the publication of the preceding year's annual Consumer Price Index, shall supplement the base amount of such security deposit in the amount necessary to eliminate the effects of inflation on such deposit; Provided, that the calculation of the effects of inflation on such deposit shall be consistent with similar calculations undertaken pursuant to Section 5, hereof, and shall be based upon the same index used thereunder. Said security deposit shall be held by the City as security for the faithful performance by the SRT of all of the terms, covenants, and conditions of this Agreement to be kept and performed by the SRT during the entire term hereof. The City

shall be authorized, but shall not be required, to use, apply, or retain all or any part of this security deposit for the payment of any fee or charge or any sum alleged to be or actually in default, or for the payment of any amount that it may spend or become obligated to spend by reason of any alleged or actual default by the SRT, or to compensate the City for any other loss or damage that the City may suffer by reason of any alleged or actual SRT default. If any portion of said security deposit is so used or applied, the SRT shall, within five (5) City business days after notice thereof, deliver to the City Treasurer additional cash or assignment(s) of certificate(s) of deposit or otherwise make appropriate adjustments to the letter or line of credit, if necessary, in an amount sufficient to restore the security deposit to its amount immediately preceding any deduction therefrom for a City use or application, and the SRT's failure to do so shall be a default under this Agreement. The City shall not be required to keep any cash security deposit separate from its general funds, and the SRT shall not be entitled to interest on such deposit. Interest on all certificates of deposit assigned to the City pursuant to this section shall be added to the principal on deposit. If the SRT shall fully and faithfully perform every provision of this Agreement to be performed by it, the security deposit or any balance thereof after deduction hereunder by the City shall be returned to the SRT within thirty (30) days following the expiration or earlier termination of this Agreement. The payment to, withdrawal of, or use of application by the City

of any portion of such security deposit shall not be contested by the SRT at the time of the City's taking such action; Provided, that nothing herein shall prejudice the SRT's right to demand through arbitration or litigation the return of such portion.

31. DEFAULT AND BREACH BY SRT. The following acts and omissions by the SRT shall constitute a default and material breach:

- (a) The failure to comply with all of the requirements of Section 17 hereof, regarding insurance;
- (b) The violation of any law, ordinance, rule, or regulation;
- (c) The abandonment or vacating of the Premises;
- (d) The failure to perform any other condition or covenant of this Agreement where such default or deficiency in performance was not remedied within a reasonable time, which in no event shall exceed thirty (30) days after notice stating the nature of the default or deficiency and the City's intention to terminate if not corrected.

32. DEFAULT BY THE CITY. The City shall not be in default unless the City fails to perform an obligation required of it within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the SRT to the City specifying the particular obligation that the City has failed to perform; Provided, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

33. REMEDIES UPON DEFAULT AND MATERIAL BREACH BY SRT.

In the event of a default and a material breach of this Agreement by the SRT, the City, in addition to all other remedies available to it under law and without any additional notice to the SRT, may terminate this Agreement, reenter the Premises, license others to use said Premises during any portion of the period of use remaining under this Agreement had it not been terminated, and receive license fees therefore; Provided, that notwithstanding such termination and reentry, the SRT's liability for the fees and charges to be paid to the City hereunder shall not be extinguished, and the SRT agrees to pay to the City the difference between said fees and charges within thirty (30) days after the submission of an invoice therefor to the SRT by the City.

34. ARBITRATION. In the event of a dispute as to the existence of a default (other than the violation of a law, ordinance, rule, or regulation, which shall be determined in accordance with the provisions of Section 19 hereof); or the materiality of a default, or the inflation index substitute to be used in accordance with Section 5 and 30 hereof; or the responsibility for or cost of, repair work to be undertaken pursuant to Sec. 26, hereof; then the parties shall submit the dispute to arbitration. Each party shall select one arbitrator within five (5) City business days after notice of arbitration is given by one party to the other; a third arbitrator shall be selected by the two arbitrators within five (5) City business days after their own selection. No arbitrator shall have any financial interest in this Agreement or in the affairs of either party.

The decision of a majority of said three arbitrators shall be binding upon the parties as to whether there has been a default and whether that default is sufficiently material to justify a termination. The parties to this Agreement shall equally share the costs of any arbitration.

36. SURRENDER OF PREMISES AND REMOVAL OF SRT'S PROPERTY.

A. Surrender of Premises. Upon termination or expiration of this Agreement and, as appropriate, the license granted hereunder to use certain Non-Exclusive and SRT Priority Areas of the Premises during times specified in each annual season endorsement incorporated herein pursuant to Section 4, hereof, the SRT shall surrender all affected portions of the Premises to the City and promptly surrender and deliver to the City all keys that it may have to all such portions of the Premises.

