

## LICENSE TO OCCUPY

*(THIS AGREEMENT IS A LICENSE TO OCCUPY SPACE. IT IS NOT A LEASE AND DOES NOT CREATE ANY LEASEHOLD RIGHTS. LICENSOR AND LICENSEE SPECIFICALLY DISCLAIM ANY INTENTION TO CREATE ANY LEASEHOLD RIGHTS OR ANY RELATIONSHIP OF LANDLORD AND TENANT BY THIS DOCUMENT.)*

**THIS LICENSE TO OCCUPY** (“License”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the “**Effective Date**”) by and between the **DISTRICT OF COLUMBIA**, a municipal corporation, through the Department of General Services (“**Licensor**” or “**District**”); and \_\_\_\_\_, a \_\_\_\_\_ corporation (“**Licensee**”).

### RECITALS:

A. Licensor owns or controls a certain parcel of real estate located in the District of Columbia and improved with a theatre building known as the Lincoln Theatre, located at 1215 U Street, NW, in Washington, D.C. (“**Lincoln Theatre**”);

B. The District issued a Request for Proposal (Solicitation Number DGS-RFP-2012-10) on or about [REDACTED] to select a licensee to occupy and operate the Lincoln Theatre including management, marketing, staffing and maintenance of the Lincoln Theatre, a copy of which is attached hereto as **Exhibit “A”** (“**RFP**”);

C. Licensee was selected as such licensee pursuant to the Offer Letter attached hereto as **Exhibit “B”**;

D. Licensee intends to use the Lincoln Theatre for the purposes set forth in the RFP on the terms and conditions set forth below; and

E. Licensor is willing to grant such terms and conditions.

**NOW, THEREFORE**, in consideration of Licensor’s grant of the use of the Lincoln Theatre and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Licensor and Licensee agree as follows:

1. **Addenda and Exhibits.** The addenda and exhibits listed below are attached to this License and are hereby incorporated in and made a part of the License.

Exhibit “A”	Request for Proposal (Solicitation Number DGS-RFP-2012-10)
Exhibit “B”	Offer Letter
Exhibit “C”	Prohibited Uses
Addendum I	Option To Renew
Addendum II	Licensor’s Equipment
Addendum III	Parking
Addendum IV	District and Community Sponsored Events
Addendum V	Licensor’s Work
Addendum VI	Hiring Requirements

2. **Recitals.** The foregoing recitals are hereby incorporated into this License to the same extent as if set forth herein in full and are made a part hereof.

3. **Permitted Use.** Licensee shall use the Lincoln Theatre solely for the purpose of operating a first class performing arts center, all of which shall be consistent with the image of

the Lincoln Theatre, in compliance with the terms and provisions of the RFP and similar to the type of programming, events and shows performed at similar facilities in the District of Columbia, such as by way of example the Howard Theatre, \_\_\_\_\_ (list to be expanded) (“**Permitted Uses**“). Licensee may not use the Lincoln Theatre for any of the uses, type of shows or events set forth in **Exhibit “C”** attached hereto.

4. **License Term.** Subject to the terms and provisions of Addendum IV, Licensors grants Licensee during the term of the License the right to occupy the Lincoln Theatre for the Permitted Uses for a term of one (1) year commencing on \_\_\_\_\_ (“**Commencement Date**”) and, unless terminated earlier, expiring twelve (12) full calendar months thereafter (“**Expiration Date**”). Upon the Expiration Date or earlier termination of this License, this License shall terminate without the necessity of notice from either Licensors or Licensee and Licensee shall quit and surrender to Licensors the Lincoln Theatre, broom-clean, in good order and condition, ordinary wear and tear excepted; remove all of Licensee’s personal property; and shall surrender to Licensors all keys to or for the Lincoln Theatre.

5. **License Fee.** Beginning on the Commencement Date, Licensee covenants and agrees to pay to Licensors on the first day of each calendar month throughout the term of this License, without demand, abatement, deduction or offset, in lawful money of the United States, the license fee (the “**License Fee**”) in the amount of \$\_\_\_\_\_ per month. All payments required under this License shall be payable to the DC Treasury and sent to the following address or to such other address as directed by Licensors in writing: \_\_\_\_\_. For any portion of a calendar month at the beginning of the License Term, Licensee shall pay in advance the pro-rated amount of the License Fee for each day included in such portion of the month.

