

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”) is made and entered into on this _____ day of _____, 2021 by and between **JACKSONVILLE SYMPHONY ASSOCIATION, INC.**, a Florida non-profit corporation (“**Tenant**”), with its principal offices located at 300 West Water Street, Suite 200, Jacksonville, Florida 32202; and the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (“**Landlord**” or “**City**”).

RECITALS

WHEREAS, Tenant currently leases from Landlord portions of the Performing Arts Center located at 300 West Water Street in Jacksonville, Florida pursuant to that certain Lease Agreement dated June 30, 2016, which will expire on June 30, 2021; and

WHEREAS, Tenant desires to continue leasing portions of the Performing Arts Center, and Landlord has agreed to Tenant’s continued use and occupation of the Premises (as defined herein), subject to the terms and conditions outlined herein; and

WHEREAS, on _____, 2021 the City Council approved and authorized this Agreement pursuant to 2021-___-E.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, the receipt and sufficiency of which has been acknowledged by the parties, the parties agree as follows:

1. **RECITALS.**

The Recitals set forth above are true and correct and incorporated herein by this reference.

2. **GRANT OF LEASE.**

Landlord leases to Tenant, and Tenant leases from Landlord, the Premises (as defined below) pursuant to the terms and subject to the conditions of this Agreement.

3. **PREMISES DEFINED.**

The Landlord hereby demises and leases to the Tenant, for the term and under the conditions hereinafter set out, those certain Premises within the Performing Arts Center located at 300 West Water Street, in Jacksonville, Duval County, Florida (the “**Facility**”), described as follows:

- a. The northeast corner of the second floor of the Jacksonville Performing Arts Center, 300 West Water Street, Jacksonville, Florida 32202, known generally as suite 201,

which shall constitute an aggregate area of 7,390 square feet of usable space measured from the base of the interior walls of the premises, presently referred to as Jacoby Hall and further shown on **Exhibit A-1** (the “**Office Space**”).

b. The “ticket sales office” consisting of approximately 180 square feet; the “conductor’s dressing room” consisting of approximately 226 square feet; the “music library” consisting of approximately 374 square feet; the “administrative office” on the first floor and consisting of approximately 72 square feet; the “piano and timpani storage area” consisting of approximately 448 square feet; the “Chorus Room” consisting of approximately 2,700 square feet; and up to 1,000 square feet of basement storage, all as further shown on **Exhibit A-2** (collectively, the “**Additional Space**”).

c. Tenant shall have use rights in Jacoby Hall as set forth in Paragraph 9(b)(i) below.

d. The Office Space, the Additional Space and the use rights in Jacoby Hall described in subsections a., b. and c. above are hereinafter collectively referred to as the “**Premises.**” For purposes of clarity, Tenant has no leasehold interest in Jacoby Hall, but instead has solely those use rights as set forth in Paragraph 9(b)(i) below.

e. Access to the Premises shall be provided through the common areas of the Facility.

4. TERM.

The term of this Agreement commences on the 1st day of July, 2021 and continues through the 30th day of June, 2026.

5. RENTALS; LATE PAYMENTS; ADDRESS FOR ALL PAYMENTS.

a. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the above-described Premises for the term set out in this Agreement. Tenant agrees to pay to the Landlord the sums set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Said rentals, plus any applicable sales tax, shall be payable on the 1st day of each month without notice, demand, deduction or set-off, and shall be paid to SMG or the then current Facility manager (the “**Facility Manager**”) at the address noted in subsection 5.c. below.

b. Landlord, in addition to all other rights and remedies available to it, may charge Tenant a fee equal to five percent (5%) of any delinquent payment to reimburse Landlord for its costs and inconvenience incurred as a consequence of Tenant’s delinquency. In no event, however, shall the charges permitted under this Section or elsewhere in this Agreement, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest. Notwithstanding the foregoing, the late fee referenced above shall not be charged with respect to any payment made within five (5) business days after its due date.

c. All payments required by this Agreement (including rent, ticket surcharge or user

fees, Catering Fees described in Section 8 below, and any and all other payments and expenses), shall be remitted to the SMG, 300 West Water Street, Jacksonville, Florida 32202.

d. Commencing on October 1, 2021 and continuing each year thereafter for the term of this Agreement, all rental fees shall be increased by three percent (3%) over the rental fees of the preceding year. For purposes of clarity, calculation of the three percent (3%) annual rental fees increase shall be calculated on the full value of the rental fees of the prior year, exclusive of any rent abatement that may be authorized by Section 5(e) below.

e. Commencing with the October 1, 2021 through September 30, 2022 time frame, and for each year of the term thereafter, Tenant shall be eligible for an annual rent abatement in the amounts as set forth below, provided, however, that annual single ticket sales for such year exceed the following thresholds:

- (i) 27,000 paid single tickets = \$3,000 rent abatement
- (ii) 30,000 paid single tickets = \$6,000 rent abatement
- (iii) 33,000 paid single tickets = \$9,000 rent abatement.

The calculation for annual ticket sales shall be made on an annual basis, for ticket sales occurring from October 1 through September 30 of each year of this Agreement, commencing October 1, 2021. For example, for the time frame commencing October 1, 2021 and concluding September 30, 2022, in the event Tenant sold 31,000 single tickets (excluding all season ticket package sales), Tenant would be eligible for a one-time annual rental abatement of \$6,000.00, to be applied in equal \$3,000 monthly reductions over the following two-month period. For purposes of clarity, the rent abatement set forth in this Section shall be calculated utilizing all applicable ticketing agencies, and the maximum rent abatement per month shall be \$3,000.00.

6. COMPLIMENTARY TICKETS.

Subject to any performer contractual requirements, Tenant shall allocate to Landlord twenty (20) tickets, or such other number as mutually agreed to by Tenant and Landlord, to each of Tenant's events at the Facility, which tickets may be used or distributed by Landlord in its sole discretion without charge to Landlord of any kind ("**Complimentary Tickets**"). The Complimentary Tickets shall not count as a paid single ticket for purposes of calculating the annual rent abatement in Section 5 above. Landlord shall use commercially reasonable efforts to return any unused Complimentary Tickets to Tenant twenty-four (24) hours prior to the applicable event, and Tenant may then sell such tickets in its ordinary course of business. Tenant shall use its best efforts to ensure all performer agreements comply with this Section.

