

AN ORDINANCE 2017-08-17-0564

**AUTHORIZING A FIVE (5) YEAR LEASE AGREEMENT WITH
KEY BRAND THEATRICAL GROUP, INC. d/b/a BROADWAY
ACROSS AMERICA FOR THE USE OF THE LILA COCKRELL
THEATER LOCATED IN THE HENRY B. GONZALEZ
CONVENTION CENTER IN CITY COUNCIL DISTRICT 1 WITH
ESTIMATED ANNUAL REVENUE OF \$1,500,000.00.**

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WHEREAS, Key Brand Theatrical Group, Inc. d/b/a Broadway Across America has held their Broadway Series of live theatrical performances at the Majestic Theater for the past 26 years; and

WHEREAS, BAA's lease with the Majestic Theatre operator, American Theatre Group (ATG), expires in 2021; and

WHEREAS, BAA has decided not to renew its lease with ATG and has expressed a desire to find a replacement location for the Broadway Series; and

WHEREAS, BAA has identified the City-owned Lila Cockrell Theater as a location that could be used for such purpose; and

WHEREAS, the City has negotiated rental fees, concession fees and facility access fees that could result in an estimated \$1,500,000.00 in annual revenue to the City upon the expiration of BAA's lease with ATG; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Lease Agreement between the City of San Antonio and Key Brand Theatrical Group, Inc. d/b/a Broadway Across America for the use of the Lila Cockrell Theater located in the Henry B. Gonzalez Convention Center in City Council District 1 are hereby approved. A copy of the Lease substantially in its final form is attached as "Exhibit A" and made a part of this Ordinance. A final copy of the Lease will be attached when executed.

SECTION 2. The City Manager or the City Manager's designee is hereby authorized to execute a Lease Agreement with Key Brand Theatrical Group, Inc. d/b/a Broadway Across America for the use of the Lila Cockrell Theater in the Henry B. Gonzalez Convention Center.

SECTION 3. Funds generated by this Ordinance will be deposited as per the table below:

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Amount	General Ledger	Internal Order	Fund
\$3,600,000.00	4407231	242000000001	29006000
\$1,800,000.00	4407731	242000000001	29006000
\$300,000.00	4407732	242000000001	29006000
\$2,100,000.00	4407900	242000000001	29006000
Total	\$7,800,000.00		

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

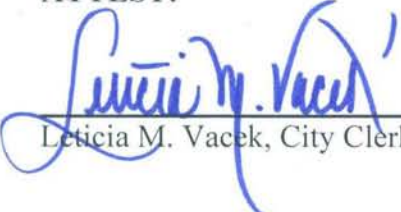
SECTION 5. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 17th day of August, 2017.



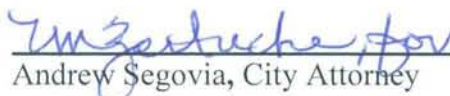
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	8 (in consent vote: 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16, 18, 19, 20, 22)						
Date:	08/17/2017						
Time:	09:50:39 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Lease Agreement with Key Brand Theatrical Group for the use of the Lila Cockrell Theatre for a period of five years beginning in 2021. [Carlos J. Contreras III, Assistant City Manager; Michael J. Sawaya, Director, Convention & Sports Facilities]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x			x	
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

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EXHIBIT A

**CITY OF SAN ANTONIO
LICENSE AGREEMENT FOR RENTAL OF THEATRE
HENRY B. GONZALEZ CONVENTION CENTER, LILA COCKRELL THEATRE**

Key Brand Theatrical Group, Inc.
d/b/a Broadway Across America
9th Floor, 1619 Broadway
New York, New York 10019

This License Agreement ("LICENSE") is made and entered into by and between the CITY of San Antonio ("CITY") a municipal corporation of the State of Texas, acting by and through its Director of Convention & Sports Facilities, ("DIRECTOR") and Key Brand Theatrical Group, Inc., d/b/a Broadway Across America, hereinafter called *LICENSEE*, for the following express purposes and conditions, all of which the *LICENSEE* hereby covenants and agrees with *CITY* to keep and perform:

I. PAYMENT TO CITY AND GRANT AND TERM OF LICENSE

1.1 *CITY*, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by *LICENSEE*, does hereby lease to *LICENSEE* the following portions of the Henry B. Gonzalez Convention Center (the "FACILITY") in San Antonio, Texas (the "LICENSED PREMISES"):

The Lila Cockrell Theatre and River Level Rooms 004 and 005, together with dressing rooms, lobbies, public spaces, the usual entrances and exits to the same, and any such additional space as the *CITY* in its discretion shall allocate to the *LICENSEE*, *CITY* shall further make no change which would materially affect the economic or other benefits of this Agreement for *LICENSEE*.

LICENSEE agrees as consideration hereof and as payment for the right herein granted to use the LICENSED PREMISES to pay *CITY* as set forth on Addendum I annexed hereto.

1.2 *LICENSEE* further agrees to pay to *CITY* on demand any and all undisputed previously agreed sums which may be due *CITY* for additional services, accommodations or materials as may be requested by *LICENSEE* in writing, as provided in Article II entitled "ADDITIONAL SERVICES" Total balance owed for previously agreed additional rents and/or additional services is due 30 days after the final day of the TERM. The highest legal rate of interest in Texas will be assessed to any unpaid balance after the due date.