6. **Facility Revenues.** Subject to the terms and provisions of Addendum III, in exchange for the License Fee, Licensee shall be entitled to all revenues generated from the operation of the theater, including ticket sales, ticket fees, advertising revenues, facility rentals, food and beverage revenues, merchandise revenues, site fees, and any other revenues generated from the operation of the theater. The Licensee, however, shall not be permitted to change the name of the theater or provide for advertising on the outside of the theater (other than in existing marquee and storefront locations) and shall not enter into any “naming rights” transactions.

7. **RFP.** This License shall be subject to all of the terms and provisions of the RFP. In the event of a conflict between the RFP and this License, the terms and provisions of the License shall prevail.

8. **Reservation of Property Interests.** Licensors reserves unto itself, its employees, agents, contractors, successors, and assigns the right to enter the Lincoln Theatre upon reasonable notice to inspect, maintain, repair, renovate and reconstruct the Lincoln Theatre, and to perform any necessary governmental functions or responsibilities, except in the circumstance where the entry of the Licensors would unreasonably disrupt the use of the Lincoln Theatre by the Licensee, in which case the Licensors and Licensee shall mutually agree upon a time for the Licensors to enter the Lincoln Theatre.

9. **Condition of Lincoln Theatre.** Except for Licensors’s Work (as defined and set forth in Addendum V), upon the Commencement Date Licensee acknowledges that: (i) Licensee

has inspected the Lincoln Theatre; (ii) Licensee accepts the Lincoln Theatre, and all improvements, betterments and equipment "AS IS", with no representation or warranty by Licensor, express or implied, as to the condition or suitability of the Lincoln Theatre, or any furniture, furnishings or equipment located therein, for Licensee's purpose; and (iii) Licensor has no obligation to improve or repair the Lincoln Theatre, except as specifically set forth in this License. The Licensee assumes all risk of loss, damage or personal injury resulting from it and its officers, agents, invitees and employees entry on the Lincoln Theatre.

10. **Repairs.**

(a) *Licensor Responsibilities.* Licensor will, at Licensor's sole cost and expense, repair and maintain the structure, roof, outer walls and all base building mechanical, electric and plumbing systems of the Lincoln Theatre in good order, condition and repair, and provide the maintenance and services set forth in Level 2 and Level 3 of Attachment A4 of the RFP. If any such repairs are necessitated by Licensee's breach of this License, or by any act or negligence of Licensee, its agents, employees, assigns, contractors or invitees, Licensee shall reimburse to Licensor the reasonable cost incurred in completing such repairs within ten (10) days of receipt of an invoice from Licensor.

(b) *Licensee's Responsibilities.* Other than Licensor's responsibilities as set forth in Section 10(a) above, Licensee, at its sole cost and expense, shall maintain the Lincoln Theatre, and all furniture, fixtures and equipment located therein, in good condition, order and repair and shall provide (i) custodial services to clean and maintain the Lincoln Theatre, including trash hauling/recycling, (ii) the maintenance and services set forth in Level 1 of Attachment A4 of the RFP, and (iii) security services for the protection of human life, the prevention of loss of property and the detection/reporting of any criminal activity in or around the Lincoln Theatre.

11. **Utilities.** Licensor shall provide all necessary utilities at its sole cost and expense. Licensee at its own expense shall make arrangements for the installation, maintenance and cost of telephone service and equipment, as well as the maintenance cost for any data service and equipment in the Lincoln Theatre.

