

SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT

THIS SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO THEATRES, INC., a California nonprofit corporation ("OPERATOR"), to be effective as of **March 1, 2010** (the "Effective Date"), upon execution by the parties and approval by the San Diego City Attorney, as follows:

1. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to OPERATOR and its employees, agents, and contractors to enter upon the following CITY-owned property (collectively, the "Civic Center Facilities," more particularly described in the attached **Exhibit A: Civic Center Facilities**):
 - a. The Civic Theatre ("Theatre"), located at 1110 Third Avenue, San Diego, California 92101, consisting of a theatre building that includes seating for 2,967 people;
 - b. The San Diego Community Concourse Plaza (the "Plaza Area"), located at 202 "C" Street, San Diego, California 92101, comprising approximately 26,000 square feet of exterior space; and
 - c. The following San Diego Community Concourse ("Concourse") facilities (collectively, the "Concourse Area"):
 - (1) **Ticketing:** Concourse ticketing office, ticketing management office, and the ticketing telephone operations rooms (i.e., Rooms 215 & 216), comprising approximately 1,600 square feet;
 - (2) **Concessions Support:** Concourse basement concessions support space, comprising approximately 700 square feet; and
 - (3) **Equipment Storage:** Concourse basement equipment storage area, comprising approximately 1,500 square feet of fenced-off space.
2. **Use of Civic Center Facilities.** OPERATOR may enter upon and use the Civic Center Facilities solely and exclusively for the purposes designated below. OPERATOR shall continuously occupy and use the Civic Center Facilities throughout the term of this Agreement.
 - a. **Theatre.** OPERATOR shall have exclusive use of the Theatre, non-exclusive use of the Plaza Area, and exclusive use of the Concourse Area for the purpose of managing, marketing, and operating the Theatre as a public assembly venue for performing arts, entertainment, education, community, convention, corporate, and civic activities, including the presentation and/or production of public, private, invitational, and ticketed events. Such events may be produced through OPERATOR'S renting or

licensing the Civic Center Facilities to individuals, organizations, or corporations, or through OPERATOR'S in-house production. OPERATOR may:

- (1) Occupy, control, manage, operate, and market the Theatre as a public assembly venue for performing arts, entertainment, educational, community, convention corporate, and civic events, and such events may be public, private, invitational or ticketed;
 - (2) Obtain and hold a license to sell and dispense alcoholic beverages during events held in the Theatre and operate concessions, in connection with events occurring in the Theatre, selling beverages and light refreshments, packaged food items, novelties, and articles primarily related to events held in the Theatre;
 - (3) Promulgate and administer management and operational policies for the Theatre;
 - (4) Retain, hire, and contract with consultants and other professionals or experts that OPERATOR, in its sole discretion, determines are necessary to perform its obligations herein;
 - (5) Enter into license and rental agreements, and other contracts with third parties to use the Theatre, including contracts for events occurring up to three (3) years beyond the term of this Agreement. If Operator receives written notice from City of a date (the "Stop Date") after which the Theatre's existence or accessibility will cease or be interrupted, Operator shall cease any further contracting beyond such Stop Date and shall advise City of any previously executed contracts which exist beyond the Stop Date. City shall provide a minimum of twenty-four (24) months notice of any such Stop Date;
 - (6) Provide other services and charge appropriate fees to licensees, attendees, and others in connection with their use of the Theatre; and
 - (7) Take all other actions and make such other decisions as may be required to perform the services required by this Agreement.
- b. Concessions. OPERATOR may operate a concession in the Theatre and the Plaza Area in conjunction with Theatre events. Such concession may sell to the general public beverages, including alcoholic beverages pursuant to a liquor license, and light refreshments, packaged food items, novelties, and articles primarily related to Theatre events, including without limitation recordings, broadcastings, and related articles and services.
- c. Plaza Area. OPERATOR shall have non-exclusive use of the Plaza Area for unimpeded ingress and egress, for use as an intermission audience gathering area, and for Theatre event-related activities. OPERATOR shall diligently coordinate with the operator of Golden Hall (i.e., CITY or CITY'S designee; "Golden Hall Operator"), and the Golden Hall Operator shall diligently coordinate with OPERATOR, regarding event

bookings to avoid scheduling conflicts. OPERATOR shall provide the Golden Hall Operator a minimum of three (3) months prior written notice of OPERATOR'S Civic Center Facilities event schedule. If OPERATOR and the Golden Hall Operator are unable to resolve a scheduling conflict, the conflict may be resolved by the Director of CITY'S Real Estate Assets Department (the "READ Director"), in his or her sole discretion, which decision shall be binding upon OPERATOR.

3. Event Parking Revenues. CITY shall pay to OPERATOR all Evan V. Jones Parkade ("Parkade") parking revenues solely generated from OPERATOR'S events held in the Civic Center Facilities, net of related costs such as cashier personnel. CITY anticipates the installation of new operational equipment within the Parkade that will enable more precise accounting of parking revenue sources. In advance of such installation, CITY shall advise OPERATOR of the procedures to be implemented to appropriately track, account for, and compensate OPERATOR for the parking revenues generated from OPERATOR'S events.
4. Parkade Passes. CITY shall provide to OPERATOR up to sixteen (16) monthly Parkade passes at a discounted rate of fifty percent (50%) of the regular rate.
5. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent, approval, or other discretionary act shall mean the written consent or approval of the READ Director, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the READ Director's reasonable discretion in a timely manner, unless otherwise expressly provided. As used herein, "READ Director" shall mean the person designated by the Mayor of San Diego to manage CITY'S Real Estate Assets Department. If no such person has been so designated at a time when this Agreement provides for READ Director's consent, approval, or other discretionary determination, then the determination shall be made by the Mayor or his or her designee.
6. Term. The term of this Agreement ("Term") shall be three (3) years, commencing on the Effective Date.
7. Obligations upon Expiration or Termination. On the date of expiration or earlier termination of this Agreement, OPERATOR shall surrender possession of the Theatre to CITY. The parties shall negotiate an orderly plan of transition prior to the expiration of this Agreement to ensure the unobstructed availability of the Theatre for persons or entities who have signed written contracts for its use. The parties shall cooperate in the transition and neither party shall interfere with or impede in any manner the transfer of business records and information to enable the continued operation of the Theatre, or the protection and/or removal of OPERATOR'S personal property (including furniture, fixtures, and equipment, and business records) located in the Theatre.
8. Agreement Fees & Costs. Consideration to CITY for granting this Agreement shall be as follows; provided, however, any prepaid annual charges shall be subject to a pro-rata refund or credit to the account of the payor upon expiration or termination of this Agreement:

- a. Theatre Management & Operation. OPERATOR shall manage and operate the Theatre on CITY'S behalf as a public service, without a management fee, and without CITY funding. City shall not be required to pay OPERATOR for the services provided pursuant to this Agreement, nor shall OPERATOR be charged rent for its occupancy and use of the Civic Center Facilities, provided OPERATOR continues to perform the services set forth herein. OPERATOR shall retain the revenue generated from Theatre events and operations and use the same exclusively in connection with managing and operating the Theatre.
- b. Gas, Electric & Trash Collection Costs. CITY is currently billed for gas, electricity, and trash collection services used by all CITY-owned buildings in the San Diego Civic Center (the "Civic Center"), of which the Civic Center Facilities are a part. CITY shall pay all such billings. OPERATOR shall reimburse CITY for such costs as follows, which the parties agree is OPERATOR'S fair share of such costs:
- (1) Twelve and Fifteen One-Hundredths percent (12.15%) of Civic Center gas and electric costs; and
 - (2) Three Hundred Thirty-Four Dollars (\$334) per month for trash collection services.
- c. Water and Sewer Costs. CITY is currently billed for water and sewer services used by all CITY-owned buildings in the San Diego Civic Center (the "Civic Center"), of which the Civic Center Facilities are a part. CITY shall pay all such billings. OPERATOR acknowledges that its fair share of such services is eighteen percent (18%). OPERATOR shall pay to CITY One Thousand Four Hundred Dollars (\$1,400) per month for such water and sewer services (the "Water & Sewer Reimbursement"). At least 30 days prior to the end of each year during the Term, CITY shall deliver to OPERATOR an accounting of the actual, paid water and sewer billings for the most recent twelve-month period, together with an estimate of the water and sewer billings for the next year of the Term. The Water & Sewer Reimbursement shall then be adjusted to reflect such estimate. OPERATOR shall thereafter pay to CITY such adjusted Water & Sewer Reimbursement.
- d. Central Power Staff & Maintenance Costs.
- (1) Staffing Salaries. CITY shall reimburse OPERATOR for Eighty-Four and Seven-Tenths percent (84.7%) of the actual cost for salaries, benefits, and related expenses for the staffing of the Central Power Facilities ("Central Power"), located within the basement of the Concourse, which provides power, heating, ventilation, and air conditioning to CITY-owned buildings in the Civic Center, including the Theatre.
 - (2) Repair & Maintenance. OPERATOR shall pay for all routine repair and maintenance of the Central Power systems. CITY shall reimburse OPERATOR for Eighty-Eight and Seventy-Five One-Hundredths percent (88.75%) of the

actual costs of such repair and maintenance, including materials and supplies.