1.3 The amounts above are based on rates approved by *CITY* Ordinance #88946 as amended by subsequent Ordinances.

1.4 The initial term of this Agreement shall be five (5) years commencing September 1, 2021 and continuing through the close of business on August 31, 2026 (the "TERM"). Notwithstanding the foregoing, from the date of this Agreement through the end of the TERM (as same may be extended), *LICENSEE* shall have the right to book as set forth in Paragraph 1.5 hereof and to take such other actions as *LICENSEE* shall deem appropriate to enable *LICENSEE* to commence utilizing its production and presentation rights as of September 1, 2021, including, by way of example only, and without limitation, the booking and programming of PRESENTATIONS (as hereinafter defined), and thereafter selling of tickets, setting up of ticketing systems, hiring of employees, marketing and advertising programs or series of programs, retaining contractors and other appropriate activities. Unless *LICENSEE* has given written notice to *CITY* of its intention to terminate this

Agreement by the date no later than eighteen (18) months prior to the last day of the TERM (as extended), the TERM shall be extended by one (1) year in each such instance. For example, if *LICENSEE* fails to give notice of termination on or before February 28, 2025, the TERM shall be automatically extended through August 31, 2027. By way of further example, if the TERM is extended as aforesaid, and if *LICENSEE* fails to give notice of termination prior to February 28, 2026, the TERM shall be automatically extended to August 31, 2028. Such extension shall continue without limitation until such time as *LICENSEE* gives written notice to *CITY* as aforesaid of termination.

1.5 *LICENSEE* shall have the right to book the LICENSED PREMISES for all stage presentations (the "PRESENTATIONS") (whether presented singly or as part of a series) which are to commence performances on or after September 1, 2021. *CITY* grants *LICENSEE* the exclusive right not only to book, but also to produce, present and/or arrange for the production and presentation of all PRESENTATIONS at the LICENSED PREMISES during the TERM (as same may be extended). *CITY* hereby grants permission to the *LICENSEE* to use, during the dates and times submitted by *LICENSEE* to *CITY* from time to time and on the terms and conditions set forth in this Agreement, all of the LICENSED PREMISES described herein. Subject to *LICENSEE*'S exclusive right to book, produce and present and/or arrange for the production or presentation of PRESENTATIONS in the LICENSED PREMISES, the grant of permission made in this Section shall otherwise constitute a non-exclusive license with respect to the LICENSED PREMISES, and nothing in this Agreement shall be deemed to give the *LICENSEE* a property interest in the LICENSED PREMISES other than a license to use the LICENSED PREMISES on the dates and on the terms and conditions set forth herein.

1.6 As used herein, a "SEASON" shall mean the period of time which begins on September 1st of each year and ends on August 31 of the following year. As used herein, a PERFORMING WEEK shall mean the period of seven days which begins on the Monday of the first week of each PRESENTATION and concludes three hours after the end of the last Sunday of each PRESENTATION, provided that *LICENSEE* shall have the right to advise *CITY* that certain PERFORMING WEEKS will be shorter than seven days for purpose of prorating payments specified herein. The schedule for PERFORMING WEEKS of PRESENTATIONS shall be set by *LICENSEE* and *CITY* as soon as dates are available and, subject to the availability of the PRESENTATIONS The *CITY* shall make available to *LICENSEE* by the September 1 occurring 48 months before the commencement of each Season (and earlier if available dates are known earlier), no less than eight PERFORMING WEEKS during the school year portion of each of the SEASONS and no less than seven WEEKS during each Summer, all of which PERFORMING WEEKS shall be in one or two-week blocks (unless otherwise requested by *LICENSEE*) no less than three weeks apart and not across holiday periods. *LICENSEE* shall have the first right to hold additional PERFORMING WEEKS which become available at any time. On or before the August 31 one year prior to the start of each SEASON, *LICENSEE* shall release or confirm its dates for the applicable SEASON.

1.7 Weeks reserved according to the process described in clause 1.6 shall be fully reserved for the use of the *LICENSEE* and non-cancellable, unless and until released in writing by *LICENSEE*.

1.8 The load-in, load out, rehearsal, work calls and all performances schedule and durations for each PRESENTATION shall be determined by *LICENSEE*. *LICENSEE* may designate a day, or days, during each PRESENTATION as a day, or days, on which no performances will be held; however, *LICENSEE* shall have full access to all licensed areas on non-performance days.

1.10 Upon execution of this Agreement, *LICENSEE* shall deposit with *CITY* the sum of Fifty Thousand Dollars (\$50,000). Such sum shall be deemed an advance against the rent payable to *CITY* hereunder for each Season of the Term, recoverable at the rate of Ten Thousand Dollars (\$10,000) per Season from the first rent

otherwise due CITY for that SEASON. Notwithstanding anything to the contrary set forth herein, LICENSEE shall have the right to terminate this Agreement by written notice to CITY given at any time commencing with the date of this Agreement and continuing through the last day of the Term. Such termination shall be given by written notice to CITY. In the event of such termination, CITY shall have the right to retain as its sole property any remaining balance of the foregoing \$50,000 deposit, and neither party shall have any further obligation to the other following such termination.

II. ADDITIONAL SERVICES

2.1 Should LICENSEE require additional services, accommodations or materials other than those ordinarily provided for the LICENSED PREMISES, which the DIRECTOR or his designee agrees could be provided by CITY, such as special set-ups or special labor requests, and LICENSEE desires CITY to provide those services, LICENSEE shall make a written request for said services no later than 60 days prior to the Commencement Date. LICENSEE agrees to pay on demand any and all undisputed sums which may be due CITY for said additional services. Such payment shall be made to CITY at the office of the Director of Convention & Sports Facilities, P.O. Box 1809, San Antonio, TX, 78296. Total balance owed for additional services is due 30 days after the final day of the event. The maximum legal interest rate allowed by Texas Law will be assessed to any unpaid balance after the due date.