7. TICKET SURCHARGE.

a. Pursuant to the requirements of Section 123.102(e), *Ordinance Code* (as amended from time to time), Tenant shall collect (or cause the collection by its ticket vendors) the per ticket "Ticket User Fee" on each ticket sold for each event in the Facility. Notwithstanding the foregoing, tickets purchased through a season ticket package, consisting of tickets to

multiple performances, will be subject to a single Ticket User Fee. Notwithstanding the terms and provisions of Section 123.102(e), *Ordinance Code*, and Tenant's organization as a non-profit corporation, the collection of the Ticket User Fee shall not be waived by Landlord.

b. Tenant shall remit the Ticket User Fee to the Facility Manager at the address set forth in Section 5.c. above and on no less than a monthly basis (and if no fee is due, then Tenant shall send a written notice to the Facility Manager noting the same).

c. On March 31 of each year, Tenant shall provide to the Landlord an attestation examination report certified to Tenant and performed by an Independent Certified Public Accountant in conformity with the Attestation Standards of the American Institute of Certified Public Accountants (AICPA) relating to the prior fiscal year. The examination shall include, at a minimum, a review of the internal controls, compliance with this Agreement, and amounts due and payable to the Landlord for the following matters: (i) all Ticket User Fees; (ii) all other amounts due from Tenant to the Landlord as set forth in this Agreement. Landlord's Council Auditor's Office shall have the right to audit the above-named revenue sources and to review the work papers of the Independent Certified Public Accountant, and Landlord may require that certain reports and schedules be presented in a format prescribed by it.

d. As a condition precedent to the effectiveness of this Agreement, Tenant shall have paid in full to the Facility Manager all prior Ticket User Fees and all prior sums due and payable to the Landlord.

8. TAXES.

In the event that the Premises or leasehold under this Agreement becomes subject to federal, state or local taxes of whatever kind or nature, Tenant shall be solely responsible for the payment of any and all such taxes at no cost or expense to Landlord.

9. USE OF PREMISES BY TENANT.

Tenant shall continuously occupy and use the Premises only for the permitted uses described in this Section 9 and shall comply with all laws relating to the use, condition, access to, and occupancy of the Premises. Tenant shall not commit waste, overload the Facility's structure or systems, or subject the Premises to use that would damage the Premises. The Premises shall not be used for any use which is disreputable, creates extraordinary fire hazards, or results in an increased rate of insurance on the Facility or its contents, or for the storage of any Hazardous Materials (other than typical supplies for the permitted use) and then only in compliance with all laws). Tenant shall conduct its business so as not to create any nuisance or unreasonably interfere with other occupants, tenants, users, licensees, invitees, or Landlord or its Facility Manager in its management of the Facility.

a. Tenant shall have the right to use the Office Space and Additional Space solely for the purposes as set forth in Section 3 hereof only and no other use is permitted without the prior written consent of Landlord, which consent may be withheld for any reason or no reason in the sole discretion of Landlord.

b. Tenant shall have a license to use the remaining portions of the Facility as follows:

(i) Rehearsals and Performances. Landlord, through its Facility Manager shall provide Tenant priority scheduling of two hundred (200) rehearsal and performance dates per Agreement year in the Facility, to be divided as follows: (y) One-hundred ninety (190) rehearsal and performance dates per Agreement year in the “Concert Hall,” (provided, however, that Tenant may substitute up to twenty [20] dates per Agreement Year (as defined below) in the 600-seat “Little Theater” for the Concert Hall; and (z) fifteen (15) rehearsal and performance dates per Agreement year in the “Main Auditorium”).

Approximately one (1) year before the start of the next Agreement Year, the Tenant shall provide the Facility Manager all of its aggregate “holds” (being defined as the Tenant’s tentative reservations) for performances and rehearsals in the Concert Hall, and its “holds” for the “Nutcracker” in the Main Auditorium and in the Little Theater. These “holds” shall last for six (6) months from the date of the Tenant’s initial request, and during this six (6) month period, the Facility Manager shall notify the Tenant when a third party has made a bona fide offer for any of the “holds” requested by Tenant. The Tenant shall respond in writing to the Facility Manager within two (2) business days whether it releases the “hold” date(s). Failure of Tenant to respond to the Facility Manager within the required time frame shall be deemed that Tenant has released the “hold” date(s).

At the conclusion of the six (6) month period, the Tenant and the Facility Manager shall conduct a “final clearance meeting” confirming or releasing all of Tenant’s remaining “hold” date(s). Nothing herein shall abate or reduce the Tenant’s rental as set forth in Section 5 above; however, if Tenant schedules more than two hundred (200) rehearsals and performances as set forth above, then Tenant shall remit to the Facility Manager the then-existing rental and expenses rates for such additional use of the Facility.

(ii) Patrons’ Galleries. Only in connection with Tenant’s concert performances, Tenant may use that area of the Facility designated as the Patrons’ Galleries for receptions and similar functions without the payment of any additional rental fee except for actual out-of-pocket expenses incurred by Landlord or its Facility Manager related to Tenant’s use of the Patrons’ Galleries. Tenant’s scheduling of the Patrons’ Galleries shall be according to the same methods and terms as set forth in subsection (i) above.

(iii) Volunteers and Employees. Tenant may implement a volunteer usher corps and use volunteer ticket takers for its performances; provided, however, that the Tenant’s indemnities set forth in Section 15 hereof shall include and be applicable to any actions of said volunteer(s). Notwithstanding the foregoing, Tenant shall employ a minimum of two (2) professional supervisors from the Facility Manager to supervise

Tenant's volunteer corps for every Tenant event. Tenant shall be liable and hold the City of Jacksonville and Facility Manager harmless from and against any and all legal and financial liability associated with Tenant's employees and volunteer corps, including but not limited to payments, expenses, taxes, FICA, employee benefits, workers' compensation, insurance, minimum wage and fair labor standards, overtime, collective bargaining and union matters, and any other employment matter. Tenant shall be solely responsible for negotiating with any collective bargaining units or unions associated with Tenant's use of the Facility (including but not limited to IATSE).

(iv) Event Catering. Tenant may employ a food and beverage caterer of its choice for events for ninety-nine (99) guests or less, and Tenant shall be responsible for compliance with all legal requirements (including but not limited to compliance with all beverage laws and coordinating the use of the appropriate beverage license) and all event costs associated with said catering. For events with more than ninety-nine (99) guests, Tenant shall use the caterer designated by the Facility Manager and pay the then-prevailing Facility rates, or Tenant may elect to employ a food and beverage manager of its choice (although Landlord's preference is for Tenant to use the caterer as designated by the Facility Manager), in which event Tenant shall be responsible for compliance with all legal requirements, including but not limited to beverage laws and coordinating the use of the appropriate beverage license, and all event costs associated with said catering. Prior to such event, Tenant shall provide additional proof of insurance for host beverage/liquor coverage in the type and amount as required by the City's Risk Management Division (and naming the Landlord and the Facility Manager as additional insureds) for similar events conducted at public assembly facilities.