12. **Failure to Vacate.** Licensee hereby expressly waives any notice to quit that may or might be required by law, now or in the future. If Licensee does not vacate the Lincoln Theatre upon termination or expiration of this License as provided in section 3 above, Licensee shall be liable to Licensor for any and all damages that Licensor may suffer as a result of any breach of this License by such Licensee which shall include direct and consequential damages, including, but not limited to, reasonable attorneys' fees. If Licensee should fail to vacate the Lincoln Theatre on or before the Expiration Date or earlier termination of this License, (i) Licensee authorizes Licensor, on behalf of Licensee, to consent immediately to judgment being entered against Licensee in any suit for possession of the Lincoln Theatre filed by Licensor and to obtain a Writ of Possession for the Lincoln Theatre ("**Writ**") from the court; (ii) Licensor shall be entitled to pursue a separate action against Licensee for Licensor's damages as a result of such breach of this License by the Licensee and (iii) the Licensee hereby waives any right to object to or contest Licensor's filing of any suit for possession of the Lincoln Theatre or the issuance of a Writ to the Licensor by the court at any time after the Expiration Date or earlier termination, assuming there is a failure to vacate. Licensee hereby waives any right to a jury trial and

consents to the payment of Licensor's reasonable attorneys' fees, including reasonable fees where Licensor is represented by the Office of the Attorney General for the District of Columbia. Attorney's fees for Licensor shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia.

13. **Indemnification and Insurance.** To the maximum extent permitted by law and except as shall be occasioned by the negligence or willful acts of **Indemnities** (as defined below), the Licensee shall indemnify, hold harmless, and defend Licensor and Licensor's agents, employees, officers and directors ("**Indemnities**") against any and all claims, suits, liabilities, damages and judgments, including, without limitation, reasonable attorney's fees and litigation costs, arising out of, resulting from, or relating to (a) the acts or omissions of the Licensee and Licensee's agents, employees, officers, directors and invitees in or upon the Lincoln Theatre during the term of this License and/or the Licensee's occupancy of the Lincoln Theatre, or (b) any breach of this License by the Licensee. The Licensee shall furnish Licensor with proof of insurance in the form of an original, signed certificate of insurance, issued by an insurance carrier, prior to the Commencement Date, in the amounts provided below and with a carrier licensed to do business in the District of Columbia. Said policies of insurance shall name the District of Columbia as an additional insured. Licensee shall carry Commercial General Liability Insurance (ISO form or equivalent) naming Licensee as the named insured and Licensor as an additional insured, protecting Licensee and the additional insured against liability for bodily injury, death and property damage occurring upon or in the Lincoln Theatre or any portion of the Lincoln Theatre, with a minimum combined single limit of Two Million Dollars (\$2,000,000.00) and a general aggregate limit of Five Million Dollars (\$5,000,000.00), providing coverage which any named and/or named additional insured shall be legally liable to pay as damages due to an act, event or occurrence covered by such insurance. The insurance required by this License shall remain in effect for the duration of this License and shall not be materially modified or altered, or terminated without written notice to Licensor. Notwithstanding any other provision in this License, this License shall terminate immediately upon any termination of the insurance required herein.

14. **Limitations of Licensor's Liability.** Except to the extent arising out of the negligent or intentional wrongful acts of the Licensor or its employees, agents or contractors, Licensor shall not be liable to Licensee or Licensee's officers, directors, agents and employees ("**Licensee's Agents**") for any damage, compensation or claim arising from (i) repairing any portion of the Lincoln Theatre or the Lincoln Theatre, (ii) any interruption in the use of the Lincoln Theatre, (iii) accident or damage resulting from the use of the Lincoln Theatre (by Licensor, Licensee, Licensee's Agents or any other person or persons whatsoever), (iv) the termination of this License by reason of the destruction of the Lincoln Theatre, (v) any fire, robbery, theft, criminal act and/or any other casualty, or (vi) any leakage in any part of the Lincoln Theatre, or from water, rain or snow that may leak into or flow from any part of the Lincoln Theatre, or from drains, pipes or plumbing work in the Lincoln Theatre, or (vii) any other cause whatsoever. Any goods, property or personal effects, stored or placed by Licensee in or about the Lincoln Theatre, shall be at the sole risk of the Licensee. Licensee shall be responsible for providing security services to the Lincoln Theatre.