III. [INTENTIONALLY DELETED]

IV. USE OF LICENSED PROPERTY AND EQUIPMENT

4.1 CITY shall, at its sole cost and expense:

(a) Provide the LICENSED PREMISES, set in accordance with the approved ticket manifest, with seating for at least 2,319 patrons (2283 with use of sound/light platform in rear orchestra) and all facilities thereof, including performance and non-performance areas which are safe and suitable for the presentation of each PRESENTATION.

(b) Provide adequate, proper and appropriate heating and/or air-conditioning, lighting, electricity, water, ventilation and all other utilities at the LICENSED PREMISES to meet the requirements of each PRESENTATION and to provide otherwise for the comfortable use and occupancy of the LICENSED PREMISES.

(c) Provide and maintain a safe and suitable performance area ("Stage") in the LICENSED PREMISES as may be required by LICENSEE, having weight allowances and clearances from floor to ceiling suitable for the presentation of each PRESENTATION, with structural capability sufficient to support each PRESENTATION'S scenery, props, equipment and rigging, including all necessary chains, cables, etc. No portion of the Stage (including, but not limited to, railings) shall be removed or taken down, without LICENSEE'S approval or consent, until LICENSEE has completed move-out. The Stage shall be completely level and flat with no protrusions or hollows. CITY shall provide additional railings for the back and sides of the Stage as per instructions supplied by LICENSEE. The exact specifications and requirements for the Stage must be confirmed with LICENSEE'S operation staff fourteen (14) days prior to construction. The Stage must be constructed and completely in place prior to each PRESENTATION. Unless otherwise instructed by LICENSEE, CITY shall not install any necessary railing until each PRESENTATION is fully loaded in. LICENSEE shall instruct CITY to either make the Orchestra Pit suitable for musicians, or to raise the Orchestra Pit prior to each PRESENTATION for use as additional stage space by LICENSEE. During the PERFORMING WEEK, the LICENSED PREMISES shall be available for rehearsals, maintenance, pre-set, and other uses by LICENSEE at

such times as performances are not being presented, and the LICENSED PREMISES shall not be scheduled for any other purpose by CITY.

(d) Provide unrestricted use to LICENSEE of all fly systems, battens, counterweights, legs, borders and all other masking items.

(e) Provide not less than 4 free parking spaces for LICENSEE'S personnel in an area convenient to the LICENSED PREMISES, it being acknowledged and agreed that the truck loading dock shall not be deemed a parking space for purposes of this clause 4.1(e).

(f) Provide unrestricted use to LICENSEE of clean, heated and/or air-conditioned and lighted dressing rooms with coat racks, waste cans, tables and chairs, mirrors and proper lighting for make-up, and shower and toilet facilities in the LICENSED PREMISES for the entire cast of each PRESENTATION.

(g) Provide interior storage space for crates, trunks and other items carried by each PRESENTATION with locks on all doors and windows which provide access to such space. LICENSEE will be provided with a minimum of one (1) key or key card to each lock for each storage space that LICENSEE occupies, as applicable.

(h) Provide a total of three (3) spotlights in good working order (each having at least the intensity and capability of a Super Trouper), plus platforms and electrical connections (in locations designated by LICENSEE) and such other lighting and electrical equipment as is available for staging each PRESENTATION.

(i) Provide a two-way intercommunicating telephone system with headsets, double earphones and mouthpieces, telephone operator type, between all spotlight operators and electrician controls, each PRESENTATION'S sound system and backstage.

(j) Provide adequate locations, per instructions from LICENSEE'S designated technical representatives, for LICENSEE'S sound and light boards for each PRESENTATION.

(k) Provide suitable devices to prevent light from entering the seating and performance areas of the LICENSED PREMISES when each PRESENTATION requires a blackout.

(l) Raise or remove, if necessary, any orchestra shell, speaker cluster, or other equipment so that they will in no way interfere with spectator sightlines, or the proper staging of each PRESENTATION. CITY shall not use any telescreen, LED signage technology, or similar device for any purpose during any performance of any PRESENTATION without the express written consent of LICENSEE.

(m) Provide, employ and control (i) building superintendent and engineers; (ii) sufficient janitors, sweepers, cleaners, restroom attendants, and other custodial workers for the proper cleaning of all areas of the LICENSED PREMISES before move-in and prior to each performance and continuously throughout each performance to maximize safety; (iii) event manager and maintenance and service personnel required to adequately manage, operate and maintain the LICENSED PREMISES; (x) first-aid attendants; and (xi) all other personnel which are required to be hired by working agreements or contracts entered into by CITY, by law, or by LICENSED PREMISES rules and regulations.

(n) Provide, in addition to the foregoing, all facilities and equipment as may be normally available at the LICENSED PREMISES, including such items as risers, chairs, tables, house sound systems and lighting equipment.

(o) Provide exclusive access to loading docks for each PERFORMING WEEK. CITY will use best efforts to negotiate with the Grand Hyatt to keep their designated loading docks free during load-in and load-out of each PERFORMING WEEK, and to allow LICENSEE exclusive access to the loading docks at those times and to allow LICENSEE'S trucks to back into the loading docks of the LICENSED PREMISES.