10. NAMING RIGHTS AND SPONSORSHIP AGREEMENTS.

During the term of this Agreement, Tenant shall have the right to enter into naming rights and/or sponsorship agreements for the interior portions and components of the Facility (including seats) (collectively, the "**Interior Naming Rights**") and to retain all revenues therefrom, on such terms and conditions as mutually agreed by Tenant and any naming rights sponsor, subject to the prior review and written approval of Landlord, with such approval not to be unreasonably withheld, conditioned or delayed. Any such agreements in connection with the Interior Naming Rights shall contain such indemnification and insurance in favor of Landlord as required by Landlord in its reasonable discretion. Tenant agrees to indemnify, hold harmless and defend Landlord from any and all claims, actions, losses, and damages relating to Landlord's release of the Interior Naming Rights to Tenant as set forth in this Section. Landlord retains and shall have the sole right to sell the naming and/or sponsorship rights as to the entire Facility (the "**Facility Naming Rights**"), which shall include those rights and inventories within the interior of the Facility as are reasonable and necessary to attract a Facility Naming Rights sponsor. Landlord shall retain all revenues in connection with the Facility Naming Rights. Notwithstanding the foregoing, Tenant has the perpetual right to name the Pipe Organ pursuant to the terms of a prior agreement. Within ten (10) days of full execution of this Agreement, Tenant shall provide copies of all currently valid naming rights, donor, or sponsorship agreements to which it is a party for all or any portion of the Facility. Landlord's grant of the Interior Naming Rights to Tenant is in recognition of Tenant's maintenance obligations for the Premises as set forth in

Paragraph 14 below, and it is Landlord's expectation that proceeds derived from the Interior Naming Rights shall be applied to those costs incurred by Tenant in connection with Paragraph 14 below.

11. HAZARDOUS SUBSTANCES.

a. Tenant covenants and agrees that it shall not cause or permit any Hazardous Substances (the "**Hazardous Substances**" as hereinafter defined) to be installed, placed, stored, held, located, released or disposed of in, on, at, or under the Premises, or the Facility within which the Premises are located without Landlord's prior written consent, which consent may be unreasonably, and in Landlord's sole discretion, withheld. Tenant further covenants and agrees to indemnify Landlord for any loss, cost, damage, liability or expense (including without limitation, attorneys' fees and other costs of legal representation) that Landlord might ever incur because of Tenant's failure to comply with the provisions of the immediately preceding sentence. This indemnification is to survive the expiration or other termination of this Agreement.

b. For the purposes of this Section, Hazardous Substances shall mean and include all those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the United States Environmental Protection Agency (the "**EPA**") or any other substance, element, material or compound defined or restricted as a hazardous, toxic, radioactive or dangerous substance, material or waste by the EPA or by any other ordinance, statute, law, code, or regulation of any federal, state or local governmental entity or any agency, department or other subdivision thereof, whether now or later enacted, issued, or promulgated.

12. CONDITION OF PREMISES.

Tenant accepts the Premises in its "AS IS, WHERE IS" condition, and Landlord has made no representation or warranty of any kind or nature, express or implied, in connection with the condition of the Premises or its fitness for Tenant's intended uses, (including, without limitation, the physical condition of the Premises and the improvements thereon, or compliance with any federal, state or local law, statute, rule or regulation now or hereafter in effect). Landlord shall not be required to perform any tenant finish or other work for the Premises, or to provide Tenant any tenant finish allowance, rent credit, or other allowance or inducement with respect to the Premises.

13. ALTERATIONS.

a. No alterations or improvements shall be made by Tenant in and to the Premises during the term of this Agreement without first having obtained the written consent of the Landlord, which may be withheld for any reason or no reason, in Landlord's sole discretion. Any approved alterations shall be made by Tenant, at Tenant's sole cost and expense. No abatement or reduction of rent shall be made by Landlord for the additional improvements or alterations made by Tenant.

b. Tenant shall have the option to remove any or all of said alterations or improvements at the termination of the term of this Agreement, provided the Premises are returned to Landlord at the expiration of the term without structural damage, less ordinary wear and tear and unavoidable casualties. Tenant shall have no right to remove alterations or improvements which are incorporated into the structure of the Facility and are a permanent part thereof.

14. MAINTENANCE AND REPAIRS.

a. With respect to the Premises, Tenant shall provide for interior maintenance and repairs in accordance with generally accepted good practices, including repainting, the replacement of worn or damaged wall coverings, woodwork, carpet and flooring, and repairs or replacement of Landlord's interior equipment as may be necessary due to normal usage. Tenant shall keep the Premises and that part of the Facility common areas which it uses, clean and sanitary; use and operate the Premises and the Facility common areas in a reasonable manner (including all electrical [except those elements set forth in Paragraph 14(c) below, which shall be the responsibility of Landlord], plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators); and will not destroy, deface, damage, impair, or remove any part of the Premises, common areas, or property therein belonging to the Landlord nor permit any person to do so; and with the exception of normal wear and tear and unavoidable casualties keep the Premises in as good a condition as on the date of occupancy. Janitorial services shall be provided by the Tenant.

b. Landlord shall maintain and keep in repair the exterior of the Premises during the term of this Agreement and shall be responsible for maintenance of all structural components including roofs, porches, doors, and exterior walls, for the replacement of all windows broken or damaged in the Premises, except such breakage or damage caused to the exterior of the Premises by Tenant, its officers, agents, invitees, guests or employees. The temperature of the Premises shall be maintained between a range of 68 and 85 degrees Fahrenheit (the "**Temperature Range**"). If the temperature of the Premises should fall outside of the Temperature Range due to the actions or neglect of Landlord, after notification to Landlord by Tenant, Landlord shall use commercially reasonable efforts to restore the temperature of the Premises to the Temperature Range. If the temperature is not restored to the Temperature Range and Tenant incurs a financial penalty or loss under the Musician's Union Contract as a result thereof, Landlord shall be responsible for such loss and shall reimburse Tenant for the same, subject to City Council approval and lawfully appropriated funds therefor.

c. Landlord shall be responsible for replacement of all bulbs, lamps, tubes and starters used in ceiling light fixtures for the purpose of furnishing lighting.

d. Landlord, as the owner of that certain Casavant Opus 553 pipe organ (the "**Pipe Organ**") pursuant to the Tenant's prior conveyance to the Landlord according to the terms of a prior agreement, is responsible for the maintenance and repair of the same (excepting any tuning required prior to any performances, and excepting any maintenance or repair necessitated by Tenant's damage or negligent use of the same). Landlord shall have the sole right to determine when the Pipe Organ can no longer be feasibly repaired and may replace

the Pipe Organ with replacement equipment at Landlord's election (whereupon the Pipe Organ will be thereafter surplused according to the then-legal requirements of the Landlord pursuant to its *Ordinance Code*). Notwithstanding the foregoing, Landlord shall endeavor, but is not hereby contractually obligated, to utilize a third-party consultant to assist Landlord in determining when the Pipe Organ can no longer be feasibly repaired.