15. **General Covenants.** Licensee at its sole cost and expenses shall:

- (a) Maintain the Lincoln Theatre, the parking lot behind the Lincoln Theatre and all entrances and exits of the Lincoln Theatre in a clean, orderly, sanitary and safe condition;
- (b) Be responsible for “**Event Day Operations**” as defined in Section B.3.1 of the RFP;
- (c) Conduct its business in all respects in a commercially reasonable manner in accordance with the quality of operation of the Lincoln Theatre;
- (d) Comply with all statutes, laws, rules, orders, regulations and ordinances affecting the Lincoln Theatre and the Permitted Uses;
- (e) Provide the mix, frequency and type of events that will promote the goals of the RFP described in Section B.3.3 of the RFP;
- (f) Share with DGS Facilities Manager copies of all keys that secure doors in the Lincoln Theatre as a safety precaution;
- (g) Meet with Licensor quarterly to review theatre operations, event scheduling and content, ticket prices and any other relevant issues.
- (g) Operate the Lincoln Theatre in a manner consistent with similar facilities in the Washington D.C. metropolitan area such as the Howard Theatre and in a manner which further the goals and objectives of the RFP; and
- (h) Be responsible for all security of the Lincoln Theatre at all times.

16. **Use of the Lincoln Theatre.** In regard to its use and occupancy of the Lincoln Theatre, Licensee shall not:

- (a) Place or maintain any merchandise, trash, refuse, or other articles in any vestibule or entry of the Lincoln Theatre, in the corridors adjacent thereto or elsewhere on the exterior of the Lincoln Theatre unless required for refuse disposal purposes;
- (b) Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio and television broadcasts within the Lincoln Theatre which is in any manner audible or visible outside of the Lincoln Theatre as determined by the Licensor in its reasonable discretion;
- (c) Permit accumulations of garbage, trash, rubbish, or other refuse within or without the Lincoln Theatre, except as to be collected or disposed of;

- (d) Cause or permit objectionable odors to emanate or be dispelled from the Lincoln Theatre;
- (e) Allow solicitations on the outside of the Lincoln Theatre;
- (f) Permit the parking of delivery vehicles so as to interfere with the use of any driveway, sidewalk, parking area, public street or alley;
- (g) Use or permit the use of any portion of the Lincoln Theatre which exceeds the floor load which the floor was designed to carry or which is allowed by law; and
- (h) Conduct or permit any activities in the Lincoln Theatre that might constitute a public or private nuisance; use or occupy the Lincoln Theatre or permit anything to be done therein which in any manner might cause injury or damage in or about the Lincoln Theatre.

17. **No Assignment.** This License is personal to Licensee and Licensee may not sell, assign or in any way transfer it, without the written consent of the Licensor. Any unauthorized assignment of this License or any interest therein by Licensee in contravention of this provision shall be null and void.

18. **No Alterations.**

(a) Licensee shall not make, or permit anyone to make on their behalf, any changes, alterations, additions or improvements, structural or otherwise, in or to the Lincoln Theatre (“**Alterations**”) without the prior written consent of Licensor.

(b) If any Alteration is made without the prior written consent of Licensor, as provided above, Licensor may correct or remove the same, and Licensee shall be liable for any and all loss, damage, actual cost or expense (including, without limitation, reasonable attorneys’ fees and all court costs) incurred by Licensor in the performance of this work.

(c) All Alterations shall, at Licensor’s election, immediately become the property of Licensor and shall remain upon and be surrendered with the Lincoln Theatre as a part thereof at the end of the period of occupancy. If Licensor does not elect that any Alterations installed by Licensee remain upon and be surrendered with the Lincoln Theatre at the expiration or termination of the period of occupancy, Licensee shall remove the same, and shall repair any damage caused by such removal, at Licensee’s sole cost and expense, and if Licensee fails to remove the same, or fail to repair any damage caused by any such removal, Licensor may remove and repair the same at Licensee’s expense and Licensee shall reimburse Licensor for the reasonable cost of such removal and repair, together with any and all damages (including, without limitation, reasonable attorneys’ fees and all court costs) that Licensor may sustain by reason of such default by Licensee.

19. **Default.** If any party breaches any of the material terms or conditions of this License, the other party may immediately terminate this License and/or pursue any other remedies available to it under this License, at law or in equity.