(p) Provide on-site PubliCITY: Use of the name of the Show on all marquees, electronic displays, signs and in any digital communications shall be in such form and manner as is approved by LICENSEE and may not be abbreviated. If CITY has a website for the FACILITY and/or the LICENSED PREMISES, CITY agrees to link to LICENSEE'S website.

(q) Keep the LICENSED PREMISES and the FACILITY clean, adequately heated and/or cooled, and with sufficient overhead illumination for LICENSEE'S purposes.

4.2 All advertising for each PRESENTATION shall be determined by LICENSEE. LICENSEE shall have the rights to standard Lila Cockrell Theater signage locations. No exterior or foyer signage adjacent to the Lila Cockrell Theatre is allowed to be placed by third parties during PERFORMING WEEKS.

4.3 LICENSEE shall have the right to engage sponsor(s) for each PRESENTATION hereunder and shall retain all revenue derived from any such sponsor(s). CITY will cooperate with LICENSEE in regard to any such sponsor(s) to enable LICENSEE to fulfill its obligations under any sponsorship agreement entered into by LICENSEE.

4.4 LICENSEE shall have the exclusive right to distribute Playbill programs for each Engagement without cost or commission to CITY or its designated concessions provider.

4.5 CITY warrants that the LICENSED PREMISES shall be free from material interference and CITY shall take any necessary steps to halt any material interference during LICENSEE'S use of the LICENSED PREMISES. CITY shall notify LICENSEE of any construction or remodeling to be performed in the LICENSED PREMISES immediately prior to or over the licensed period. Should construction or remodeling be mutually determined to materially interfere with LICENSEE'S use of the LICENSED PREMISES, LICENSEE may suspend and/or terminate this Agreement without liability with written notice to CITY as long as such action is taken within 30 days of LICENSEE'S receipt of notice of construction or remodeling.

4.6 The LICENSED PREMISES and equipment shall be used for the purpose of the PRESENTATIONS and for no other purpose without the prior written consent of the CITY. The CITY reserves the right to review the intended use of the LICENSED PREMISES. The LICENSEE may not use the LICENSED PREMISES for any purpose other than for and in connection with the PRESENTATIONS.

4.7 LICENSEE understands that CITY has sole control of all concession rights as reserved in Article 4.16 hereof, and that NO FOOD OR BEVERAGE, WITH OR WITHOUT CHARGE, SAMPLES OR OTHERWISE, MAY BE SERVED OR DISTRIBUTED BY LICENSEE WITHOUT THE PRIOR WRITTEN CONSENT OF CITY. FURTHER, LICENSEE WILL NOT ALLOW ANY ATTENDEE TO BRING IN FOOD OR BEVERAGE.

4.8 CONTROL OF BUILDING. In furnishing the LICENSED PREMISES, CITY reserves the right to control the management thereof, and to enforce all necessary and proper rules for the management and operation of said LICENSED PREMISES.

4.9 REMOVAL OF INSTALLATIONS AND PROPERTY OF LICENSEE. In the event platforms, staging or other structures are erected by LICENSEE in any portion of the building, the expense of such erection

and removal shall be paid for by *LICENSEE*. All property of *LICENSEE* shall be removed from the LICENSED PREMISES at the expiration of the TERM hereof, as extended.

4.10 ALTERATIONS. *LICENSEE* will not, without *CITY'S* approval, cause or permit any nails or any other things to be driven into any portion of the San Antonio Convention Facilities, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the LICENSED PREMISES or furnishing or the equipment thereof, nor do or permit to be done anything which will damage or change the finish or appearance of the San Antonio Convention Facilities or the furnishings thereof. TAPE OR OTHER ADHESIVE MATERIALS MAY NOT BE APPLIED TO WALLS OR OTHER SURFACES OF THE LICENSED PREMISES WITHOUT THE PRIOR APPROVAL OF DIRECTOR. ALL PRODUCTS OR BALLOONS THAT COULD RISE TO THE CEILING ARE PROHIBITED ALONG WITH DECORATIONS OR ITEMS THAT CREATE A SUBSTANTIAL RISK OF DAMAGE OR EXCESSIVE LITTER.

4.11 SEATING CAPACITY. In no event shall attendance at a meeting, dinner, concert, entertainment, exhibition or other event be in excess of the designated capacity as determined by the *CITY'S* Fire Marshall, it being confirmed by *CITY* that 2,319 attendees for each show hereunder has been and shall continue to be approved by the Fire Marshall throughout the TERM (as same may be extended).

4.12 AISLES AND ALL ACCESS CLEAR. *LICENSEE* will permit no chairs, movable seats or other obstructions to be or remain in the entrances, exits, or passageways and will keep same clear at all times. No portion of the sidewalk, entries, passage, vestibules, halls, elevators, or access to public utilities of said building shall be obstructed by *LICENSEE* or used for any purpose other than for ingress and egress to and from the LICENSED PREMISES.

4.13 RESPONSIBILITY FOR DAMAGE. If said LICENSED PREMISES, or any portion of said building, during the term of this LICENSE shall be damaged by the act, default or negligence of *LICENSEE*, or of *LICENSEE'S* agent, employees, patrons, guests, or any person admitted to the said LICENSED PREMISES by *LICENSEE*, not including Director, *CITY*, or their respective employees, agents or contractors, *LICENSEE* will pay to *CITY*, upon demand, such sum as shall be necessary to restore said LICENSED PREMISES to its present condition. *LICENSEE* hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said LICENSED PREMISES, or to any portion of said building with the consent of *LICENSEE'S* employees or any person acting for or on behalf of *LICENSEE*.