15. INDEMNITY.

Tenant and its subsidiaries (collectively, the "**Indemnifying Parties**"), shall (and shall require all subcontractors any tier to) hold harmless, indemnify, and defend the City of Jacksonville and the City's members, officers, officials, employees and agents (collectively, the "**Indemnified Parties**") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature (including, but not limited to, court, investigation and defense costs, and reasonable expert and attorney's fees), which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

a. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Agreement, operations, services or work performed hereunder; and

b. Violation of Laws Liability, arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, rules or regulations, by the Indemnifying Parties or those under their control; and

c. Breach of Representations, Warranties and Obligations, arising directly or indirectly out of any breach of any representation, warranty, covenant or obligation set forth in the Agreement or made by the Indemnifying Parties in connection with the Agreement or in any certificate, document, writing or other instrument delivered by the Indemnifying Party; and

d. to the extent this Agreement contemplates environmental exposures, Environmental Liability, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

e. to the extent this Agreement contemplates intellectual property exposures, Intellectual Property Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees), arising directly or indirectly out of any allegation that the services and/or performances of Tenant or Tenant's subsidiaries contemplated hereunder (collectively, the "**Services**"), any product generated by the Services, or any part of the Services, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right and will pay all costs (including, but not limited to attorney's fees and court costs),

damages, charges and expenses charged to the Indemnified Parties by reason thereof. If in any suit or proceeding, the Services, or any product generated by the Services, or any part of the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days for the Indemnified Parties a license, authorizing the continued use of the disputed part of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the Indemnified Parties, so that the Service or product is non-infringing.

If an Indemnified Party exercises its rights under this Agreement, the Indemnified Party will (1) provide reasonable notice to Indemnifying Parties of the applicable claim or liability, and (2) allow Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect and any term which offends Section 725.06 or 725.08 of the Florida Statutes may, subject to the sole discretion of the Indemnified Party, be modified to comply with said statutes.

16. INSURANCE REQUIREMENTS OF TENANT.

Without limiting its liability under this Agreement, Tenant shall at all times during the term of this Agreement procure prior to commencement of this Agreement and maintain at its sole expense during the life of this Agreement (and Tenant shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below, and at the time of execution of this Agreement provide a certificate with applicable endorsements on a form that is acceptable to the City's Risk Management Division evidencing the following required coverages to the City:

<u>Schedule</u>	<u>Limits</u>
Workers' Compensation	Florida Statutory Coverage
Employers' Liability	\$ 100,000 Each Accident
	\$ 500,000 Disease Policy Limit
	\$ 100,000 Each Employee/Disease

This insurance shall cover Tenant (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI),

without any restrictive endorsements other than the Florida Employers' Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Completed Ops Aggregate
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by the City's Risk Management Division.

Automobile Liability	\$1,000,000	Each Occurrence – Bodily Injury and Property Damage Combined
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(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services.)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability	\$1,000,000	Per Claim and Aggregate
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(To the extent services or activities of a professional nature are provided by Tenant, and Risk Management determines the coverage is necessary.)

Such insurance shall be on a form acceptable to Landlord and shall cover for those sources of liability arising out of the rendering or failure to render the services required in this Agreement. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this Agreement and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Sexual Molestation Liability	\$1,000,000	Per Claim
	\$2,000,000	Aggregate

(To the extent children services or activities will be supervised in connection with this Agreement, Risk Management determines the coverage is necessary.)

**Property Insurance, Improvements, Materials, and Equipment
(Special Form - All Risk)**

**Limit shall be the total cost to replace the
property (Replacement Cost)**

(Tenant shall insure all Personal Property, Improvements, Materials, Equipment and during the term of the lease and shall provide coverages as requested by Landlord.)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard ISO Property Special Form and/or Inland Marine (when applicable) Form (ISO Form CP 1030) as filed for use in the State of Florida without any restrictive endorsements other than those approved by the City's Risk Management Division.

a. Tenant shall pay the City for all loss, destruction, or damage to the property of the City caused by Tenant's personnel or by any of its subcontractors or anyone else directly or indirectly employed by Tenant or any of its subcontractors in the performance of this Agreement.

b. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers, employees and agents.

c. Additional Insured. All insurance except Workers' Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and its members, officials, officers, employees and agents. Additional Insured for General Liability shall be in a form no more restrictive than CG2011 (and CG2010 from subcontractors of any tier and CG2037 (when applicable) and Automobile Liability CA2048; endorsements will be provided to, reviewed, and approved by the City's Risk Management Division prior to commencement of any work.

d. Tenant's Insurance Primary. The insurance provided by Tenant shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City and/or any City members, officials, officers, employees and agents.

e. Deductible or Self-Insured Retention Provisions. Except as authorized in this Agreement, the insurance maintained by Tenant shall apply on a first dollar basis without application of a self-insurance, deductible or self-insured retention. Except as authorized specifically in this Agreement, no self-insurance, deductible, or self-insured retention for any required insurance provided by Tenant pursuant to this Agreement will be allowed. If there is any self-insurance, deductible or self-insured retention for any required insurance, Tenant shall be responsible for paying on behalf of the City (and any other person or organization Tenant has, in this Agreement, agreed to include as an insured for the required insurance) any self-insurance, deductible, or self-insured retention allowed under this paragraph. The City

will not be responsible for any self-insurance, deductibles or self-insured retentions in any insurance required under this Agreement.

f. Tenant's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Tenant or its subcontractors or sub-subcontractors, employees or agent to the City or others. Any remedy provided to the City or the City's members, officials or employees shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

g. No Waiver by the City Approval/Disapproval. Neither approval by the City nor the City's failure to disapprove the insurance furnished by Tenant shall relieve Tenant of Tenant's full responsibility to provide insurance as required under this Agreement.

h. Each policy shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. At the time of execution of this Agreement, Certificates of Insurance approved by the City's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to the City. Tenant shall provide an endorsement issued by the insurer to provide the Landlord thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event Tenant is unable to obtain such endorsement, Tenant agrees to provide the City the notice directly. Until such time as the insurance is no longer required to be maintained by Tenant, Tenant shall provide the City with renewal or replacement evidence of insurance with the above minimum requirements no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

i. Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to the City's Division of Insurance and Risk Management, if requested to do so by the City, Tenant shall, within thirty (30) days after receipt of a written request from the City, provide the City with a certified, complete copy of the policies of insurance providing the coverage required herein.

j. Anything to the contrary notwithstanding, the liabilities of Tenant under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval of, nor failure to disapprove, insurance furnished by Tenant shall relieve Tenant or its sub-contractors or sub-subcontractors from responsibility to provide insurance as required by the Agreement.

k. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.