20. **Exclusive Agreement.** All understandings and agreements heretofore made between the Licensors and Licensee regarding the Lincoln Theatre are set forth in this License and this License expresses the Licensors' and Licensee's entire agreement, and no representations, oral or written, not expressly contained herein, shall be considered to be a part hereof. This License may not be altered, enlarged, modified, changed or extended except by a written instrument by Licensors and Licensee.

21. **Invalidity of Provisions.** If any term, covenant, or condition of this License, or the application thereof to any person or circumstances, shall be held invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law as if such invalid or unenforceable term or provision had not been included herein.

22. **Authority.**

(a). **Authority of the Licensors.** By executing this License the Licensors represents to Licensee that: (i) it is authorized to enter into, execute, and deliver this License and perform its obligations hereunder; (ii) this License is effective and enforceable against the Licensors in accordance with its terms; (iii) the person signing on the Licensors' behalf is duly authorized to execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of the Licensors contained in this paragraph true and correct.

(b). **Licensee's Representations.** By executing this License, the Licensee represents to the Licensors that: (i) it is authorized to enter into, execute and deliver this License and perform its obligations hereunder; (ii) this License is effective and enforceable against the Licensee in accordance with its terms; (iii) the persons signing on behalf the Licensee is duly authorized to execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of the Licensee contained in this paragraph true and correct. Licensee represents that it is in good standing in its place of organization and will remain so for so long as it is a Licensee hereunder and that, if it is a foreign corporation or entity, it has, and will remain so for so long as it is a Licensee hereunder, qualified to do business in the District of Columbia.

(c). **Licensee's Representative.** The Licensee hereby designates \_\_\_\_\_ (the "**Licensee's Representative**"), as the sole person with authority to communicate with the Licensors regarding any issues that may arise under this License. Licensee may change the Licensee's Representative upon prior written notice to the Licensors.

23. **Context of Words.** Where the context requires, words in the singular shall be substituted for the plural and vice versa, and words in the masculine shall be substituted for any gender.

24. **Notice.** Whenever any demand, request, approval, consent or notice (singularly and collectively, "Notice") shall or may be given by one party to the other, such Notice shall be in writing and addressed to the parties at their respective addresses as set forth below and served by (i) hand, (ii) a nationally recognized overnight express courier, or (iii) registered or certified mail return receipt requested. The date the Notice is received shall be the date of service of Notice. If an addressee refuses to accept delivery, however, then Notice shall be deemed to have been served on either (i) the date hand delivery is refused, (ii) the next business day after the Notice was sent in the case of attempted delivery by overnight courier, or (iii) five (5) Business Days after mailing the Notice in the case of registered or certified mail. Either party may, at any time, change its Notice address by giving the other party Notice, in accordance with the above, stating the change and setting forth the new address. Any Notice required pursuant to this License shall be addressed as follows (or to such other address as shall be subsequently indicated in writing to either party to this License from the other):

**To the Licensor:**

The Government of the District of Columbia  
Department of General Services  
2000 14<sup>th</sup> Street, NW  
8<sup>th</sup> Floor  
Washington, D.C. 20009  
Attention: Director

**With a copy to:**

Government of the District of Columbia  
Office of the Attorney General for the District of Columbia  
1100 15th, NW, 8<sup>th</sup> Floor North  
Washington, DC 20005  
Attention: Commercial Division, Real Estate Section

**To the Licensee:**

**INSERT**

25. **Counterparts.** This License may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this License by facsimile shall be sufficient for all purposes and shall be binding on any party who so executes.

26. **Absence of Interest.** Licensee represents that no officer, agent, employee, elected official or representative of Licensor, or of the Council of the District of Columbia, has received any payment or other consideration for the making of this License and that no such person has any interest, direct or indirect, in this License or the proceeds thereof or related thereto.

27. **Governing Law; Service of Process; Waiver of Jury Trial.** This License shall be governed by the laws of the District of Columbia and the Licensee hereto accepts the jurisdiction of the Superior Court of the District of Columbia as the Court of competent jurisdiction to resolve matters under this License.