- (3) Staffing. CITY shall delineate staffing requirements and may, at its sole option and upon at least one hundred twenty (120) days prior written notice, assume responsibility for Central Power staff and maintenance.
- e. Property Insurance Costs. CITY shall obtain and maintain property insurance for fire, property, and extended coverage that includes coverage of the Civic Center Facilities. OPERATOR shall reimburse CITY for its pro-rata share of the cost to obtain and maintain such insurance, as determined by CITY.
- f. Place of Payments. Payments to CITY shall be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California 92101. Payments to OPERATOR shall be made by check payable to San Diego Theatres, Inc., and mailed to San Diego Theatres, Inc., 1100 Third Avenue, San Diego, California 92101.
- g. Late Payments. If an invoiced amount remains unpaid after forty-five (45) days past its due date, the paying party shall pay to the invoicing party a late-payment fee equal to the greater of ten percent (10%) of the unpaid amount and Twenty-Five Dollars (\$25), plus interest on the unpaid amount at the rate of twelve percent (12%) simple interest per annum from the due date until paid.
9. Annual Report. Within ninety (90) days after the last day of each of OPERATOR'S fiscal years during the Term, OPERATOR shall deliver to CITY a preliminary, non-audited financial report for that fiscal year. The financial report shall include an operating statement and report of net worth, and shall be in a form reasonably satisfactory to CITY and be subject to review and audit by the San Diego City Auditor. Within one hundred fifty (150) days after the last day of each of OPERATOR'S fiscal years during the Term, OPERATOR shall deliver to CITY audited financial reports, which shall consist of being a component of OPERATOR'S parent corporation's financial report.
10. Maintenance of the Civic Center Facilities. OPERATOR shall, at OPERATOR'S sole cost and expense and to CITY'S satisfaction, maintain the Civic Center Facilities in a decent, safe, healthy and sanitary condition at all times during the Term. Notwithstanding the foregoing, OPERATOR shall only be required to so maintain the Plaza Area in connection with its use thereof. CITY acknowledges that OPERATOR'S obligation under this section shall not include major capital repairs or improvements.
11. Inspection. CITY may, at all times upon prior notice, enter and inspect the Civic Center Facilities; provided, however, such inspection rights shall not include free admission to ticketed events on the Civic Center Facilities.
12. Improvements/Alterations. OPERATOR shall not construct any permanent improvements,

structures, or installations on the Civic Center Facilities, and shall not alter the Civic Center Facilities without CITY'S prior written consent. OPERATOR shall not make any major structural or architectural design alterations to approved improvements, structures or installations on the Civic Center Facilities without CITY'S prior written consent, which may not be unreasonably withheld. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Civic Center Facilities.

13. Ownership of Improvements and Personal Property.

- a. Improvements. Upon the expiration or earlier termination of this Agreement, any and all improvements, fixtures, structures, and installations or additions to the Civic Center Facilities now existing or constructed on the Civic Center Facilities by OPERATOR shall be deemed to be part of the Civic Center Facilities and shall become CITY'S property free of all liens and claims.
- b. Personal Property. OPERATOR shall remove its personal property prior to the expiration of this Agreement, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after a notice of termination. Any personal property which OPERATOR fails to remove as provided herein shall be deemed abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove such items at OPERATOR'S sole cost and expense. If any removal of such personal property by OPERATOR results in damage to the Civic Center Facilities, OPERATOR shall repair all such damage at its sole cost and expense. Notwithstanding the foregoing, if OPERATOR elects to dispose of any of its personal property used in its operations on the Civic Center Facilities, upon expiration or termination of this Agreement, CITY shall have the first right to acquire or purchase such personal property.

14. Insurance.

- a. Current Certificates. OPERATOR shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
 - (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000); OPERATOR may use an umbrella policy in addition to a primary policy to meet the required coverage limits;
 - (2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement. Coverage shall be written on *ISO form CA 00 01 03 06*, or a substitute form providing equivalent liability coverage; and

- (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of OPERATOR'S employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- b. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or other form acceptable to CITY], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- c. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- d. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- e. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of OPERATOR and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- f. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, OPERATOR shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. OPERATOR shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, OPERATOR shall immediately notify CITY and obtain replacement insurance as soon as possible.
- g. Modification. To assure protection from and against the kind and extent of risk existing with OPERATOR'S performance of this Agreement or with the Civic Center Facilities, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving OPERATOR ninety (90) days prior written notice. OPERATOR shall also obtain any additional insurance required by CITY for new improvements or CITY'S reasonable re-evaluation of risk levels related to this Agreement or the Civic Center Facilities.

- h. Accident Reports. OPERATOR shall immediately report to CITY any accident causing property damage or injury to persons and related to OPERATOR'S performance of this Agreement. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
 - i. Causes of Loss - Special Form Property Insurance. OPERATOR shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of OPERATOR'S insurable property related to this Agreement in an amount to cover 100 percent (100%) of the replacement cost. OPERATOR shall deliver to CITY a certificate of such insurance.
 - j. Failure to Comply. Notwithstanding any other provision of this Agreement to the contrary, if OPERATOR fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance at any time and from time to time as reasonably requested by CITY, CITY may terminate this Agreement after five (5) business days' prior written notice to OPERATOR. Upon such termination, OPERATOR shall immediately cease its use of the Civic Center Facilities and commence and diligently pursue the removal of its property from the Civic Center Facilities.
15. OPERATOR'S Indemnification Obligation. OPERATOR shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to OPERATOR'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement and OPERATOR'S use, development, or maintenance of the Civic Center Facilities, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that OPERATOR'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence, or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees.
16. CITY'S Indemnification Obligation. CITY shall protect, defend, indemnify, and hold OPERATOR, its officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY'S elected officials, officers, employees, agents, or contractors, which in any way arise out of or are in any manner directly or indirectly connected with this Agreement and CITY'S use, development, or maintenance of the Civic Center Facilities, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of OPERATOR, its officers, representatives, agents and employees..
17. No Discrimination. OPERATOR shall not discriminate in any manner against any person

or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in OPERATOR'S use of the Civic Center Facilities, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

18. Local Business and Employment. OPERATOR acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. OPERATOR will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. OPERATOR shall hire qualified local residents and firms whenever feasible.
19. Drug-free Workplace. OPERATOR shall comply with San Diego City Council Policy 100-17. OPERATOR shall adopt and enforce a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Civic Center Facilities and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) OPERATOR'S policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
20. No Nuisance. OPERATOR shall not use the Civic Center Facilities in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
21. No Assignment. OPERATOR shall not assign any rights granted by this Agreement or any interest herein without CITY'S prior written consent. CITY'S approval of any such proposed assignment may not be unreasonably withheld. Any assignment by operation of law shall automatically terminate this Agreement.
22. Signs. OPERATOR shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Civic Center Facilities,

OPERATOR shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at OPERATOR'S cost. No exterior signs shall be displayed without CITY'S prior written consent, except those marquee signs that currently exist on the Concourse and the Theatre's entry level, and banners that are hung on the Theatre's exterior to promote events occurring in the Theatre or related to OPERATOR'S business activities exclusively related to the Theatre.

23. Encumbrances. OPERATOR shall keep the Civic Center Facilities free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with OPERATOR'S obligations under this Agreement or OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities. OPERATOR shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Civic Center Facilities, including without limitation OPERATOR'S failure or the failure of any contractor or subcontractor hired by OPERATOR to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
24. Compliance with Laws. OPERATOR shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities.
25. Disabled Access Compliance. CITY, as owner of the Theatre, shall be responsible for structural compliance of the Civic Center Facilities in accordance with the Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations ("Building Code") as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities. CITY shall be responsible for the Civic Center Facilities' physical compliance with the ADA or Building Code. OPERATOR shall be responsible for ADA compliance of non-structural accommodations and services related to use of the Civic Center Facilities.
 - a. CITY shall indemnify, hold harmless and defend OPERATOR against any claims or causes of action related to physical compliance of the Civic Center Facilities pertaining to ADA or the Building Code.
 - b. OPERATOR shall indemnify, hold harmless and defend CITY against any claims or causes of action related to ADA compliance of non-structural accommodations and services related to use of the Civic Center Facilities.
26. Taxes. PERMTTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon OPERATOR by reason of the business or other OPERATOR activities related to the Civic Center Facilities, including any licenses or Agreements.

OPERATOR acknowledges that this Agreement may create a possessory interest subject to property taxation, and that OPERATOR may be subject to the payment of taxes levied on that interest. OPERATOR shall pay all such possessory interest taxes. OPERATOR'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.

27. Asbestos Disclosure. Portions of the structural components of the Civic Center Facilities contain asbestos. OPERATOR acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. OPERATOR shall disclose to the appropriate parties the existence of asbestos on the Civic Center Facilities, as required by Health and Safety Code Section 25915. CITY shall protect, defend, indemnify and hold OPERATOR harmless from any loss or claim which may result from the existence of asbestos on the Civic Center Facilities; provided, however, that CITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of OPERATOR or its officers, representatives, agents, contractors and employees.
28. Asbestos. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Civic Center Facilities made by OPERATOR. CITY may, at its discretion, station supervisory personnel at the work site to ensure that OPERATOR'S obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and, except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
29. Hazardous Substances. OPERATOR and OPERATOR'S agents and contractors shall not install, store, utilize, generate, sell or release hazardous or otherwise regulated substances in, on, under, or from the Civic Center Facilities ("hazardous substance activities") without CITY'S prior written consent. OPERATOR shall, prior to initiating any operations, obtain all required permits for its hazardous substance activities from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
 - a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the

Office of the City Clerk as Document 769704 and is hereby incorporated into this Agreement.