17. FIRE AND CASUALTY.

If the Premises are damaged by fire or other casualty, Landlord may at Landlord's option and only to the extent that the insurance proceeds available to Landlord are adequate to fully pay the costs of such repair and restoration, repair the damage and restore the Premises (excluding Tenant's alterations, improvements and personalty) to their condition existing immediately prior to the occurrence of the casualty. If the Landlord does not elect to repair or rebuild, the Landlord may terminate this Agreement by giving written notice to Tenant within thirty (30) days of the occurrence of the casualty. If such repairs cannot be completed within a sixty (60) day time period starting on the day such damage occurs, or the insurance proceeds are insufficient to fully restore the Premises to the condition existing immediately prior to the occurrence of the casualty (excluding Tenant's alterations, improvements and personally) then Tenant, at its sole option, may, upon written notice to Landlord, terminate this Agreement. The rent shall abate from the date of the casualty in proportion to the impairment of the use that Tenant can reasonably make of the Premises until the Premises are restored or until the Agreement is terminated in accordance with this Section. Landlord shall not be liable, regardless of cause, for any inconvenience or interruption of the business of Tenant occasioned by fire or other casualty. Notwithstanding anything to the contrary in this Agreement, Landlord shall have no obligation to insure the Premises or the Facility of which the Premises are a part, or any portions thereof or any contents, property or other items located thereon or therein either presently or in the future.

18. UTILITIES.

a. Landlord will promptly pay all gas, water, sewer, garbage, power and electric light rates or charges which may become payable during the term of this Agreement for the gas, water, sewerage, garbage and electricity used by Tenant in the Premises.

b. Landlord shall maintain and keep in a state of repair all wiring, plumbing, and associated mechanical or electrical equipment of the Premises.

c. Landlord shall not be liable for any interruption or failure whatsoever in utility services, nor shall any such failure or interruption constitute an actual or constructive eviction of Tenant from the Premises or result in or give rise to any abatement in any rent reserved hereunder.

d. Tenant shall be responsible for the installation of and charges for any telephone or computer facilities used by Tenant in the Premises.

19. MECHANICS' LIENS.

Tenant hereby agrees to indemnify and defend Landlord against, and shall keep the Premises free from, all mechanics' liens and other such liens arising from any work performed, material furnished or obligations incurred by Tenant or at the direction of Tenant in connection with the Premises, and agrees to obtain the discharge of any lien which attaches as a result of such work immediately after such lien attaches or payment for the labor or material is due.

Notice is hereby given to all Tenant's contractors, subcontractors, materialmen or suppliers that Landlord is not liable for any labor or materials furnished to Tenant on credit and no mechanics or other liens shall attach to or affect Landlord's interest in the Premises as a result thereof. The indemnification set forth in this Section shall survive the expiration or other termination of this Agreement.

20. INJURY OR DAMAGE TO PROPERTY ON PREMISES.

All property of any kind that may be on the Premises during the continuance of this Agreement shall be at the sole risk of the Tenant, and except for any negligence of the Landlord, Landlord shall not be liable to Tenant or any other person for any injury, loss or damage to property or to any person on the Premises.

21. EXPIRATION OF TERM.

At the expiration of the term, Tenant will peaceably yield up to Landlord the Premises in good tenantable repair. It is understood and agreed between the parties that Tenant shall have the right to remove from the Premises all personal property of Tenant and all fixtures, machinery, equipment, appurtenances and appliances placed or installed on the Premises by it, provided Tenant restores the Premises to as good a state of repair as they were prior to the removal. If not sooner terminated as herein provided, this Agreement shall terminate at the end of the term of this Agreement without the necessity of notice from either Landlord or Tenant to terminate the same, Tenant hereby waiving notice to vacate the Premises and agreeing that Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of premises from a tenant holding over. The cost and expense of any repairs necessary to restore the condition of the Premises shall be borne by Tenant and immediately due and owing to Landlord.

22. SUBLETTING AND ASSIGNMENT.

Tenant shall not transfer, mortgage, pledge, assign or convey its interest in the Agreement or sublet the Premises or any part thereof.

23. WAIVER OF DEFAULTS.

The waiver by Landlord of any breach of this Agreement by Tenant shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

24. RIGHT OF LANDLORD TO INSPECT.

Landlord, at all reasonable times, may enter into and upon the Premises for the purpose of viewing the same and for the purpose of making any such repairs as they are required to make under the terms of this Agreement. Landlord shall retain ownership of the Premises at all times.

25. USE OF PREMISES BY LANDLORD.

Landlord shall have the right to use the Premises or any portion thereof, when said Premises or portion thereof are not being used by Tenant. Said use by Landlord shall be at no cost or expense to Landlord.

26. DEFAULTS AND REMEDIES.

a. The following shall be deemed to be events of default by Tenant under this Agreement: (1) Tenant shall fail to pay when due any installment of rent, the Ticket User Fees, the Catering Fee, or any other payment required pursuant to this Agreement; (2) Tenant shall abandon any substantial portion of the Premises; (3) Tenant files a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder; (4) Tenant makes a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; (5) Tenant shall do or permit to be done any act which results in a lien being filed against the Premises or the Facility; (6) the liquidation, termination, or dissolution of Tenant; (7) Tenant shall fail to provide the insurance to Landlord as required by this Agreement; or (8) Tenant shall be in default of any other term, provision or covenant of this Agreement, other than those specified in subparts (1) through (7), above, and such default is not cured within thirty (30) days after written notice thereof to Tenant. Notwithstanding the foregoing, if Tenant's default is failure to timely pay rent or any other sum due under this Agreement, then Tenant shall have ten (10) days to cure such default.

b. Upon the occurrence of any event of default set forth in this Agreement, Landlord shall have the option to pursue any one or more of the remedies set forth in this subsection b. without any additional notice or demand:

(i) Without declaring the Agreement terminated, Landlord may enter upon and take possession of the Premises, and remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages, and relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises; further, Tenant agrees to reimburse Landlord for any expenditures made by it in order to relet the Premises, including, but not limited to, remodeling and repair costs.

(ii) Without declaring the Agreement terminated, Landlord may enter upon the Premises, without being liable for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Agreement. Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Agreement; further, Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this Agreement caused by the negligence of Landlord or otherwise.

(iii) Landlord may terminate this Agreement, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises, and remove Tenant and any other person who may be occupying all or any part of the Premises without being liable for any claim for damages. Tenant agrees to pay on demand the amount of all loss and damage which Landlord may suffer for any reason due to the termination of this Agreement under this Section, including (without limitation) loss and damage due to the failure of Tenant to maintain and/or repair the Premises as required hereunder and/or due to the inability of Landlord to relet the Premises on satisfactory terms or otherwise.