(a) ***WAIVER OF JURY TRIAL. THE PARTIES HERETO EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL AND AGREE THAT ANY DISPUTES HEREUNDER THAT RESULT IN THE FILING OF AN ACTION IN ANY DISTRICT OF COLUMBIA COURT SHALL BE RESOLVED BY A BENCH TRIAL.***

(b) **Days.** Including. All days referred to herein shall be calendar days unless otherwise specified. Use of the word “including” shall also mean “including without limitation.”

28. **No Broker.** The Licensor and Licensee hereto represent to each other that neither of them has employed any broker in carrying on the negotiations relating to this License.

29. **No Partnership.** Nothing contained in this License shall be deemed or construed to create a partnership or joint venture of or between Licensee and Licensor, or to create any other relationship between the parties hereto other than that of Licensee and Licensor.

30. **Smoking Prohibited.** Licensee shall not permit smoking within the Lincoln Theatre, and shall post and maintain in conspicuous places in or upon the Lincoln Theatre a sign or signs, reading “NO SMOKING ALLOWED”.

31. **Anti-Deficiency Limitations.** The following limitations exit as to each and every purported obligation of Licensor set forth in this License, whether or not expressly conditioned:

(a) The obligations of Licensor to fulfill financial obligations pursuant to this License or any subsequent agreement entered into pursuant to this License or referenced herein (to which Licensor is a party) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2005 Repl.); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2005 Repl. & 2008 Supp.) (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2008 Supp.). Pursuant to the Anti-Deficiency Acts, nothing in this License shall create an obligation of the Licensor in anticipation of an appropriation by Congress for such purpose, and the Licensor’s legal liability for the repairs to the Lincoln Theatre under this License shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year.

(b) This License shall not constitute an indebtedness of Licensor nor shall it constitute an obligation for which Licensor is obligated to levy or pledge any form of taxation as it relates to this License or for which Licensor has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this License unless such amount has been appropriated by Act of Congress and is lawfully available.

32. **Nondiscrimination in Employment.**

(a) Licensee shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other applicable Laws, or court order, in the sale, lease, or rental or in the use or occupancy of the Leased Lincoln Theatre.

(b) Licensees shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable Laws or court order.

(c) Licensee will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Licensee agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the District of Columbia or any agency thereof setting forth the provisions of this non-discrimination clause.

(d) Licensee will, in all solicitations or advertisements for potential employees placed by or on behalf of Licensee, include the federal U.S. Equal Employment Opportunity Commission's logotype, statement, or slogan as a means of educating the public that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable Laws or court order.

33. **Signs.** Licensee shall not affix, exhibit, attach, or allow any signs, signboards, writing or printed matter on the exterior of the Lincoln Theatre or which can be seen from the exterior of the Lincoln Theatre, without the prior written consent of the Licensor. The cost for all signs shall be borne by the Licensee.

34. **Hazardous Substances.** Licensee hereby covenants that, at its sole cost and expense, it shall comply with all provisions of Environmental Laws applicable to the Lincoln Theatre and all uses, improvements, and appurtenances of and to the Lincoln Theatre, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Laws, and Licensor shall have no responsibility or liability with respect thereto. Licensee shall indemnify, defend, and hold Licensor harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) in connection with, arising out of, in response to, or in any manner relating to (i) Licensee's violation of any Environmental Laws relating to the Lincoln Theatre, (ii) any release or threatened release of a Hazardous Material after the date of Licensee's original occupancy of the Lincoln Theatre that was caused by the Licensee, or (iii) any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Lincoln Theatre that was caused by the Licensee after the date of Licensee's original occupancy of the Lincoln Theatre ("Environmental

Claims”). Except to the extent caused by the negligence or willful misconduct of the Licensee, the Licensee shall not be responsible for any clean up, abatement, loss, costs, damage, claims, liabilities and causes of action arising out of or resulting from the existing underground storage tanks located on the Lincoln Theatre and which pre-existed the Licensee’s date of original occupancy.