- b. Remediation. If OPERATOR or OPERATOR'S agents and contractors cause a release of a hazardous substance, or petroleum related substance or its chemical constituents in, on, under, or from the Civic Center Facilities in violation of applicable law, OPERATOR shall pay all costs of remediation and removal to the CITY'S satisfaction for reuse of the Civic Center Facilities at substantially the same level of use as existed prior to such release, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If OPERATOR or OPERATOR'S agents and contractors receive approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Civic Center Facilities, OPERATOR and OPERATOR'S agents and contractors shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Civic Center Facilities immediately upon or prior to the expiration or earlier termination of this Agreement. CITY reserves the right to conduct inspections of the Civic Center Facilities and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Civic Center Facilities. OPERATOR shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal which OPERATOR has failed to remove as required by this provision.
- d. Indemnity. OPERATOR'S indemnity in favor of CITY under Section 15 above shall apply to OPERATOR'S performance of its obligations under this Section 29. CITY'S indemnity in favor of OPERATOR under Section 16, above, shall apply to any hazardous substances activities undertaken by CITY, its employees, contractors and agents.
- e. Notice of Release. If OPERATOR knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Civic Center Facilities in violation of applicable law, OPERATOR shall, as soon as reasonably practicable, notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. OPERATOR shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If OPERATOR knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, OPERATOR shall take all actions necessary to alleviate the danger. OPERATOR shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Civic Center Facilities.
- f. Environmental Assessment. Upon reasonable cause to believe that OPERATOR'S use

of the Civic Center Facilities ("OPERATOR'S Operations"), resulted in any hazardous substance being released on, from or beneath the Civic Center Facilities in violation of applicable law, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at OPERATOR'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by OPERATOR'S Operations on, in, from or under the Civic Center Facilities, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Civic Center Facilities which would not permit substantially the same level of use as existed prior to such release, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to permit re-use at substantially the same level of use as existed prior to such release and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. OPERATOR shall cause, or if OPERATOR fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that re-use of the Civic Center Facilities at substantially the same level of use as existed prior to such release and compliance with environmental law and regulations are achieved, and OPERATOR shall pay all costs and expenses therefor.

- g. Sewer Line. CITY acknowledges that sewage leakage has occurred and may occur in the future at the connection of the sewer line from the Theatre to the main sewer line under "C" Street due to deterioration of the line. CITY shall use its best efforts to provide a quarterly clean-out and a semi-annual photographic inspection of the line, subject to available funding. City shall be solely responsible and liable for this condition and any and all claims, costs and expenses related to environmental liabilities directly resulting from this condition, excepting those claims, costs and expenses directly resulting from the established active negligence, sole negligence, or sole willful misconduct of OPERATOR, its officers, representatives, agents, contractors, or employees.

30. Waiver.

- a. CITY'S failure to insist upon the strict performance of any of OPERATOR'S obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Civic Center Facilities is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
- b. OPERATOR'S failure to insist upon the strict performance of any of CITY'S

obligations directly related to health, safety, or the public welfare under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. OPERATOR'S failure to discover a breach of any obligation of this Agreement directly related to health, safety, or the public welfare, or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but OPERATOR may at any and all times require the cure of any such breach.

31. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
32. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Agreement and OPERATOR'S occupancy, use, development, and maintenance of the Civic Center Facilities. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
33. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Agreement, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.
34. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or OPERATOR, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

With a copy to: SAN DIEGO CITY ATTORNEY
Real Property Section
1200 Third Avenue, Suite 1100
San Diego, CA 92101

SAN DIEGO THEATRES, INC.
Attention: President & CEO
1100 Third Avenue
San Diego, California 92101

35. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to OPERATOR'S occupancy, use,

development, or maintenance of the Civic Center Facilities. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities.

36. Default & Remedies. A party shall be in default of this Agreement if it either: (a) fails to make any payment required under this Agreement when due; or (b) breaches any of its obligations under this Agreement, other than those requiring payment, and fails to correct the breach within thirty (30) days following written notice thereof from the other party, or if not correctible within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the correction to completion. Upon a default, the non-defaulting party may: (x) terminate this Agreement; (y) enforce the provisions of this Agreement in law or in equity; and/or (z) seek compensatory damages. Each such remedy shall be distinct, separate, and cumulative.

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37. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

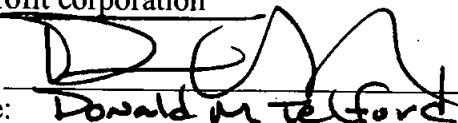
Date: 3/30/10

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: 3/29/2010

SAN DIEGO THEATRES, INC., a California nonprofit corporation

BY: 
Name: Donald McTelford
Title: President + CEO

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: 4/5/10

JAN I. GOLDSMITH, San Diego City Attorney

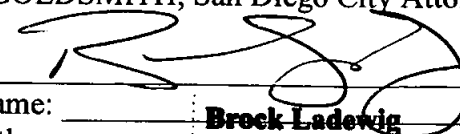
BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

Exhibit A: Civic Center Facilities

EXHIBIT A

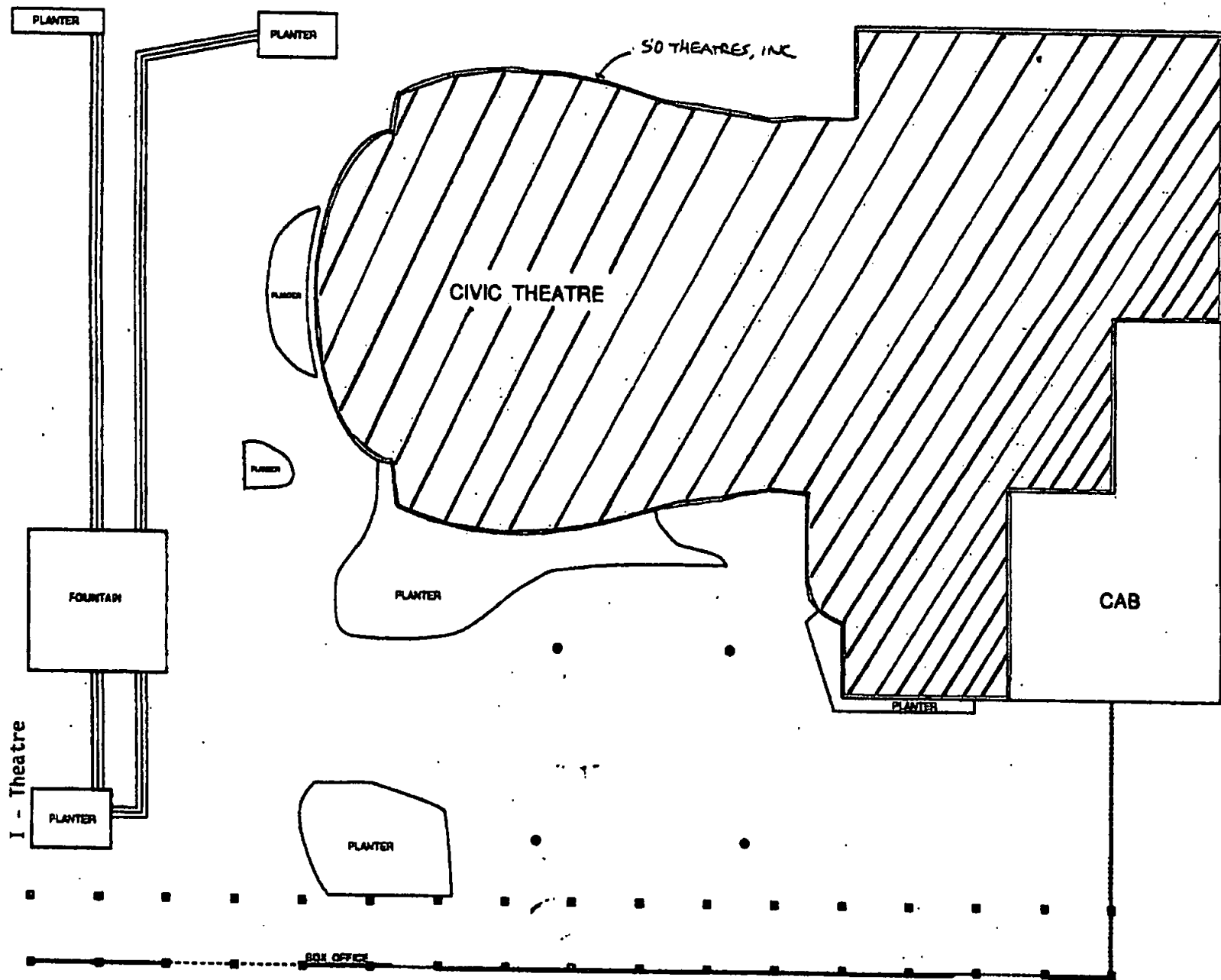
I – Theatre

II – Plaza Area

III – Concourse Area (First Floor Ticketing)

IV – Concourse Area (Second Floor Ticketing)

V – Concourse Area (Concessions Support & Equipment Storage)