CITY and *LICENSEE*, or their representatives, will conduct an inspection of the LICENSED PREMISES prior to move-in and after move-out.

4.14 Note that on January 1, 2016 new legislation in the State of Texas allowing for the open carry of handguns on public property by licensed handgun owners became effective. The Henry B. Gonzalez Convention Center is a public facility and the *CITY* of San Antonio complies with State law. To discuss security options regarding the licensed space, *LICENSEE* shall contact *CITY'S* booking or event management staff.

4.15 *LICENSEE'S* REPRESENTATIVE. A representative of *LICENSEE* approved by Director or his designee shall remain on the LICENSED PREMISES during such times as *LICENSEE* is using the LICENSED PREMISE and until performers and the public have left the LICENSED PREMISES.

4.16 RESERVED RIGHTS. *CITY* reserves the sole and exclusive right to sell or serve on, in or about the LICENSED PREMISES any alcoholic beverages, soft drinks, food, souvenirs, or other merchandise, or *CITY* may grant all concession rights to any party or parties designated by *CITY*, and no food or beverage, samples or otherwise, may be served or distributed by *LICENSEE* without the prior written consent of *CITY*. *CITY* likewise

reserves the right, through its DIRECTOR, his designee or CITY'S Police Officers, to eject any objectionable persons from said building, and upon the exercise of this authority, LICENSEE hereby waives any right and all claims for damages against CITY, or any of its agents, officials, or employees. Notwithstanding the foregoing, CITY agrees to allow LICENSEE or its exhibitors to distribute nominal souvenirs, tokens of attendance and/or gifts directly related to the LICENSEE'S event without CITY's prior written consent.

V. COMPARATIVE INDEMNITY

5.1 LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and authorized representatives of CITY (collectively, the "City's Indemnitees"), individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature (collectively, "Losses" and individually, a "Loss"): (1) arising out of or in connection with LICENSEE's use of the facilities; and (2) arising out of any act or omission of LICENSEE or any of LICENSEE's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to: (a) LICENSEE or LICENSEE's contractors, other than the producers of the touring theatrical attractions being presented by Licensee at the Licensed Premises hereunder (collectively, the "Show Producers") , or (b) CITY's elected officials, employees, officers, directors, volunteers and representatives.

5.2 The indemnity provided for in the foregoing Paragraph 5.1 shall not apply to any liability or other Loss to the extent it arises from (1) the negligence or willful misconduct of CITY or the City's Indemnitees, or (2) damage or loss to real or personal property covered by Paragraph 6.10 below.

5.3 CITY covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, LICENSEE and Licensee's employees, officers, directors, contractors and agents (collectively, the "Licensee's Indemnitees"), individually or collectively, from and against any and all Losses: (1) arising out of or in connection with CITY's failure to operate, maintain and repair the FACILITY and LICENSED PREMISES in accordance with applicable law and this Agreement; and (2) arising out of any act or omission of CITY or any of CITY's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to: (a) CITY or its contractors, or (b) Licensee's employees, officers, directors, volunteers and representatives.

5.4 The indemnity provided for in the foregoing Paragraph 5.3 shall not apply to any liability or other Loss to the extent it arises from (1) the negligence or willful misconduct of LICENSEE or the Licensee's Indemnitees, or (2) damage or loss to real or personal property covered by Paragraph 6.10 below.

5.5 IN THE EVENT THAT A LOSS ARISES FROM OR IN CONNECTION WITH THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BOTH LICENSEE AND CITY (OR THEIR RESPECTIVE EMPLOYEES, AGENTS, CONSULTANTS, CONTRACTORS, REPRESENTATIVES, GUESTS, VOLUNTEERS OR INVITEES), THEN LIABILITY SHALL BE APPORTIONED COMPARATIVELY (AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR OTHERWISE AGREED BY CITY AND LICENSEE AND/OR THEIR RESPECTIVE INSURERS) IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

5.6 *LICENSEE* shall promptly advise *CITY* in writing of any claim or demand against *CITY* or *LICENSEE* known to *LICENSEE* related to or arising out of *LICENSEE*'s or *CITY*'s activities under this Agreement. Further, *LICENSEE* shall, at *LICENSEE*'S sole cost, see to the investigation and defense of any such claim or demand against *LICENSEE* or *CITY* related to or arising solely out of *LICENSEE*'s activities under this Agreement until such time as *CITY* is alleged to have been negligent or otherwise at fault, in whole or in part, in connection therewith or found to have been negligent or otherwise at fault by a court of competent jurisdiction. *CITY* shall have the right, at its option and at its own expense, to participate in such defense without relieving *LICENSEE* of any of its obligations under this paragraph.

5.7 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VI. INSURANCE REQUIREMENTS

6.1 Prior to the commencement of any work under this Agreement, *LICENSEE* shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the *CITY*'s Convention & Sports Facilities Department, which shall be clearly labeled with the legal name of event in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The *CITY* will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the *CITY*. The *CITY* shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the *CITY*'s Risk Management Department (approval not to be unreasonably withheld or delayed). No officer or employee, other than the *CITY*'s Risk Manager, shall have authority to waive this requirement.