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

C. Removal of Property. Prior to the expiration or earlier termination of this Agreement and, as appropriate, the license granted hereunder to use certain Non-Exclusive and SRT Priority Areas of the Premises during times specified in

each annual season endorsement incorporated herein pursuant to Section 4 hereof, the SRT shall remove from all affected portions of the Premises, at no cost or expense to the City, all trade fixtures, equipment, furnishings, and other personal property owned and placed in or on such portions of the Premises by the SRT. In removing such material and property, the SRT shall take due care to not damage or injure the Premises, and any damage or injury thereto shall be immediately repaired by the City at the SRT's sole cost and expense. Structural alterations, additions, and leasehold improvements shall not be removed. In no event shall the SRT make any claim or demand upon the City, nor shall the City be liable, for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the SRT arising out of such removal operation or the required relinquishment of such alterations, additions, and improvements.

D. DISPOSITION OF UNREMOVED PROPERTY. In the event that, after termination or expiration of this Agreement or any license granted hereunder, the SRT has not removed its trade fixtures, equipment, furnishings, and other personal property within the time allowed, the City may, but need not, remove the same and hold it for the owners thereof, or place the same in storage, all at the expense and risk of the owners thereof; and the SRT shall reimburse the City for any expense incurred by the City in connection with such removal and storage. The City shall have the right to sell such stored property, without notice to the SRT, after it has been stored for a period of

thirty (30) days or more, the proceeds of such sale to be applied first to the cost of sale, second to the payment of the charges for storage, third to the payment of any other amounts which may then be due from the SRT to the City, and the balance, if any, to be paid to the SRT. The SRT hereby waives and expressly releases the City from any and all claims for loss or damage, of any kind or nature, arising out of said removal, storage, and sale.

36. NO WAIVERS. No action other than a written document from the City specifically so stating shall constitute a waiver by the City of any particular breach or default by the SRT, nor shall such a document waive the SRT's failure to fully comply with any other term or condition of this Agreement, irrespective of any knowledge the City may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

37. OBLIGATION OF SRT LIMITED TO CORPORATION. Any and all obligations of SRT under this Agreement are enforceable only against Seattle Repertory Theatre, a nonprofit corporation, and are not enforceable against nor do they impose any formal liability upon SRT's officers, directors, and members.

38. CITY'S REMEDIES CUMULATIVE. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any

other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use of another.

39. BINDING EFFECT. The provisions, covenants, and conditions contained in this Agreement are to apply to and be binding upon the parties hereto and their legal heirs, representatives, successors, assigns and subsidiaries.

40. RELATIONSHIP. The City shall in no event be construed, held, or become, in any way or for any purpose, a partner, associate, or joint venturer of the SRT or any party associated with the SRT in the conduct of its business or otherwise. This Agreement does not constitute the SRT the agent or legal representative of the City for any purpose whatsoever, nor is the SRT granted any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. The term "City" as referred to throughout this Agreement in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, etc., shall mean the Seattle Center Director or his designee, except where the granting of approval, consent, or permission or the taking of any other official action by any other City Official is required by law, ordinance, resolution, rule, or regulation before the SRT may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain any particular right or privilege under this Agreement.

41. NOTICES. Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the City at the following address:

Director  
Seattle Center Department  
305 Harrison Street  
Seattle, Washington 98109

and to the SRT at the following address:

Chairman, Seattle Repertory Theatre  
Box B,  
Queen Anne Station  
Seattle, Washington 98109

Notices sent by mail shall be deemed given on the date of the postmark affixed by the United States Postal Service. Either party may change its address for receipt of reports, notices, or payments without the formal amendment of this section of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

42. AMENDMENTS. The parties hereto expressly reserve the right to amend this Agreement from time to time as they deem necessary. No alteration or modification of the terms hereof shall be valid unless made in writing and signed by authorized representatives of the parties hereto; Provided, that Part C may be amended from time to time at the discretion of the City.

43. AGREEMENT CONTENTS AND GENERAL LICENSE TERMS AND CONDITIONS. This License Agreement consists of this Signature and General Terms and Conditions Form and the following parts, which by this reference are incorporated herein:

- Part B - Project Facilities Summary Description;
- Part C - Event Service Manual or its equivalent, as most recently published by the City during the term of this Agreement;
- All annual season endorsements regarding the schedule of use;

- Addendum for Crowd Control;
- Addendum for Laser Use;
- Addendum for Ticket Control;

and, except for related matters addressed in the agreement between the City and the SRT regarding the design and construction of the Bagley Wright Theatre at Seattle Center, embodies the entire agreement of the parties hereto. There are no other understandings or agreements, written or oral, between the parties relating to the subject matter hereof.