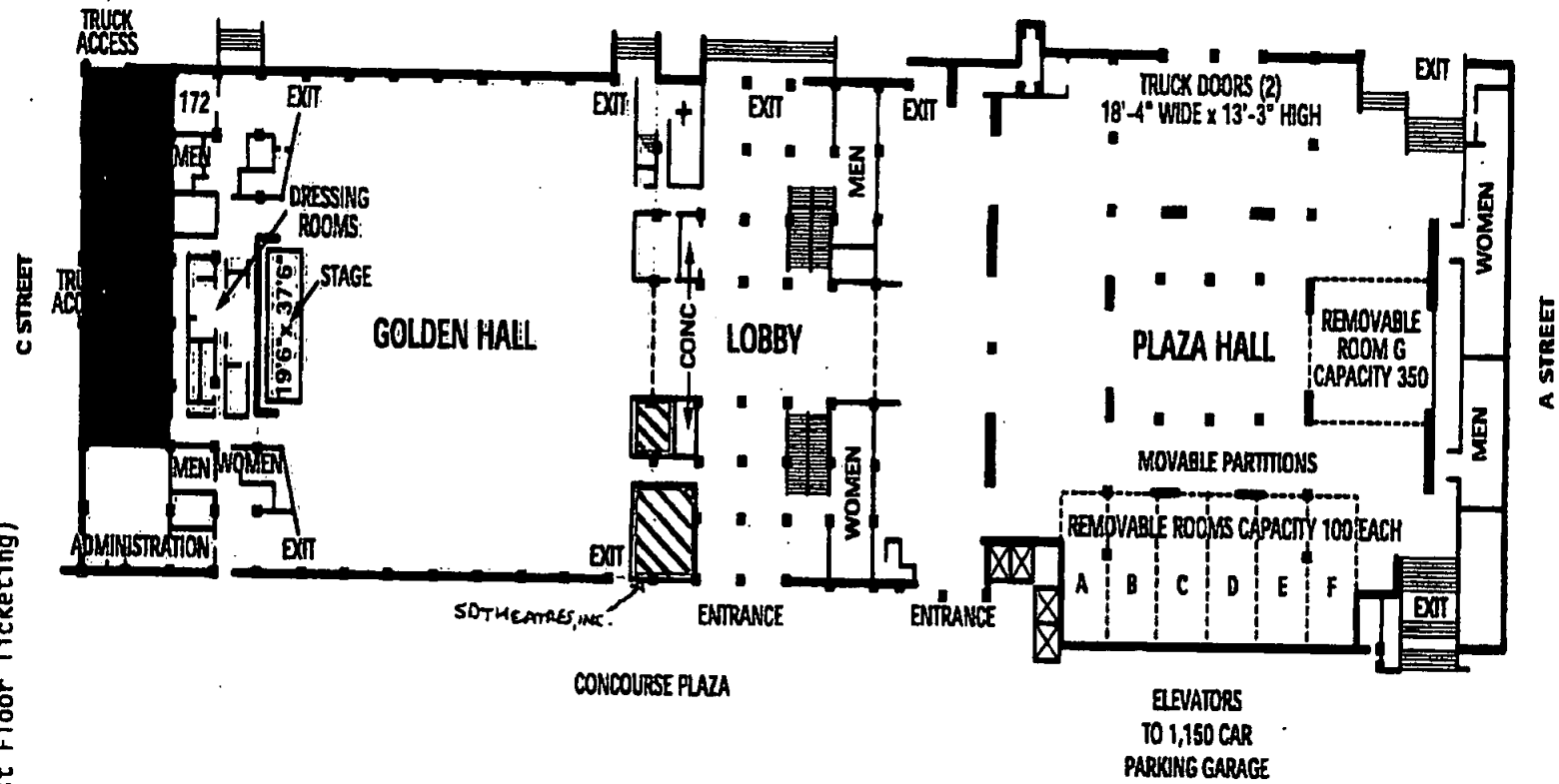


II - Plaza Area

26,000 sq.ft.

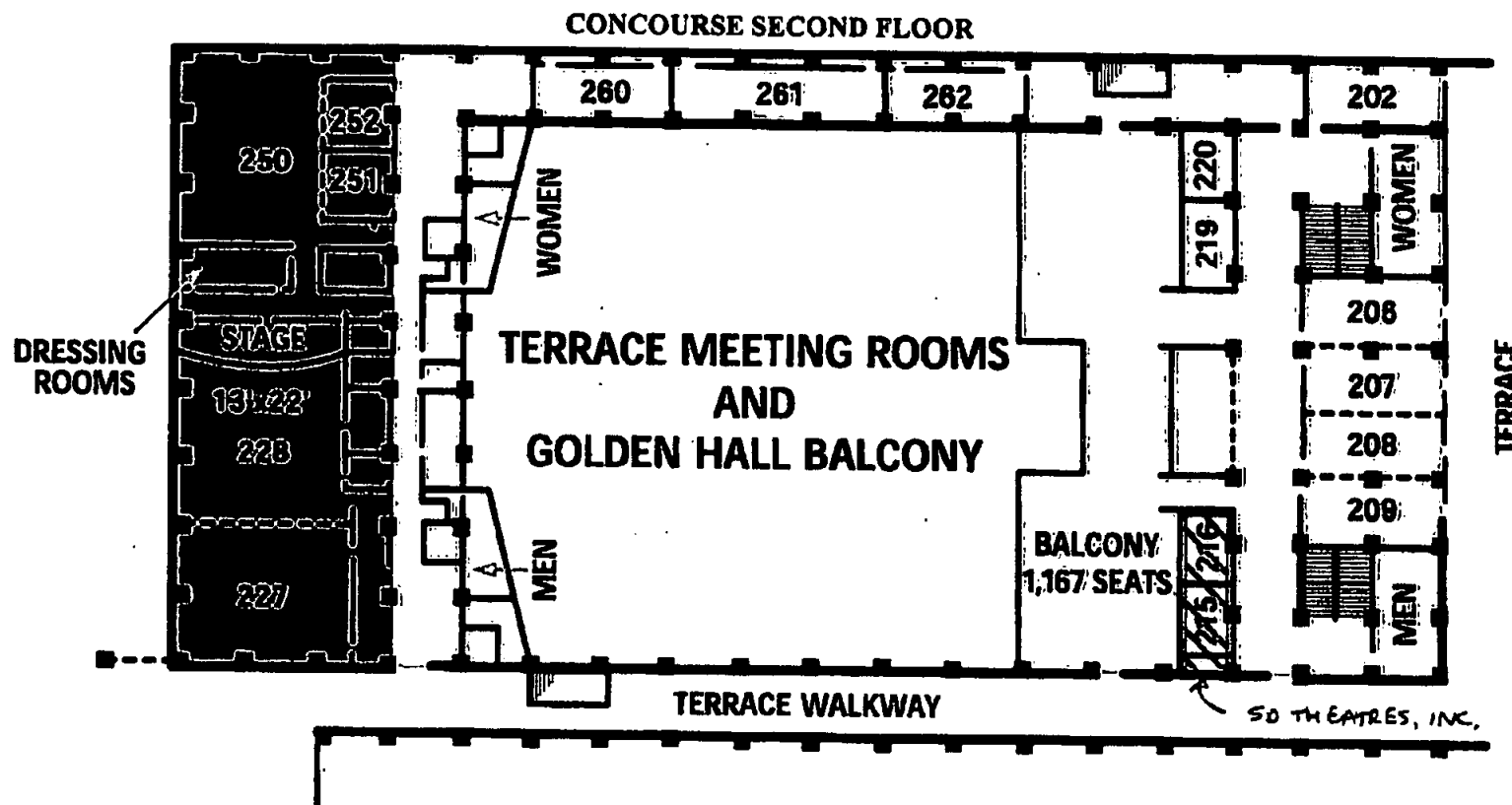


III - Concourse Area (First Floor Ticketing)

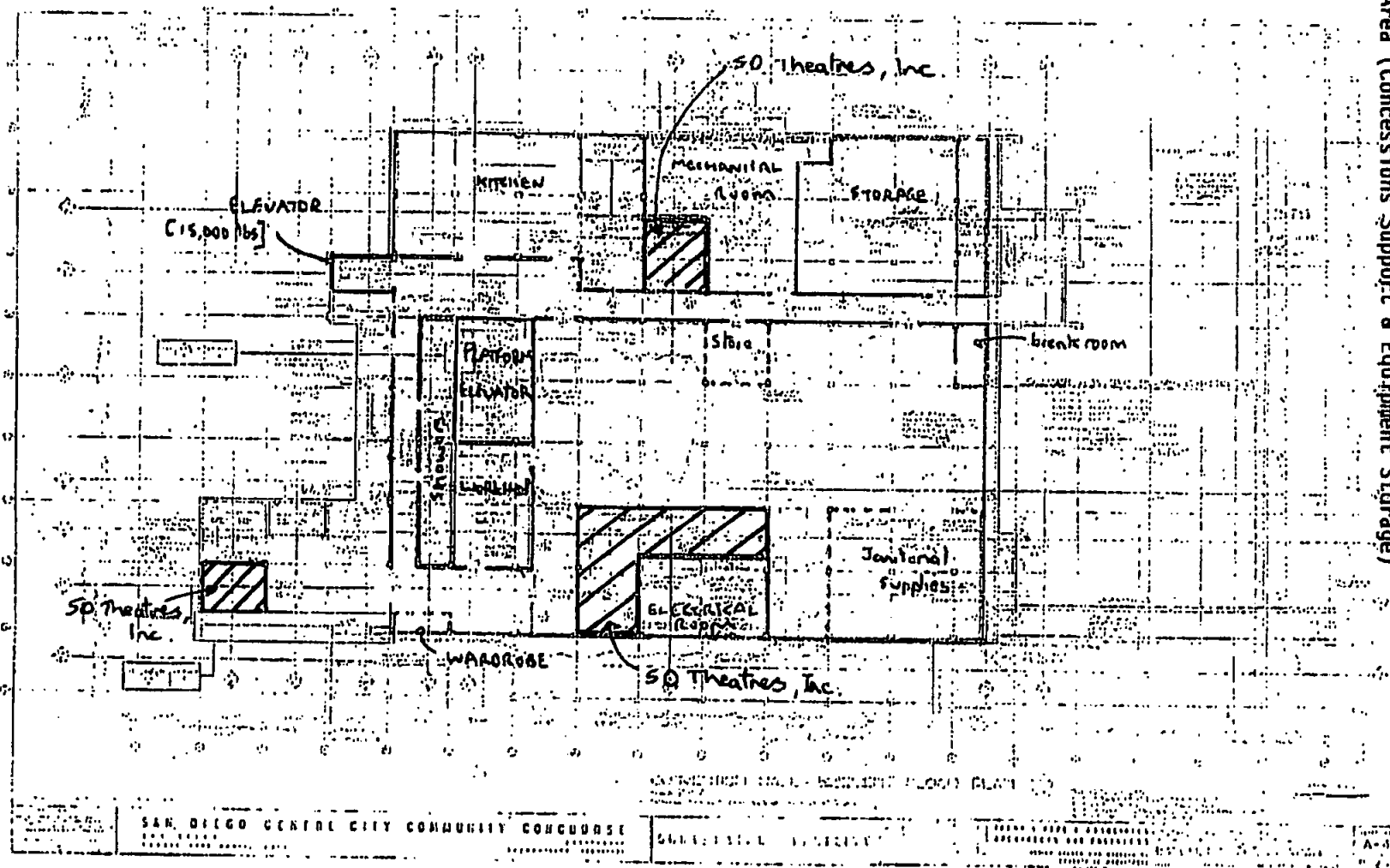


CONCOURSE FIRST FLOOR

IV - Concourse Area (Second Floor Ticketing)