6.2 The *CITY* reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when reasonably deemed necessary and prudent by *CITY*'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will *CITY* allow modification whereupon *CITY* may incur increased risk.

6.3 A *LICENSEE*'S financial integrity is of interest to the *CITY*; therefore, subject to *LICENSEE*'S right to maintain reasonable deductibles in such amounts as are approved by the *CITY*, *LICENSEE* shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at *LICENSEE*'S sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation *	Statutory Limits
2. Employers' Liability *	\$1,000,000 / \$1,000,000 / \$1,000,000

<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. LICENSED PREMISES operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	<p>For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability *</p> <ul style="list-style-type: none"> a. Owned/leased vehicle b. Non-owned vehicle c. Hired Vehicles 	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p>

*Applicable if the operations of the LICENSEE while on Convention, Sports and Entertainment Facilities will subject the CITY to such exposure.

6.4 As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto and sent to the address below:

CITY of San Antonio
Convention & Sports Facilities Department
P.O. Box 1809
San Antonio, TX 78296

6.5 LICENSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured's by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies ;
- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

6.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LICENSEE'S performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

6.7 Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE'S or its subcontractors' performance of the work covered under this Agreement.

6.8 It is agreed that LICENSEE'S insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY of San Antonio for liability arising solely out of LICENSEE'S negligence under this Agreement.

6.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the *CITY* shall be limited to insurance coverage provided.

6.10 *LICENSEE* and any of its contractors or subcontractors with the exception of Show Producers are responsible for all damages to their own equipment and/or property. Similarly, *CITY* is responsible for all damages to its own rented and personal property (regardless of the cause of such damages). Each party shall cause any insurer of such property to endorse the applicable policy with a waiver of subrogation with respect to the claims regarding any such damages.

VII. COPYRIGHT INDEMNIFICATION

7.1 *LICENSEE* AGREES TO ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FEDERAL COPYRIGHT LAW OF 1978 (17 U.S.C. 101, ET SEQ, as amended,.) AND ANY REGULATIONS ISSUED THEREAFTER INCLUDING, BUT NOT LIMITED TO, THE ASSUMPTION OF ANY AND ALL RESPONSIBILITIES FOR PAYING ROYALTIES WHICH ARE DUE FOR THE USE OF COPYRIGHTED WORKS IN *LICENSEE'S* PERFORMANCES OR EXHIBITIONS TO THE COPYRIGHT OWNER, OR REPRESENTATIVES OF SAID COPYRIGHT OWNER, AND *LICENSEE* AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS *CITY*, ITS OFFICERS, EMPLOYEES AND AGENTS, FOR ANY CLAIMS, LOSSES, EXPENSES OR DAMAGES GROWING OUT OF *LICENSEE'S* INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS.

VIII. LAW OBSERVANCE/TAXES

8.1 *LICENSEE* shall not do, nor suffer to be done, anything on the LICENSED PREMISES, during the term of this LICENSE, in violation of the laws of the United States or the State of Texas. Further, *LICENSEE* shall obey all rules and regulations of *CITY* for the government and management of the San Antonio Convention Facilities, together with all rules and requirements of the police and fire departments of *CITY*. *LICENSEE* agrees that every employee, agent or invitee connected with the purpose for which the LICENSED PREMISES are licensed shall abide by, conform to and comply with all and any such rules, laws, and ordinances. If the attention of said *LICENSEE* is called to such violations, *LICENSEE* will immediately desist from and correct such violations.

8.2 If actual sales are made on the LICENSED PREMISES, *LICENSEE* must inform each seller of the applicable sales tax. This rate is subject to change and *LICENSEE* must check with the Local State Comptroller's Office (1-800-252-5555 or www.cpa.state.tx.us/taxinfo/sales) prior to show date to ascertain the current rate. Additionally, *LICENSEE* is responsible for ensuring that each seller possesses a sales permit number prior to the start of the show.

IX. ATTORNEY'S FEES

9.1 If either Party is required to file suit to collect any amount owed it or to otherwise enforce its rights under this LICENSE for the use of the LICENSED PREMISES, the prevailing party shall be entitled to its reasonable attorney's fees.

X. PERFORMANCE QUALITY

10.1 *LICENSEE* hereby agrees that no activity, performance, exhibition or entertainment (attraction) shall be given or held or take place in the LICENSED PREMISES herein described which is potentially dangerous to the public or which is illegal.

XI. ABANDONED ITEMS

11.1 *CITY* shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition, or entertainment given or held on the LICENSED PREMISES. *LICENSEE* agrees to hold *CITY* harmless for dispensing of said articles not claimed within 24 hours after the end of the event.

XII. TERMS USED

12.1 It is understood that whenever this LICENSE authorizes or requires *CITY* to take any action, it may be done by DIRECTOR, his designee or by other persons designated by the *CITY* Manager.

XIII. CANCELLATION BY CITY

13.1 With respect to a particular PERFORMANCE WEEK (as distinct from the entire TERM), violation by *LICENSEE* of any material covenant, agreement or condition contained herein shall be cause for termination of that PERFORMANCE WEEK hereof by *CITY* (subject to the cure period in Paragraph 13.2). In such a case, *LICENSEE* forfeits any payment already made with respect to such PERFORMANCE WEEK and is entitled to a refund only if the canceled space is re-booked to another party. In addition, *CITY* may likewise terminate this LICENSE with respect to such PERFORMANCE WEEK if the *LICENSEE* should a court having jurisdiction over *LICENSEE* take its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act. Written notice of such cancellation will be given to the *LICENSEE* by DIRECTOR. *LICENSEE* waives any and all claims for damages against *CITY* resulting from such cancellation.