(a) **“Hazardous Materials”** means any substance or material:

(i) the presence or suspected presence of which requires or may require investigation, response, clean-up, remediation, or monitoring, or may result in liability, under any governmental requirement; or

(ii) that is or contains a hazardous substance, waste, extremely hazardous substance, hazardous material, hazardous waste, hazardous constituent, solid waste, special waste, toxic substance, pollutant, contaminant, petroleum or petroleum derived substance or waste, and related materials, including without limitation, any such materials defined, listed, identified under or described in any Environmental Law; or

(iii) which is flammable, explosive, radioactive, reactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous, or is or becomes regulated under any Environmental Law; or

(iv) which is or contains asbestos (whether friable or non-friable), any polychlorinated biphenyls or compounds or equipment containing polychlorinated biphenyls, or medical waste; or

(v) without limitation, which is or contains or once contained gasoline, diesel fuel, oil, diesel and gasoline range organics (TPH-DRO / GRO), or any other petroleum products or petroleum hydrocarbons, or additives to petroleum products, or any breakdown products or compounds of any of the foregoing; or

(vi) without limitation, radon gas.

(b) **“Environmental Laws”** means any federal or District law, statute, code, ordinance, rule, regulation, requirement, permit, license, resolution, or judicial or administrative decision, order, judgment, injunction, award, decree, writ, or similar item (including without limitation consent decrees) relating to environmental matters, the protection of the environment or the protection of human health and safety from environmental concerns, including without limitation all those relating to or regulating the presence, use, generation, handling, storage, treatment, transportation, decontamination, processing, clean-up, removal, encapsulation, enclosure, abatement, disposal, reporting, licensing, permitting, monitoring, investigation, remediation, or release (including, without limitation, to ambient air, surface water, ground water, land surface or subsurface strata) of any Hazardous Material, pollutant, contaminant, or other substance or waste, including without limitation:

(i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Sections 2601, et seq., the Clean

Water Act, 33 U.S.C. Sections 1251 et seq., the Clean Air Act, 42 U.S.C. Sections 7401, et seq., and their District and local counterparts and related regulations; and

(ii) any other legal requirement, legal rule, or order regulating, relating to, imposing standards of conduct for, or imposing or allocating any liability concerning any Hazardous Material, pollutant, or contamination.

35. **Force Majeure.** The Licensor and the Licensee shall be excused from performing an obligation or undertaking provided for in this License so long as the performance is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military, or naval authorities (but only such orders of a general nature pertaining to the Licensed Lincoln Theatre and comparable properties in the District of Columbia), or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control of the Licensor or the Licensee, as the case may be.

36. **Quiet Enjoyment.** Provided that there shall be no uncured default by the Licensee hereunder as to which all times to cure shall have expired, then, subject to the terms of this License, Licensor warrants that the Licensee shall peaceably have, hold and enjoy the Licensed Lincoln Theatre and appurtenances thereto free from interference from Licensor or anyone claiming by, through or under Licensor.

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, Licensor and Licensee have entered into this License as of the date first set forth above as their free act and deed for the uses and purposes herein contained.

**LICENSOR:**

**THE DISTRICT OF COLUMBIA,**

A municipal corporation, acting by and through the Department of General Services

By: \_\_\_\_\_  
Brian Hanlon  
Director

\_\_\_\_\_ Date

*Approved as to Legal Sufficiency:*

**Office of the Attorney General for the District of Columbia**

\_\_\_\_\_  
Steven A. Sadel  
Assistant Attorney General/General Counsel

\_\_\_\_\_ Date

**LICENSEE:**

\_\_\_\_\_,  
A \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page of License Agreement]

**EXHIBIT “A”**

**RFP**

**EXHIBIT “B”**

**OFFER LETTER**

**EXHIBIT “C”**

**PROHIBITED USES**



## ADDENDUM I

### OPTION TO RENEW

Licensee shall have the option to extend the Term hereof for four (4) additional periods of one (1) year each (hereinafter "**Option Period**"), subject to the following terms and conditions:

- a. Licensee may exercise such option by giving Licensor written notice, via certified mail-return receipt requested, of its intent to exercise said option, such notice to be received by Licensor at least three (3) full calendar months prior to the expiration of the original Term, or the then-current Option Period, as the case may be.
- b. At the time of exercise, (i) Licensee is not in default under any of its obligations under the Licensee and (ii) Licensee is operating a theatre in the Lincoln Theatre in accordance with the Permitted Use.
- c. Licensor may, in Licensor's sole and absolute discretion, void Licensee's option to renew by sending written notice to Licensee within thirty (30) days of receipt of Licensee's exercise of its option in which the event the License shall terminate at the end of the Term, or the then-current Option Period, as the case may be.
- d. All other terms and conditions of this License shall remain unchanged and apply during the Option Period except that the License Fee shall be increased by \_\_\_\_\_% at the commencement of each Option Period.
- e. If such option is not timely exercised, Licensee's right to renew shall expire and the Licensee shall terminate at the end of the Term, or the then-current Option Period, as the case may be.

## **ADDENDUM II**

### **LICENSOR'S EQUIPMENT**

1. Licensors assigns to the Licensee the use of the equipment as identified in **Attachment A** (the “**Licensors Equipment**”) for use solely in connection with the Licensees Permitted Uses at the Lincoln Theatre pursuant to this License.
2. Licensors Equipment shall at all times remain the personal property of the Licensor. Licensee shall not at any time remove Licensors Equipment from the Lincoln Theatre. Licensee shall not lease, assign, loan, encumber or alter Licensors Equipment.
3. Licensee assumes and shall bear full responsibility and risk for loss, damage or injury resulting from Licensees use of Licensors Equipment and agrees to defend, indemnify and save harmless the Licensor in connection with any claims resulting from the use or operation of the Assigned Equipment.
4. Except as otherwise provided in Section \_\_\_\_ of the License, Licensee, at Licensees sole cost and expense, shall maintain Licensors Equipment in good order, condition and repair. Licensee assumes all risk for loss, theft and damage to Licensors Equipment, and except as otherwise provided in Section \_\_\_\_ of the License, agrees to replace or repair any item of equipment should any item of equipment be lost, stolen, damaged or non-working. If Licensee replaces any of Licensors Equipment, Licensor shall approve in writing in advance the design, specifications and manner of installation of such proposed replacement.
5. Licensee shall provide Licensor with a letter of credit in the amount of \$\_\_\_\_\_ as security for the return in good working order of all of Licensors Equipment in good working order at the end of the term of the License. **Details to be further addressed.**

### **ADDENDUM III**

#### **PARKING**

1. Licensee shall have the right to use the parking lot behind the Lincoln Theatre which consists of approximately \_\_\_\_ number of spaces during the term of this License ("Parking Area"). Licensee, at Licensee's sole cost and expense, shall be responsible for (i) security of the Parking Area, (ii) maintaining the Parking Area in an attractive and clean condition (iii) and keeping the Parking Area free from ice and snow. Licensee shall not permit the accumulation of garbage, trash or other waste in or around the Parking Area.
2. Notwithstanding the foregoing, Licensee's use of the Parking Area shall be subject to the terms and provisions of the U Street Parking Agreement. Terms to be discussed.

## **ADDENDUM IV**

### **DISTRICT AND COMMUNITY SPONSORED EVENTS**

1. Licensors reserves the right to use the Lincoln Theatre for up to fifteen (15) events per year for District of Columbia (“**District**”) events or District-sponsored community events at no charge to the District. **Terms to be discussed.**
2. Licensors further reserves the right at no charge to Licensors to use the Lincoln Theatre on **the following dates** as such dates were pre-booked by Licensors prior to execution of this License.

## **ADDENDUM V**

### **LICENSOR'S WORK**

Licensor shall, at Licensor's sole cost and expense, provide the following improvements and repairs to the Lincoln Theatre prior to the Commencement Date:

## **ADDENDUM V**

### **HIRING REQUIREMENTS**

1. Licensee shall comply with the hiring requirement of Section C.2 and C.3 of the RFP.
2. Licensee shall maintain complete and accurate records of its hiring records as are reasonably necessary to properly monitor or verify that Licensee has complied with such hiring requirements as set forth in the RFP.
3. Licensor shall have the right, at any time during normal business hours upon not less than five (5) days' prior notice to Licensee, to cause a complete examination or audit to be made of Licensee's books and records to ensure that Licensee is complying with all of the hiring requirements set forth in the RFP.