CONCOURSE BASEMENT



SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT

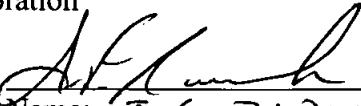
THIS SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO THEATRES, INC., a California nonprofit corporation ("OPERATOR"), to be effective as of **December 1, 2009** (the "Effective Date"), upon execution by the parties and approval by the San Diego City Attorney, as follows:

1. Term. The term of this Agreement ("Term") shall commence on the Effective Date and expire on **February 28, 2010**. The parties shall negotiate in good faith to make a new three-year operating agreement to be effective March 1, 2010.
2. Terms and Conditions. This Agreement hereby incorporates all those terms and conditions, except "Section 3. Term," contained in that certain SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT between CITY and OPERATOR dated December 1, 2006, and attached hereto as **Exhibit A: 2006 Operating Agreement**, as if set forth in their entirety herein.
3. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, this Agreement is executed to be effective as of the Effective Date.

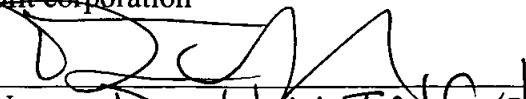
Date: 1/20/2010

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: J. F. BARWICK
Title: PUBLIC ESTATE ASSETS DIRECTOR

Date: 1/20/2010

SAN DIEGO THEATRES, INC., a California nonprofit corporation

BY: 
Name: Donald M. Telford
Title: President & CEO

APPROVED AS TO FORM AND LEGALITY:

Date: 1/20/10

JAN I. GOLDSMITH, City Attorney

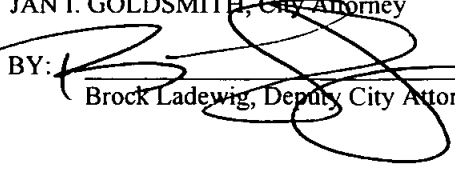
BY: 
Brock Ladewig, Deputy City Attorney

Exhibit A: 2006 Operating Agreement

(See Attached)

SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT

THIS SAN DIEGO CIVIC THEATRE OPERATING AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO THEATRES, INC., a California nonprofit corporation ("OPERATOR"), to be effective as of **December 1, 2006** (the "Effective Date"), upon execution by the parties and approval by the San Diego City Attorney, as follows:

1. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to OPERATOR, its employees, agents and contractors to enter upon the following CITY-owned property (collectively, the "Civic Center Facilities") more particularly described in the attached Exhibit A, incorporated herein):
 - a. The Civic Theatre ("Theatre"), located at 1110 Third Avenue, San Diego, California 92101, consisting of a theatre building that includes seating for 2,967 people;
 - b. The San Diego Community Concourse Plaza (the "Plaza Area"), located at 202 "C" Street, San Diego, California 92101, comprising approximately 26,000 square feet of exterior space; and
 - c. The following San Diego Community Concourse ("Concourse") facilities (collectively, the "Concourse Area"):
 - i. **Ticketing:** Concourse ticketing office, ticketing management office, and the ticketing telephone operations rooms (i.e., Rooms 215 & 216), comprising approximately 1,600 square feet;
 - ii. **Concessions Support:** Concourse basement concessions support space, comprising approximately 700 square feet; and
 - iii. **Equipment Storage:** Concourse basement equipment storage area, comprising approximately 1,500 square feet of fenced-off space.
2. **Use of Civic Center Facilities.** OPERATOR may enter upon and use the Civic Center Facilities solely and exclusively for the purposes designated below. OPERATOR shall continuously occupy and use the Civic Center Facilities throughout the term of this Agreement. OPERATOR'S unauthorized use of the Civic Center Facilities or OPERATOR'S failure to continuously occupy and use the Civic Center Facilities as provided herein shall be a default and subject this Agreement to immediate termination at CITY'S sole option.
 - a. **Theatre.** OPERATOR shall have exclusive use of the Theatre, non-exclusive use of the Plaza Area, and exclusive use of the Concourse Area for the purpose of

managing, marketing, and operating the Theatre as a public assembly venue for performing arts, entertainment, education, and community, convention, corporate, and civic activities, including the presentation and/or production of public, private, invitational, and ticketed events. Such events may be produced through OPERATOR'S renting or licensing the Civic Center Facilities to individuals, organizations, or corporations, or through OPERATOR'S in-house production. OPERATOR may:

- i. Occupy, control, manage, operate, and market the Theatre as a public assembly venue for performing arts, entertainment, educational, community, convention corporate and civic events, and such events may be public, private, invitational or ticketed;
 - ii. Obtain and hold a license to sell and dispense alcoholic beverages during events held in the Theatre and operate concessions, in connection with events occurring in the Theatre, selling beverages and light refreshments, packaged food items, novelties, and articles primarily related to events held in the Theatre;
 - iii. Promulgate and administer management and operational policies for the Theatre;
 - iv. Retain, hire, and contract with consultants and other professionals or experts that Corporation, in its sole discretion, determines are necessary to perform its obligations herein;
 - v. Enter into licenses, rental agreements, and other contracts or agreements with third parties to use the Theatre, including contracts or agreements for events occurring up to three (3) years beyond the term of this Agreement;
 - vi. Provide other services and charge appropriate fees to users in connection with their use of the Theatre; and
 - vii. Take all other actions and make such other decisions as may be required to perform the services required by this Agreement.
- b. Concessions. OPERATOR may operate a concession in the Theatre and the Plaza Area in conjunction with Theatre events. Such concession may sell to the general public beverages, including alcoholic beverages pursuant to a liquor license, and light refreshments, packaged food items, novelties, and articles primarily related to Theatre events, including without limitation recordings, broadcastings, and related articles and services.
- c. Plaza Area. OPERATOR shall have non-exclusive use of the Plaza Area for unimpeded ingress and egress, for use as an intermission audience gathering area, and for Theatre event-related activities. OPERATOR shall diligently coordinate

with the operator of Golden Hall (i.e., CITY or CITY'S designee, "Golden Hall Operator") regarding event bookings to avoid scheduling conflicts. OPERATOR shall provide Golden Hall Operator a minimum of three (3) months prior written notice of OPERATOR'S Civic Center Facilities event schedule. If OPERATOR and Golden Hall Operator are unable to resolve a scheduling conflict, CITY'S Mayor, or his or her designee ("Mayor"), shall resolve the conflict in his or her sole and absolute discretion, which decision shall be binding upon OPERATOR.

3. Term. The term of this Agreement ("Term") shall be three (3) years, commencing on the Effective Date.
4. Obligations upon Expiration or Termination. Upon expiration or termination of this Agreement, OPERATOR shall surrender possession of the Theatre to CITY on the effective date of termination. The parties shall mutually agree upon an orderly transition to ensure the unobstructed availability of the Theatre for persons or entities who have signed written contracts for its use. The parties shall cooperate in the transition and neither party shall interfere with or impede in any manner the transfer of business records and information to enable the continued operation of the Theatre, or the protection and/or removal of OPERATOR'S personal property (including furniture, fixtures, and equipment, and business records) located in the Theatre.
5. Agreement Fees & Costs. Consideration to CITY for granting this Agreement shall be as follows; provided, however, any prepaid annual charges shall be subject to a pro-rata refund or credit to the account of the payor upon expiration or termination of this Agreement:
 - a. Management & Operation of Theatre. OPERATOR shall manage and operate the Theatre on CITY'S behalf as a public service, without a management fee, and without CITY funding. City shall not be required to pay OPERATOR for the services provided pursuant to this Agreement, nor shall OPERATOR be charged rent for its occupancy and use of the Civic Center Facilities, provided OPERATOR continues to perform the services set forth herein. OPERATOR shall retain the revenue generated from Theatre events and operations and use the same exclusively in connection with managing and operating the Theatre.
 - b. Utilities & Trash Collection Costs. Utilities, including sewer, gas, and electricity used by all CITY-owned buildings in the San Diego Civic Center (the "Civic Center"), of which the Civic Center Facilities is a part, along with trash collection services, are currently billed to CITY. CITY shall pay for all water, sewer, trash collection, gas, and electric service costs for the Civic Center Facilities. OPERATOR shall reimburse CITY for such costs as follows, which the parties agree is OPERATOR'S fair share of such costs:
 - i. Eighteen percent (18%) of Civic Center water and sewer costs;
 - ii. Twelve and Fifteen One-Hundredths percent (12.15%) of Civic Center gas

and electric costs; and

iii. Three Hundred Thirty-Four Dollars (\$334) per month for trash collection services.