44. EFFECTUATION OF AGREEMENT. In order to be effective, this Agreement must be signed by the SRT and returned to the City at the address set forth in Section 40, hereof on or before \_\_\_\_\_, 19\_\_, and must also be signed by the Seattle Center Director or his designee pursuant to specific ordinance authority.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by having their duly authorized representatives affix their signatures hereto, below

Executed on behalf of  
The City of Seattle

Executed on behalf of the  
Seattle Repertory Theatre

BY \_\_\_\_\_  
JOHN W. FEAREY, CFE  
Director  
Seattle Center

BY \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

Pursuant to Ordinance \_\_\_\_\_

Authorized Representative

LICENSE NO. \_\_\_\_\_

FILE NO. \_\_\_\_\_

ESO NO. \_\_\_\_\_

## PROJECT FACILITY SUMMARY DESCRIPTION

### 1. Non Exclusive Areas

Foyer  
Lobby  
Restrooms  
Extra Box Office  
Main Floor House  
Balcony House

### 2. SRT Priority Areas

Stage  
Trap Room  
Orchestra Pit  
Sound Booth  
Lighting Booth  
Stage Manager's Booth  
Follow Spot Booth  
Audio/Electrical Service  
Audio/Electrical Storage  
Catwalks  
Sound Traps  
Large Rehearsal Room  
Green Room  
Lounge/Lunchroom  
Dressing Rooms  
• Stage Manager's Office  
Crew Room  
Staff Restrooms

### 3. SRT Exclusive Areas

Box Office/Subscription Office  
Stage Door  
Wig & Wardrobe Maintenance  
Scene Shops  
Assembly Shops  
Finishing Areas  
Welding  
Prop Shops  
Soft Prop Shop

Paint Shop  
Spray Booth  
Paint Storage & Mixing  
Dye Shop  
Fiberglass  
Costume Shop  
Costume Dye Room  
Wig/Millinery/Hairdressing  
Fitting Room  
Shoe Storage  
Costume Storage  
Material Storage  
Hardware Storage  
Prop Dead Storage  
Technical Locker Room  
Office Wing w/all appropriate office &  
supporting facilities

4. Excluded Areas

Custodial Storage  
Custodial Spaces  
Concessions  
Checkroom  
Bar/Lounge  
Catering Area  
Mechanical Rooms  
Electrical Rooms

DASLM

JOHN WISCH - PRESIDENT & ARTISTIC DIRECTOR  
PETER DONNELLY - PRODUCING DIRECTOR  
DANIEL SULLIVAN - TECHNICAL DIRECTOR

RECEIVED  
FEB 11 1981

Seattle Repertory Theatre  
Seattle Repertory Theatre

February 11, 1981

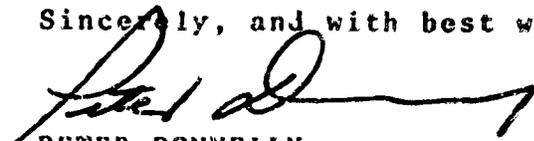
Mr. Al T. Wyemura  
SEATTLE CENTER  
305 Harrison Street  
Seattle, WA 98109

Dear Al:

Enclosed is our \$3,000,000 commitment letter from Rainier Bank. We are transmitting this to you per the Center's request.

We believe that this document will fulfill the Center's needs in our financial arrangements.

Sincerely, and with best wishes



PETER DONNELLY  
Producing Director

PD/lw  
Enclosure: Commitment Letter

**Rainier National Bank**

World Banking Division, One Rainier Square, P.O. Box 3906, Seattle, Washington 98124

February 10, 1981

Mr. Robert S. Cline, Chairman  
Seattle Repertory Theatre  
Seattle, Washington

Dear Mr. Cline:

It is our privilege to confirm with you Rainier National Bank's commitment to extend financing to the Seattle Repertory Theatre (the Rep) for the purpose of constructing the Bagley Wright Theatre at the Seattle Center. This commitment provides for advances up to \$3 million.

Security will be assignment of your pledges and pledge proceeds, and assignment of any Rainier Bank Time Certificates of Deposit. This facility is to be further supported by a First Deed of Trust on your Second Stage Theater, located downtown.