13.2 *CITY* shall notify *LICENSEE* of any material breach with respect to a particular PERFORMANCE WEEK in writing, specifying the nature of the breach and providing for a reasonable time to cure such breach. Should *LICENSEE* fail to cure such breach in a reasonable time, *CITY* may cancel that PERFORMANCE WEEK.

XIV. NO WAIVER

14.1 No waiver by either party of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

XV. IMPOSSIBILITY OF PERFORMANCE

15.1 If the (a) San Antonio Convention Facilities or any portion thereof be destroyed or damaged by fire or other calamity so as to prevent the use of the LICENSED PREMISES for the purposes and during the periods specified in this LICENSE, or (b) if the performance of this Agreement is prevented, in part or in full, by an act of God, civil strike (except for strikes involving *CITY*'s own employees) material shortage, restrictions by any governmental authority, civil riot, flood, illness or injury, curtailment (or the inability or delay in material portions of a booked productions sets or other tangible property arriving at the facility) or delay in transportation facilities preventing at least 55% of the projected participants from attending or any other cause beyond the control of the Parties, making it inadvisable, illegal, or impossible to provide the facility or hold the meeting then this LICENSE

shall terminate and/or be suspended as *LICENSEE* may elect. In such an event, neither party shall be liable or responsible to *LICENSEE* for any damages caused thereby and *LICENSEE* hereby waives any claim against *CITY* for damages by reason of such suspension or termination, except that any unearned portion of the rent due thereunder shall abate, or, if previously paid, shall be refunded by *CITY* to *LICENSEE*.

XVI. SEVERABILITY

16.1 In case any one or more of the provisions contained in this LICENSE shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this LICENSE shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

XVII. NOTICES

17.1 Any notices required or appropriate under this LICENSE shall be given in writing to *LICENSEE* at the address shown below, and to *CITY*, c/o Director of Convention & Sports Facilities, P.O. Box 1809, San Antonio, Texas, 78296. Any notice to be given to *LICENSEE* in connection with this Agreement shall be in writing and shall be deemed to have been given when delivered to or received by *LICENSEE* at the following addresses:

To *LICENSEE*: Broadway Across America
1619 Broadway, 9th Floor
New York, NY 10019
Attn: Ms. Lauren Reid

With a copy to: Franklin, Weinrib, Rudell & Vassallo
488 Madison Avenue, 18th Floor
New York, NY 10022
Attn: Elliot H. Brown, Esq.

XVIII. HEADINGS

18.1 The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this LICENSE.

XIX. ASSIGNMENT

19.1 *LICENSEE* shall have the right to assign this Agreement to a not-for-profit entity legally doing business in the State of Texas and, in the event of such assignment, *LICENSEE* shall notify *CITY* in writing that such assignment has occurred, the not-for-profit entity shall assume in writing all of *LICENSEE*'S obligations hereunder and the not-for-profit entity shall replace *LICENSEE* for all purposes hereunder and shall assume all rights and obligations of *LICENSEE*. In such event, the not-for-profit entity shall have the advantage of the terms applicable to not-for-profit entities pursuant to this Agreement, including, without limitation, Addendum I annexed hereto.

XX. TEXAS LAW TO APPLY

20.1 This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this LICENSE shall be in Bexar County,

Texas. This LICENSE is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

XXI. ENTIRE AGREEMENT

21.1 This LICENSE and addendum contain the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this LICENSE, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written or contained in Addendum(s) and information sheet.

XXII. AUTHORIZED AGENT

22.1 The signer of this LICENSE for *LICENSEE* hereby represents that he or she has full authority to execute this LICENSE on behalf of *LICENSEE*.

XXIII. ASSISTED LISTENING DEVICES

23.1 The San Antonio Convention Facilities makes available, at no cost to *LICENSEE*, a TELFEX F/M Assistive Listening System, consisting of a transmitter and wireless receivers for use during events. The system is made available in compliance with Title II (State & Local Government) of the Americans with Disabilities Act (ADA).

LICENSEE, in compliance with the provisions of Title III of the ADA (Public Accommodations) and policies of the Department of Convention Facilities is required to:

- (1) Utilize the provided system or supply one of its own;
- (2) Advertise the availability of the assistive listening devices through the use of onsite signs, event programs, brochures and/or distributed promotional materials;
- (3) Maintain an audio feed to the system;
- (4) Administer the system through responsible distribution, collection, and return of the wireless transmitters, and;
- (5) Supply staff to administer the system, receive the headsets and assure proper return of the equipment to the facilities.

Arrangements for the use of the system can be made through the Technical System Supervisor, or his designee, at (210) 207-6301, in advance of the dates requested.

LICENSEE is responsible for the proper storage, collection and prompt return of the loaned devices to the facilities at the end of the event and will be charged for any damage, loss or theft of the system or associated equipment.

23.2 Henry B. Gonzalez Convention Center and its box office and websites fall under Title II (State & Local Government) American with Disabilities Act (ADA) and is maintained and operated by CITY with regard to and in accordance with the requirements of the Act.

XXIV. RECYCLING PROGRAMS

24.1 The Convention & Sports Facilities Department has an extensive recycling program as well as food bank donation program. *LICENSEE* is encouraged to utilize the recycling services available.