c. Central Power Staff & Maintenance Costs.

i. Staffing Salaries. CITY shall reimburse OPERATOR for Eighty-Four and Seven-Tenths percent (84.7%) of the actual cost for salaries, benefits, and related expenses for the staffing of the Central Power Facilities ("Central Power"), located within the basement of the Concourse, which provides power, heating, ventilation, and air conditioning to CITY-owned buildings in the Civic Center, including the Theatre.

ii. Repair & Maintenance. OPERATOR shall pay for all routine repair and maintenance of the Central Power systems. CITY shall reimburse OPERATOR for Eighty-Eight and Seventy-Five One-Hundredths percent (88.75%) of the actual costs of such repair and maintenance, including materials and supplies.

iii. Staffing. CITY shall delineate staffing requirements and may, at its sole option and upon at least one hundred twenty (120) days prior written notice, assume responsibility for Central Power staff and maintenance.

d. Property Insurance Costs. CITY shall obtain and maintain property insurance for fire, property, and extended coverage that includes coverage of the Civic Center Facilities. OPERATOR shall reimburse CITY for its pro-rata share, as determined by the Mayor in his or her sole discretion, of the cost to obtain and maintain such insurance.

e. Event Parking Revenues. CITY shall pay to OPERATOR all Evan V. Jones Parkade ("Parkade") parking revenues solely generated from OPERATOR'S events held in the Civic Center Facilities, net of related costs for public safety and cashier personnel.

f. Public Safety Personnel. OPERATOR shall provide Parkade public safety personnel satisfactory to CITY. CITY may, in its sole discretion, determine staffing levels appropriate for the personal safety of the staff and patrons of the Parkade. CITY shall reimburse OPERATOR for the actual costs for salaries, benefits, and related expenses of such public safety personnel, excluding the costs for such personnel incurred solely for OPERATOR'S event parking for which OPERATOR receives the parking revenues, as provided above. Notwithstanding the foregoing, upon sixty (60) days prior written notice to OPERATOR, CITY may assume OPERATOR'S rights and obligations hereunder related to the provision of Parkade public safety personnel.

- g. Parkade Passes. CITY shall provide to OPERATOR up to sixteen (16) monthly Parkade passes at a discounted rate of Fifty percent (50%) of the regular rate.
 - h. Place of Payments. Payments to CITY shall be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California 92101. Payments to OPERATOR shall be made by check payable to San Diego Theatres, Inc., and mailed to San Diego Theatres, Inc., 1100 Third Avenue, San Diego, California 92101. All invoiced billings shall be due within thirty (30) days after receipt.
- 6. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's sole and absolute discretion, unless otherwise expressly provided.
- 7. Maintenance of the Civic Center Facilities. OPERATOR shall, at OPERATOR'S sole cost and expense and to CITY'S satisfaction, maintain the Civic Center Facilities in a decent, safe, healthy and sanitary condition at all times during the Term. Notwithstanding the foregoing, OPERATOR shall only be required to so maintain the Plaza Area in connection with its use thereof. CITY acknowledges that OPERATOR'S obligation under this section shall not include major capital repairs or improvements.
- 8. Inspection. CITY may, at all times upon prior notice, enter and inspect the Civic Center Facilities; provided, however, such inspection rights shall not include free admission to ticketed events on the Civic Center Facilities.
- 9. Improvements/Alterations. OPERATOR shall not construct any permanent improvements, structures, or installations on the Civic Center Facilities, and shall not alter the Civic Center Facilities without CITY'S prior written consent. OPERATOR shall not make any major structural or architectural design alterations to approved improvements, structures or installations on the Civic Center Facilities without CITY'S prior written consent, which may not be unreasonably withheld. This provision shall not relieve OPERATOR of any obligation under this Agreement to maintain the Civic Center Facilities in a decent, safe, healthy, and sanitary condition. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Civic Center Facilities.
- 10. Ownership of Improvements and Personal Property.
 - a. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Civic Center Facilities now existing or constructed on the Civic Center Facilities by OPERATOR shall be deemed to be part of the Civic Center Facilities and shall become CITY'S property free of all liens and claims.

- b. Personal Property. OPERATOR shall remove OPERATOR-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property prior to the expiration of the Term, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after such notice of termination. Any such items which OPERATOR fails to remove shall be deemed abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove such items at OPERATOR'S sole cost and expense. If any removal of such personal property by OPERATOR results in damage to the Civic Center Facilities, OPERATOR shall repair all such damage at its sole cost and expense. Notwithstanding the foregoing, if OPERATOR elects to dispose of any of its personal property used in its operations on the Civic Center Facilities, upon expiration or termination of this Agreement, CITY shall have the first right to acquire or purchase such personal property.
11. Insurance. On or before the Effective Date, OPERATOR shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000). OPERATOR may use an umbrella policy in addition to a primary policy to meet the required coverage limits.
- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
 - c. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of OPERATOR and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement, except "course of construction fire insurance" shall

be in force on commencement of all authorized construction on the Civic Center Facilities, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, OPERATOR shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

- f. Modification. To assure protection from and against the kind and extent of risk existing on the Civic Center Facilities, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving OPERATOR thirty (30) days prior written notice. OPERATOR shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
- g. Accident Reports. OPERATOR shall report to CITY any accident causing property damage or injury to persons on the Civic Center Facilities. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- h. Failure to Comply. If OPERATOR fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. OPERATOR shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify OPERATOR of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and the rate of interest. OPERATOR shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Agreement, if OPERATOR fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, OPERATOR shall immediately cease its use of the Civic Center Facilities and commence and diligently pursue the removal of its property from the Civic Center Facilities.**
- i. All Risk Property Insurance. CITY shall obtain and maintain All Risk Property insurance on all insurable property on the Civic Center Facilities in an amount to cover 100 percent (100%) of the replacement cost. CITY shall deliver to OPERATOR a certificate of such insurance.
- j. Parkade Insurance. During the time OPERATOR is obligated to provide public safety personnel for the Parkade, CITY shall ensure that the operator of the Parkade includes OPERATOR as an additional insured under its policy of Comprehensive General Liability insurance.

12. OPERATOR'S Indemnification Obligation. OPERATOR shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to OPERATOR'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that OPERATOR'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CITY shall pay all of the costs related thereto.
13. CITY'S Indemnification Obligation. CITY shall protect, defend, indemnify, and hold OPERATOR, its officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY'S elected officials, officers, employees, agents, or contractors, related to the Civic Center Facilities and which arise from the established negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of OPERATOR, its officers, representatives, agents and employees.
14. No Discrimination. OPERATOR shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in OPERATOR'S use of the Civic Center Facilities, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
15. Local Business and Employment. OPERATOR acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. OPERATOR will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. OPERATOR agrees to hire qualified local residents and firms whenever feasible.
16. Drug-free Workplace. OPERATOR shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Civic Center Facilities and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. OPERATOR'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
17. No Nuisance. OPERATOR shall not use the Civic Center Facilities in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
18. No Assignment. OPERATOR shall not assign any rights granted by this Agreement or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.
19. Signs. OPERATOR shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Civic Center Facilities, OPERATOR shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at OPERATOR'S cost. No exterior signs shall be displayed without CITY'S prior written consent, except those marquee signs that currently exist on the Concourse and the Theatre's entry level, and banners that are hung on the Theatre's exterior to promote events occurring in the Theatre or related to OPERATOR'S business activities exclusively related to the Theatre.
20. Encumbrances. OPERATOR shall keep the Civic Center Facilities free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities. OPERATOR shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Civic Center Facilities, including without limitation OPERATOR'S failure or the failure of any contractor or subcontractor hired by OPERATOR to pay any person or persons referred to

in Section 3181 of the California Civil Code or other applicable sections thereof.

21. Compliance with Laws. OPERATOR shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to AGREEMENTTE'S occupancy, use, development, and maintenance of the Civic Center Facilities.
22. Disabled Access Compliance. CITY, as owner of the Theatre, shall be responsible for structural compliance of the Civic Center Facilities in accordance with the Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities. CITY shall indemnify, hold harmless and defend OPERATOR against any claims or causes of action related to physical compliance of the Civic Center Facilities pertaining to ADA or Title 24. OPERATOR shall be responsible for compliance of non-structural accommodations and services related to the use of the Civic Center Facilities.
23. Taxes. PERMTTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon OPERATOR by reason of the business or other OPERATOR activities related to the Civic Center Facilities, including any licenses or Agreements. OPERATOR acknowledges that this Agreement may create a possessory interest subject to property taxation, and that OPERATOR may be subject to the payment of taxes levied on that interest. OPERATOR shall pay all such possessory interest taxes. OPERATOR'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
24. Asbestos Disclosure. Portions of the structural components of the Civic Center Facilities contain asbestos. OPERATOR acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. OPERATOR shall disclose to the appropriate parties the existence of asbestos on the Civic Center Facilities, as required by Health and Safety Code Section 25915. CITY shall protect, defend, indemnify and hold OPERATOR harmless from any loss or claim which may result from the existence of asbestos on the Civic Center Facilities, provided, however, that CITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of OPERATOR, its officers, representatives, agents, contractors and employees.
25. Asbestos. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Civic Center Facilities made by OPERATOR. CITY may, at its discretion, station supervisory personnel at the work site to ensure that OPERATOR'S obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and, except in the event of an emergency, the party responsible for such work shall provide written notice to the other

party at least fifteen (15) days prior to commencing the work.