To finance construction costs, we will advance the equivalent of 90% of pledges receivable, plus 100% of any Rainier Bank Time Certificates of Deposit. At this point we note that you would have no difficulty in borrowing up to the \$3 million ceiling. Other features of this commitment are outlined below:

**Expiration:** This commitment is extended through July 30, 1983.

**Interest:** Rainier National Bank Prime plus one percent, payable monthly on any outstanding balance.

**Fee:** A  $\frac{1}{2}$ % fee is payable Rainier Bank upon your acceptance of this facility.

Our commitment is contingent upon the City of Seattle's commitment to spend \$4.2 million on theater construction. In addition, the City of Seattle and the Repertory Theatre must have a contract executed with a licensed, bonded contractor of good reputation. The contract price to completion may not exceed \$7.2 million. In addition,

Construction of the new theater must start by October 30, 1981. This commitment is understood to expire July 30, 1983, by which time construction of the theater must be completed.

CONTINUED:

**RAINIER BANK**

Rainier National Bank

Seattle Repertory Theatre  
Page Two

Advances on this commitment will be controlled by Rainier Bank to assure that loan proceeds are used for construction of the Bagley Wright Theatre.

We need written certification from the Rep that pledge proceeds will be kept on a segregated basis and can only be used for construction of the Bagley Wright Theatre.

Documentation and collateral must be acceptable to the Bank.

Again, it is our pleasure to confirm our support for the construction of the new Theatre. If you agree with the forgoing commitment terms, please indicate your acceptance by signing below. This offer will expire April 1, 1981 if not accepted by the Seattle Repertory Theatre by that date.

Should you have any questions regarding the above, please contact us immediately. We wish you and the City of Seattle every success in completing this project ahead of schedule.

Sincerely,



Steven J. Barker  
Assistant Vice President

SJB:me

ACCEPTANCE

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Robert S. Cline, Chairman  
Seattle Repertory Theatre

Rainier National Bank

World Banking Division: One Rainier Square, P.O. Box 3966, Seattle, Washington 98124

*Jack Fearing*

March 4, 1981

Mr. Robert S. Cline, Chairman  
Seattle Repertory Theatre  
Seattle, WA.

Dear Mr. Cline:

We understand that there are some questions raised by the Seattle Center concerning the language used in our commitment letter to the Seattle Repertory Theatre dated February 10, 1981. Perhaps we can address and clarify several of the points we understand to be in question.

First, we understand that there is a question as to just what "construction cost" refers to. For your purposes, our term "construction cost" refers to total project cost, including architects fees, administration costs, art to be placed inside the building, in addition to the contractor's contract and other items as identified in the project budget.

We have required that construction of the new theater must begin by October 30, 1981. Our term "construction" refers to initiation of the actual building process, such as demolition of existing structures and ground breaking within a comprehensive building schedule. We are well aware that far-flung strikes, delayed materials, or natural catastrophe may delay your construction schedule at any time. We reserve the right to receive written information as to the cause of any delay. Here, our intent is to make sure that you and Seattle Center are able to plan and begin building a new theater within a reasonable period of time. We are not interested in holding up the project because of circumstances that are wholly out of your control.

We would also like to clarify our statement that "the City of Seattle and the Repertory Theatre must have a contract executed with a licensed bonded contractor. . . ." This following statement is made with full knowledge that only the City of Seattle, as building owner, will sign and execute a contract with a contractor. We understand that the responsibilities of the Repertory Theatre and the City of Seattle are delineated in a three-page "construction agreement" and the longer "licensing agreement".

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Rainier National Bank

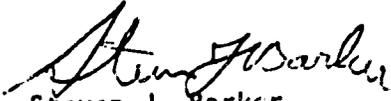
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We have requested that advances on this commitment be "controlled" by ourselves so that loan proceeds are used solely for theater construction, and not general, day-to-day operating costs. Let us suggest that advances be handled in the following manner: Upon receipt of a project invoice from the City, the Theatre will submit a written request to the Bank certifying the Theatre's obligation to pay said invoice and that the Rep had used its available cash resources. The Bank will then transfer funds directly to the Theatre for transmittal to the City. The entire process should be accomplished in one day's time.

Finally, Rainier Bank believes it is important to establish a total project cost of \$7.2 million. Should the total cost climb above that figure, we will need to see proof that additional expenses borne by the Rep are fully funded by grants and donations received.

We trust that you and the City of Seattle will take the spirit of Rainier Bank's commitment into full consideration. We wish you every success in finalizing the project.

Sincerely,

  
Steven J. Barker  
Vice President

SJB:me