(iv) Landlord may accelerate and sue for the entire balance of the unpaid rent for the remainder of the Term.

(v) Landlord may exercise all rights and remedies that are available under Florida and federal law.

(vi) Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated by Landlord only by written notice of such termination to Tenant given in accordance with this Agreement, and no other act or omission of Landlord shall be construed as a termination of this Agreement. All rights and remedies of Landlord herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercising of any other.

27. NOTICES.

All notices required to be served upon Tenant shall be served by registered or certified mail, return receipt requested, at 300 West Water Street, Suite 200, Jacksonville, Florida 32202, and all notices required to be served upon the Landlord shall be served by registered or certified mail, return receipt requested, addressed to SMG, 300 W. Water Street, Jacksonville, Florida 32202, with a copy to the City of Jacksonville, 117 West Duval Street, Suite 480, Jacksonville, Florida, 32202, Attn: Corporation Secretary.

28. DEFINITION OF TERMS.

a. The term "Agreement" shall also include any renewals, extensions or modifications of this Agreement.

b. The terms "Landlord" and "Tenant" shall include the successors and assigns of the parties hereto.

c. The singular shall include the plural and the plural shall include the singular whenever the context so requires or permits.

29. AUTHORITY TO TERMINATE.

The Mayor and Corporation Secretary shall have the authority to cancel this Agreement under any circumstances wherein Landlord has a legal right to cancel this Agreement in accordance with the provisions thereof.

30. CONTROLLING LAWS; VENUE; WAIVER OF JURY TRIAL.

The Laws of the State of Florida and the Ordinances and Codes of the City of Jacksonville shall apply to and be controlling in this Agreement. Venue for any action arising under this Agreement shall be exclusively in and for the courts of Duval County, Florida. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.**

31. TERMINATION OF AGREEMENT.

This Agreement shall terminate upon either: (i) failure of Tenant to comply with the terms of this Agreement (with Tenant being given an opportunity to cure via a thirty (30) day written notice by Landlord prior to said termination for any non-monetary default and ten (10) day written notice by Landlord prior to said termination for any monetary default); (ii) the expiration of the Term; or (iii) written notice by Landlord or Tenant pursuant to Section 17.

32. ASBESTOS.

Asbestos is an incombustible, chemical-resistant, fibrous mineral form of impure magnesium silicate often used for fire proofing, electrical insulation and building materials. When the materials containing asbestos are disturbed causing the asbestos to flake and the asbestos fibers to become airborne, the fibers can be inhaled causing serious health risks. In the event any renovations, changes, alterations or improvements are made to the Premises which would disturb or involve materials in the Premises containing asbestos, then all federal, state and local laws involving the removal of asbestos shall be followed.

33. RADON GAS.

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Landlord makes no representation to Tenant concerning the presence or absence of radon gas in the Premises at any time or in any quantity. By executing this Agreement, Tenant expressly releases Landlord from any loss, claim, liability, or damage now or hereafter arising from or relating to the presence at any time of such substances in the Premises.

34. NON-DISCRIMINATION.

Tenant shall not discriminate against any person on the basis of race, creed, color, sex, religion, national origin, age, marital status or disability in its use of the Premises.

35. LAWS, ORDINANCES AND REGULATIONS

Tenant, at its sole expense, hereby covenants and agrees to comply during the term of this Agreement, and any extensions or renewals thereof, with all applicable federal, state and local laws, rules, ordinances and regulations applicable to its use and occupation of the Premises. Tenant shall not make or permit any unlawful, improper or offensive use of the Premises or any use or occupancy thereof contrary to federal, state or local laws now or hereafter made. Tenant acknowledges that Landlord, its agents, representatives and governmental authorities, including, without limitation, Fire Marshals, Health Inspectors, and environmental regulatory authorities may inspect the Premises at any reasonable time and, in the event that Tenant is determined to be in noncompliance with this Section or any governmental laws, rules, regulations or ordinances, then Tenant shall promptly remedy such non-compliance, paying all costs, expenses, fees or fines associated therewith.

36. SECURITY.

Landlord makes no representations or warranties with respect to crime in the area, undertakes no duty to protect against criminal acts and shall not be liable for any injury, wrongful death or property damage arising from any criminal acts. Landlord may, from time to time, employ security personnel and equipment, however, such personnel and equipment are only for the protection of Landlord's property. Landlord reserves the right, in its sole discretion, to start, alter or terminate any such security services without notice. Tenant is urged to provide security for its invitees, its own personnel, and property as it deems necessary, and Tenant is urged to obtain insurance to protect against criminal acts.

37. TIME IS OF THE ESSENCE.

Time is of the essence regarding all performance under this Agreement.

38. SEVERABILITY.

If any term, covenant, condition or provision of this License, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this License, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

39. RELATIONSHIP OF PARTIES.

Nothing herein contained shall be construed as creating any relationship between the parties other than the relationship of landlord and tenant, nor cause either party to be responsible in any way for the acts, debts or obligations of the other.

40. THIRD PARTY BENEFICIARIES.

Nothing herein express or implied is intended or shall be construed to confer upon any entity other than the Landlord and Tenant any right, remedy or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole benefit of the Landlord and Tenant.

41. BROKERAGE.

Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Agreement.

42. ENTIRE AGREEMENT.

This Agreement, including all exhibits hereto, each of which is incorporated into this Agreement, constitutes the entire agreement between the parties hereto and no other representations, warranties, or agreements, whether written or oral, shall be binding on either of the parties. This Agreement may not be amended, modified or supplemented unless and except by an instrument in writing signed by both parties.

43. APPROPRIATION.

Notwithstanding anything herein to the contrary, the obligations of Landlord under this Agreement are subject to approval by the City Council of the City of Jacksonville, and the availability of funds lawfully appropriated annually for its purposes by the City Council. If funds are not available this Agreement may be canceled without penalty by Landlord by giving written notice of such cancellation. Such notice shall be signed by the Mayor and Corporation Secretary of City and be delivered to Tenant.

[Remainder of page left intentionally blank; signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement for the purposes herein expressed on the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE, FLORIDA

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

FORM APPROVED:

By: _____
Office of General Counsel

GC-#1432929-v4A-Jacksonville_Symphony_Lease_(2021-2026).doc

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Agreement. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Agreement.