26. Hazardous Substances. OPERATOR shall not allow the installation or release of hazardous substances in, on, under, or from the Civic Center Facilities. OPERATOR and OPERATOR'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Civic Center Facilities without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.
- a. Remediation. If any release of a hazardous substance occurs, OPERATOR shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. Indemnity. OPERATOR shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - c. Notice of Release. If OPERATOR knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Civic Center Facilities, OPERATOR shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If OPERATOR knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, OPERATOR shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. OPERATOR shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Civic Center Facilities.
 - d. Environmental Assessment. Upon reasonable cause to believe that OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities ("OPERATOR'S Operations"), resulted in any hazardous substance being released on or beneath the Civic Center Facilities, CITY may cause an environmental assessment of the Civic Center Facilities to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil

Engineer. The environmental assessment shall be obtained at OPERATOR'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by OPERATOR'S Operations on, in, or under the Civic Center Facilities, and in what quantities. If any such hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. OPERATOR shall cause, or if OPERATOR fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and OPERATOR shall pay all costs and expenses therefor.

- e. Sewer Line. CITY acknowledges that sewage leakage has occurred and may occur in the future at the connection of the sewer line from the Theatre to the main sewer line under "C" Street due to deterioration of the line. CITY shall use its best efforts to provide a quarterly clean-out and a semi-annual photographic inspection of the line, subject to available funding. City shall be solely responsible and liable for this condition and any and all claims, costs and expenses related to environmental liabilities directly resulting from this condition, excepting those claims, costs and expenses directly resulting from the established active negligence, sole negligence, or sole willful misconduct of OPERATOR, its officers, representatives, agents, contractors and employees.

27. Waiver.

- a. CITY'S failure to insist upon the strict performance of any of OPERATOR'S obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Civic Center Facilities is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
- b. OPERATOR'S failure to insist upon the strict performance of any of CITY'S obligations directly related to health, safety, or the public welfare under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Civic Center Facilities is CITY-owned and held in trust for the benefit of CITY'S citizens. OPERATOR'S failure to discover a breach of any obligation of this Agreement directly related to health, safety, or the public welfare, or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but OPERATOR may at any and all times require the cure of any such breach.

28. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
29. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Agreement and OPERATOR'S occupancy, use, development, and maintenance of the Civic Center Facilities. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
30. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Agreement, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.
31. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or OPERATOR, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

SAN DIEGO THEATRES, INC.
Attention: President/Chief Operating Officer
1100 Third Avenue
San Diego, California 92101

32. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for OPERATOR'S occupancy, use, development, or maintenance of the Civic Center Facilities.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

33. **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 11/28/06

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: J. F. BARWICK
Title: DIRECTOR: READ

Date: 11/20/06

SAN DIEGO THEATRES, INC., a California nonprofit corporation

BY: [Signature]
Name: Donald M. Telford
Title: President + COO

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: 11/29/06

MICHAEL J. AGUIRRE, City Attorney

BY: [Signature]
Name: BROCK LADENBURG
Title: CHIEF DEPUTY CITY ATTORNEY

EXHIBIT A

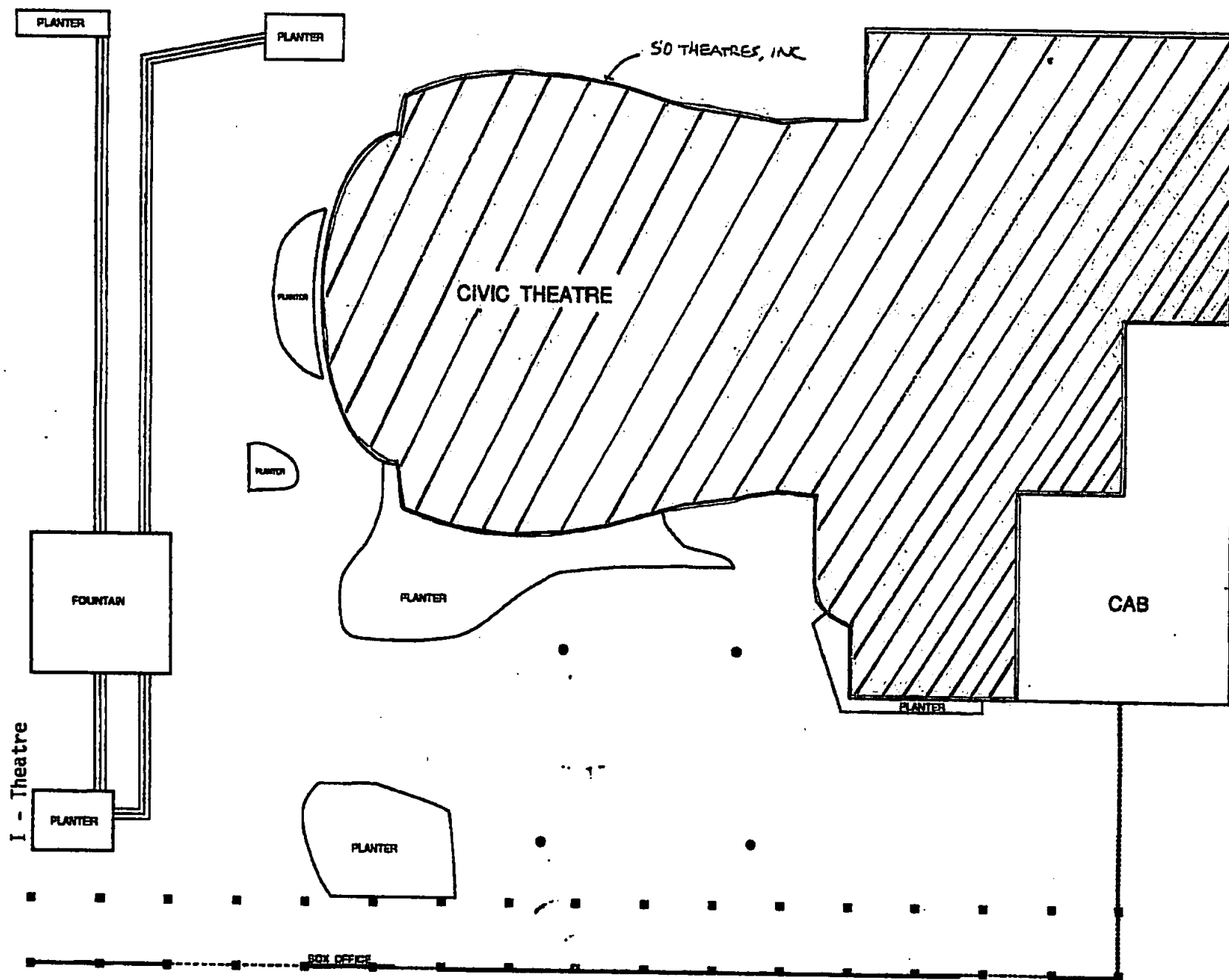
I – Theatre

II – Plaza Area

III – Concourse Area (First Floor Ticketing)

IV – Concourse Area (Second Floor Ticketing)

V – Concourse Area (Concessions Support & Equipment Storage)

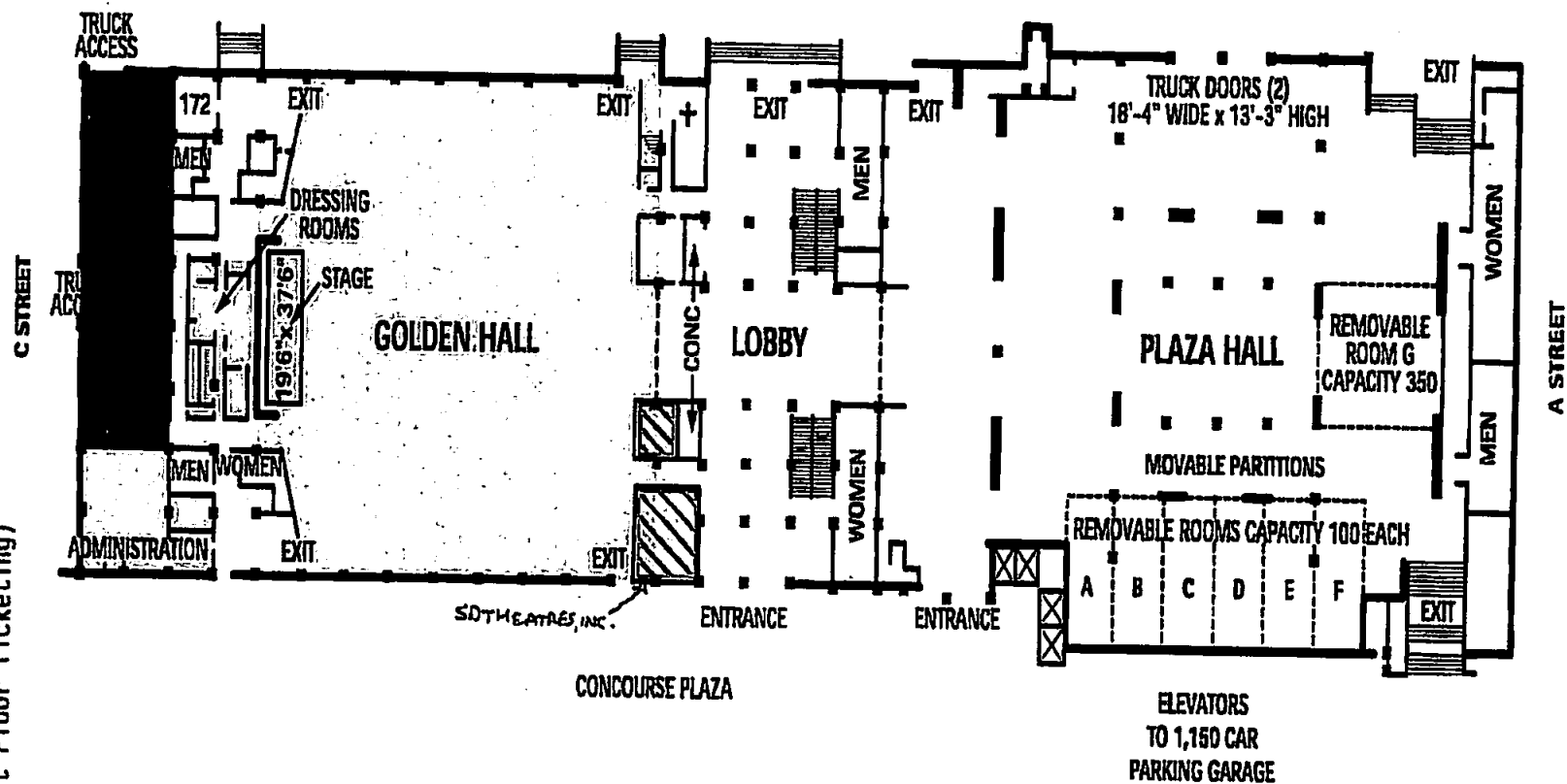


II = Plaza Area

26,000 sq.ft.

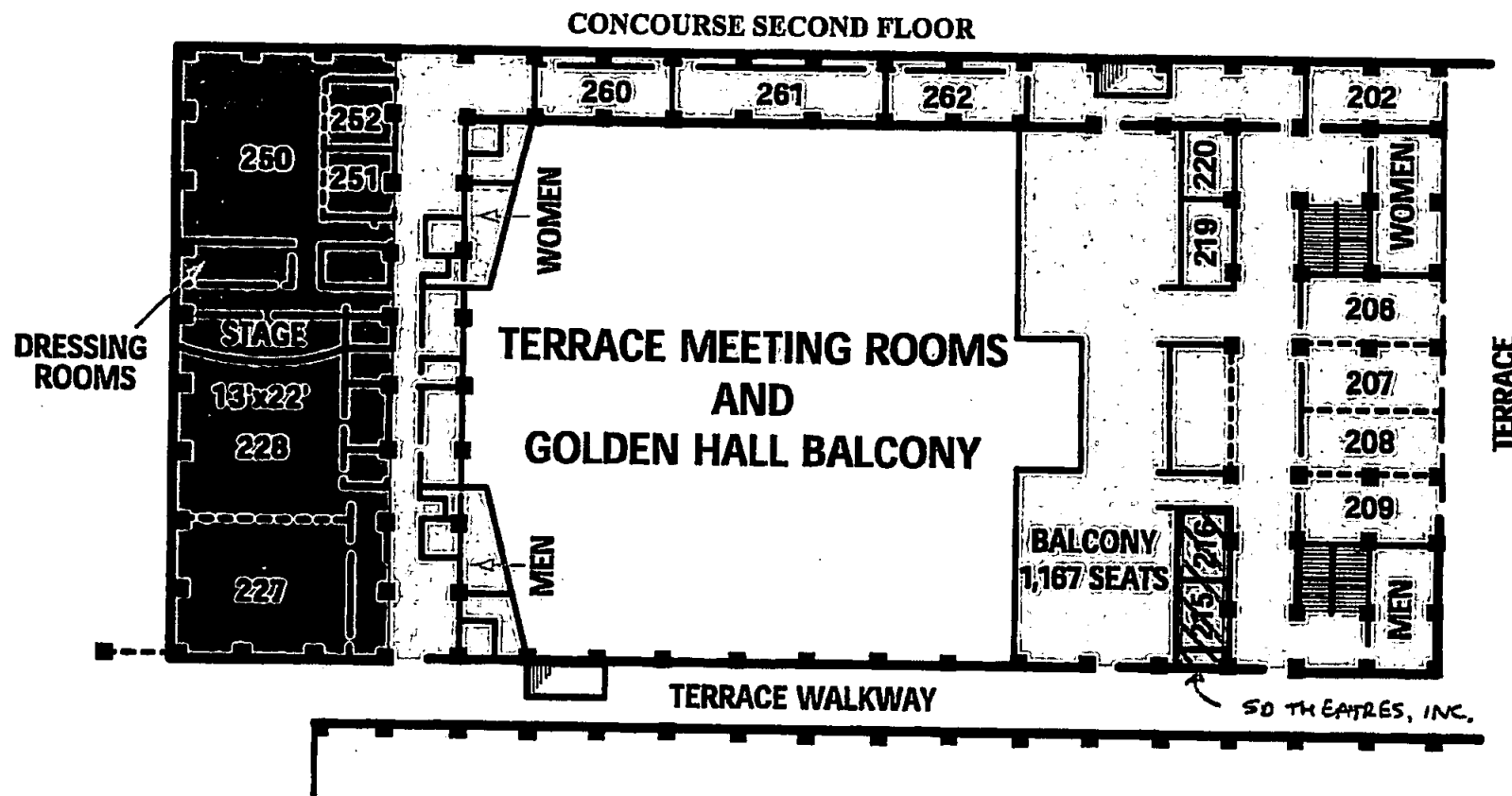


III - Concourse Area (First Floor Ticketing)



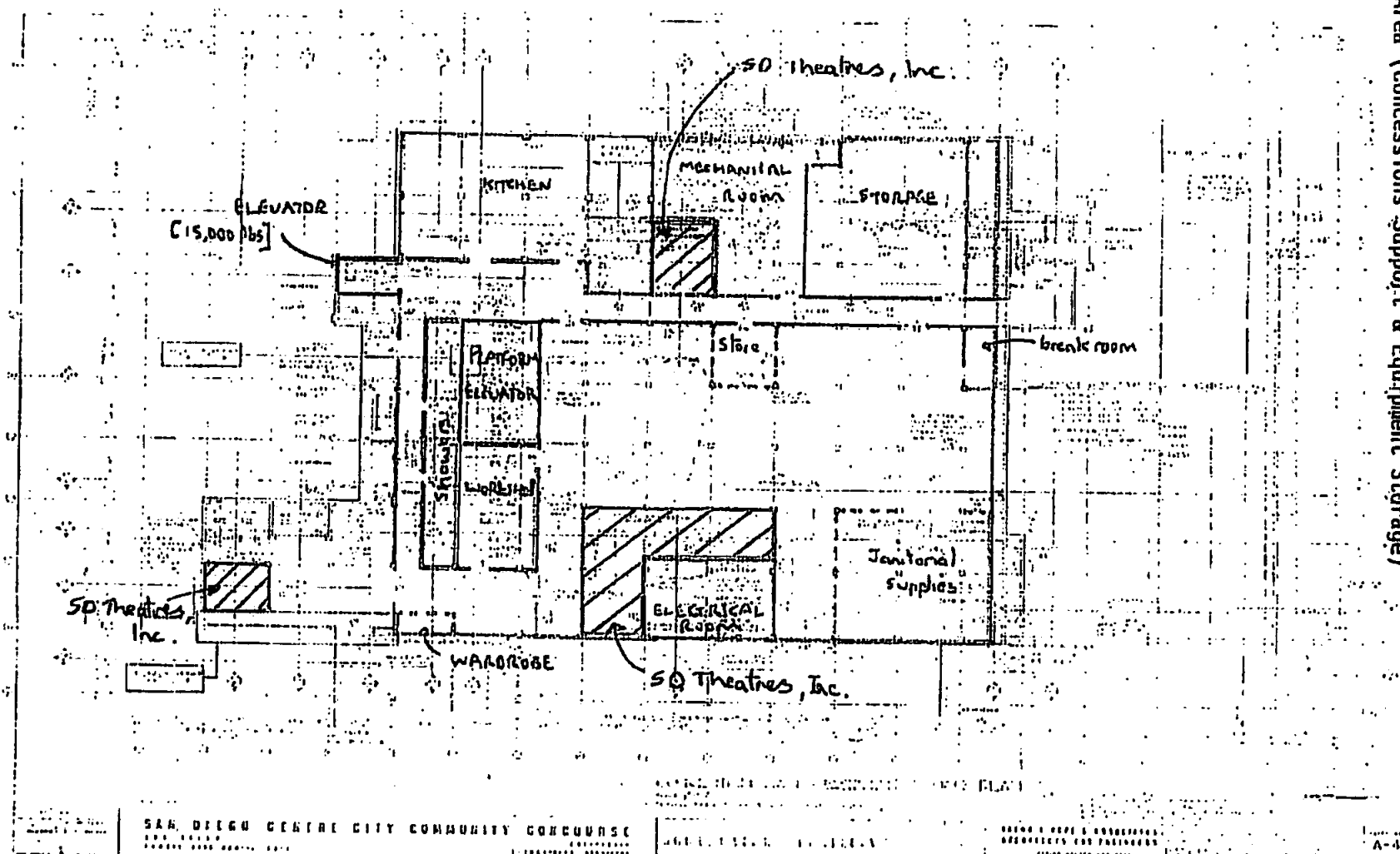
CONCOURSE FIRST FLOOR

IV - Concourse Area (Second Floor Ticketing)



V - Concourse Area (Concessions Support & Equipment Storage)

CONCOURSE BASEMENT



SAN DIEGO CENTRE CITY COMMUNITY CONCOURSE
 SAN DIEGO
 PROJECT 2000-000000-0000
 1.0000000000000000

ARCHITECTS AND ENGINEERS
 1.0000000000000000

ARCHITECTS AND ENGINEERS
 1.0000000000000000

1.0000000000000000
 A-4