Director of Finance
City Contract # _____

WITNESSES:

**JACKSONVILLE SYMPHONY
ASSOCIATION, INC.**

Print Name: _____

By: _____
Steven Libman, President/CEO

Print Name: _____

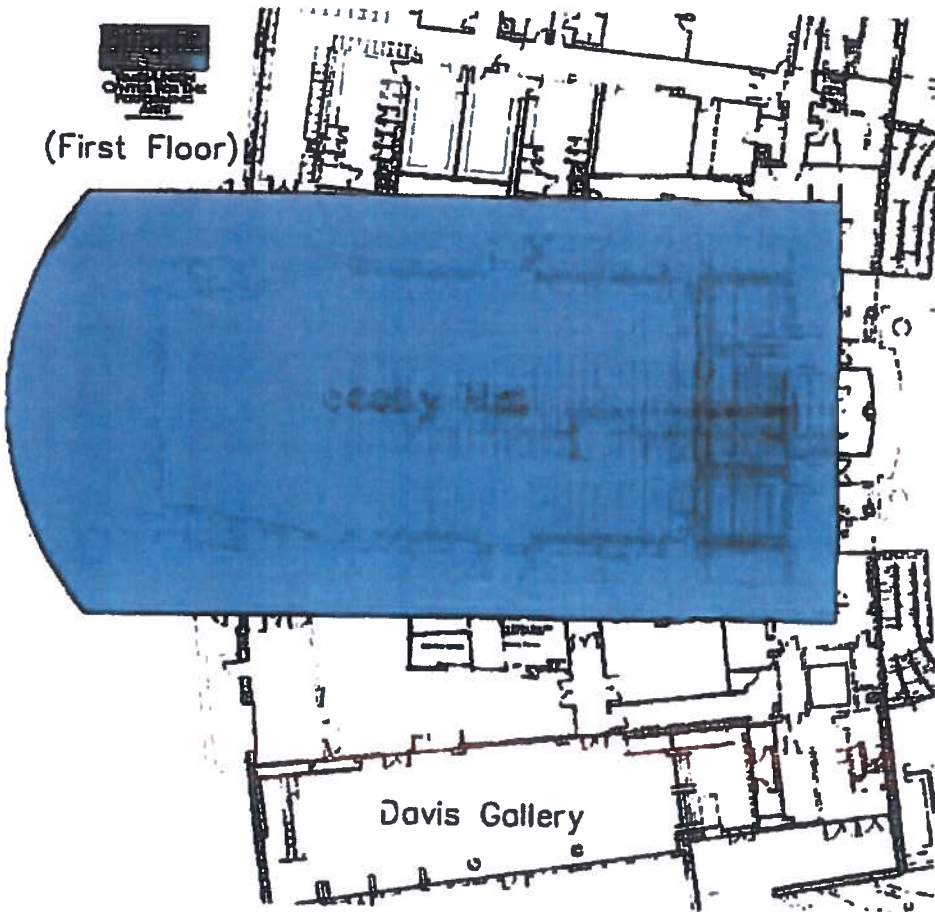
EXHIBIT A-1 and A-2

PREMISES

[See attached.]

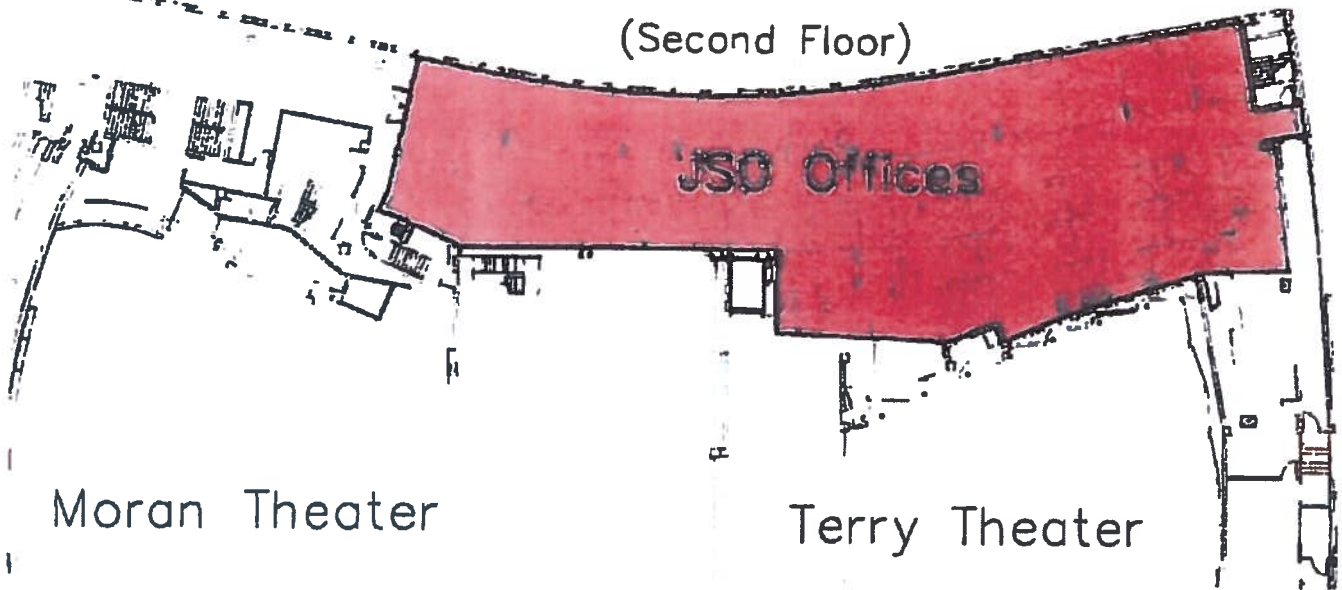
EXHIBIT A-1
PAGE 1 OF 2

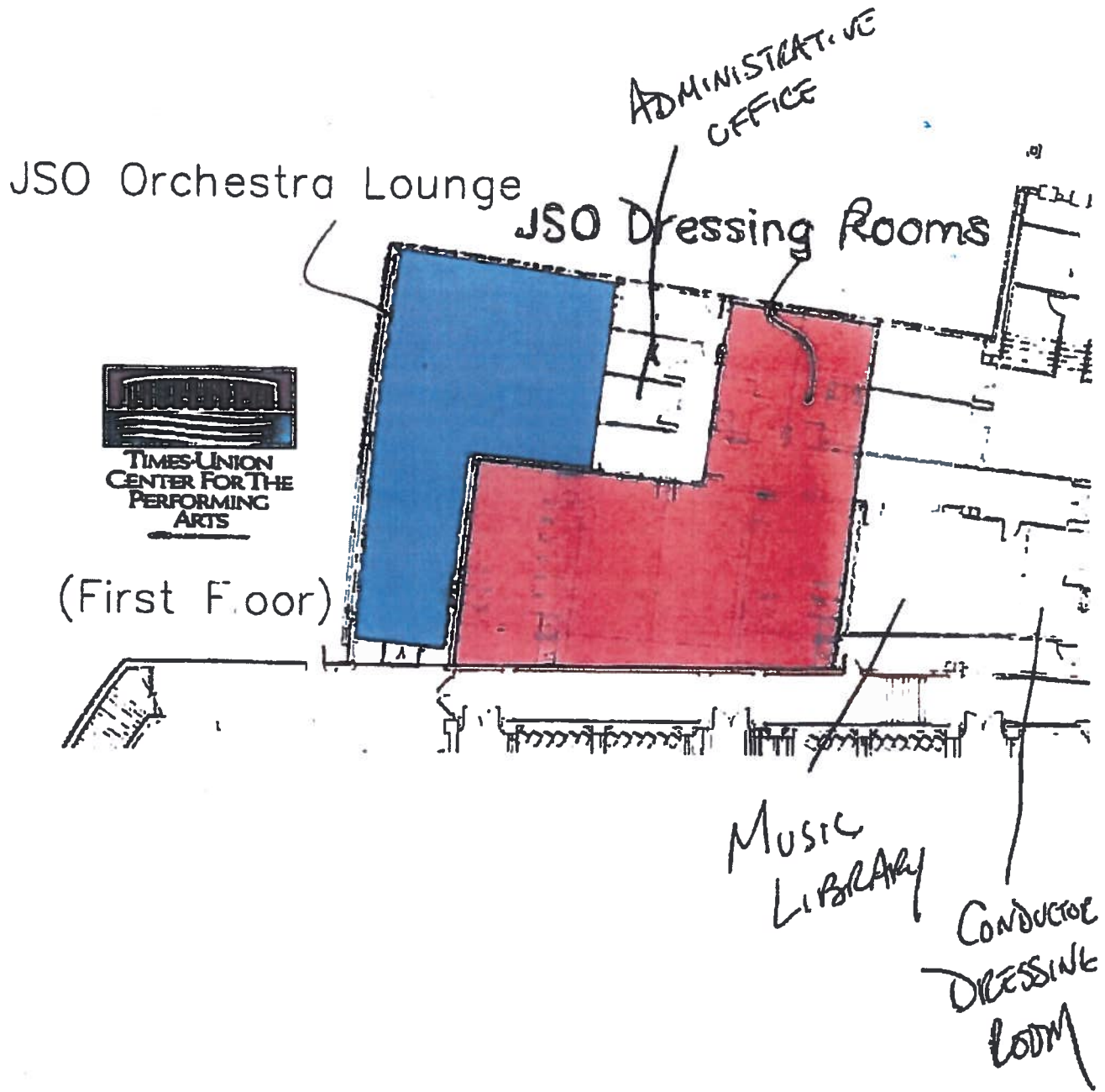
(First Floor)





(Second Floor)

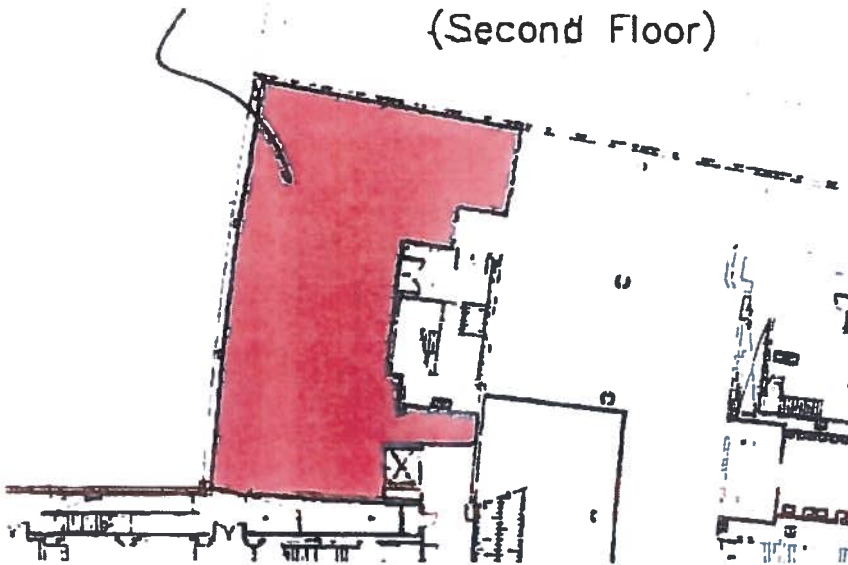




Carzo's Room
Rehearsal Area



(Second Floor)





TIMES-UNION
CENTER FOR THE
PERFORMING
ARTS

(First Floor)
Ticket Booth

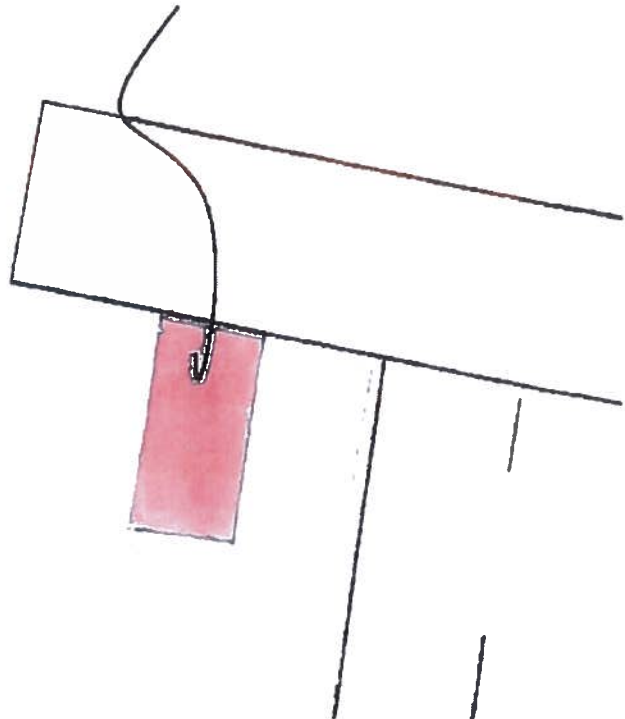


EXHIBIT B
RENT SCHEDULE

Premises Rental:

- a) Office Space \$1,975.02 monthly
- b) Jacoby Hall \$6,727.93 monthly
- c) Additional space \$ No rent
 - i. Ticket sales office
180 sq ft
 - ii. Conductor's dressing room
226 sq ft
 - iii. Music library
374 sq ft
 - iv. Administrative office (1st floor)
72 sq ft
 - v. Piano and timpani storage
448 sq ft
 - vi. Chorus Room
2,700 sq ft
 - vii. Basement Storage
Up to 1,000 sq ft

3% increase 10/1/2021	3% increase 10/1/2022	3% increase 10/1/2023	3% increase 10/1/2024	3% increase 10/1/2025
\$2,034.27	\$2,095.30	\$2,158.16	\$2,222.90	\$2,289.59
\$6,929.77	\$7,137.66	\$7,351.79	\$7,572.34	\$7,799.51