(1) The facility recycles office paper, aluminum cans, plastic, glass, cardboard, polyurethane foam, scrap metal, and pallets. Recycling containers for cans and paper are available throughout the facility.

(2) All foods prepared for *LICENSEE* in excess will be donated to the local food bank by the exclusive catering service of the Convention Facilities.

XXV. TICKETING

25.1 *LICENSEE* and *CITY* mutually acknowledge that each is a party to a ticketing agreement with Ticketmaster which specifies ticketing service charges applicable to *LICENSEE*'S live events. *CITY* agrees that in the event of any conflict between *CITY*'S and *LICENSEE*'S respective ticketing agreements, the terms of *LICENSEE*'S ticketing agreement shall control and supersede, and *LICENSEE* shall be entitled to any and all rebates of ticket service charges from Ticketmaster pursuant to *LICENSEE*'S agreement with Ticketmaster. In addition, at the time of execution of this Agreement, *CITY* agrees to provide Ticketmaster with written notice that it consents to allowing *LICENSEE*'S agreement with Ticketmaster to govern service charge rates and the distribution of any related rebates. *LICENSEE* shall also have the exclusive right to directly receive all gross sales generated through subscriptions, groups, VIP programs, presale offers and any other transaction managed by *LICENSEE* or its agents or designees.

25.2 Pricing: All tickets prices, tickets surcharges and fees for each PRESENTATION shall be determined by *LICENSEE* and shall be as set forth in ADDENDUM 1 annexed hereto.

25.3 No other ticketing fees or commissions shall be applicable.

25.4 *CITY* will not modify its existing arrangement or enter into any new arrangement with any computer ticket service for the exclusive sale of tickets which will apply to or in any way affect the sale of tickets to performances of any PRESENTATION hereunder without first obtaining the written approval of *LICENSEE* to the terms thereof, insofar as they affect *LICENSEE* and any PRESENTATION'S patrons, and no such arrangement shall be applicable to the sale of tickets to any PRESENTATION unless approved by *LICENSEE*.

25.5 The LICENSED PREMISES box office shall not impose any service charge or handling fee in connection with over-the-counter sales of tickets (including group sales orders) for the Engagement hereunder.

25.6 No facility fee or other surcharge may be added to *LICENSEE*'S established ticket price, except as may be indicated herein, or as may be required by applicable law. Any amounts added in violation of this provision shall become the exclusive property of *LICENSEE*. Notwithstanding the foregoing, in the event that at any time during the term of this Agreement a new or increased tax, surcharge or other similar fee is imposed on the sale of tickets to any PRESENTATION which increases fees on any PRESENTATION tickets beyond the amounts set forth herein, *CITY* shall credit the additional charges at settlement against those sums due from *LICENSEE* to *CITY* under the terms of this Agreement.

25.7 Complimentary Tickets: *LICENSEE* may distribute complimentary tickets in accordance with *LICENSEE*'S business practices.

SIGNATURE PAGE

LICENSEE: *KEY BRAND THEATRICAL GROUP, INC.*

By: _____
Lauren Reid
CEO

Dated: _____

CITY OF SAN ANTONIO

By: _____
Michael J. Sawaya
Executive Director

Dated: _____

ADDENDUM I

ENGAGEMENT EXPENSES

PERFORMING WEEK RENT – Includes load-in day (Monday), single performance days (Tuesday- Friday), and two performance days (Saturday and Sunday) and Sunday night load-out until 3:00AM the following Monday morning. The amounts listed below will be pro-rated by the actual number of performances included in a PERFORMING WEEK.

For Profit Rental - Eight (8) Performances (7 days)	Non-Profit Rental - Eight (8) Performances (7 days)
\$ 56,860*	\$ 46,660*
<i>*3% increase every other year commencing 2023</i>	

Any additional days without a performance “Dark Days” shall be charged as follows: for-profit \$2,250 per day, and non-profit \$1,650 per day.

Items Included in PERFORMING WEEK RENT.

- Exclusive use of LICENSED PREMISES
- All Rehearsals
- Performance days
- Use of entire sound system and spot lights
- Use of the Venue sign boxes and poster displays
- Use of the Venue Box Office during the rental period
- Use of all Venue equipment, including but not limited to, risers, orchestra pit, chairs, trashcans
- All facility cleaning personnel and all other personnel related to the professional operation of the Venue.
- One (1) complimentary load-in day and one (1) complimentary load-out day per Engagement.
- Cleaning - Included in Rent
- Facility Equipment Rentals – Included in Rent
- Utilities – Included in Rent
- Insurance (provided by LICENSEE, no additional charges for CITY insurance)
- Parking (4 spaces provide at no cost)

Expenses Excluded for PERFORMING WEEK RENT

- Facility Fee charged for each paid ticket - \$4.00 (CITY shall pay LICENSEE \$2.00 for each paid ticket for which a facility fee was charged)
- Ushers and Ticket Takers – LICENSEE will set staffing levels and use CITY’s exclusive provider.
- Box Office Labor (if requested) – LICENSEE will set staffing levels and may use CITY’s exclusive provider, or provide their own staffing.
- Box Office Expenses – Should LICENSEE require CITY’s box office equipment or space, CITY will provide this at no charge. LICENSEE will reimburse CITY for any pre-approved actual credit card charges incurred due to the request of LICENSEE.

- Security:
SAPD - *LICENSEE* will set staffing levels and use *CITY*'s exclusive provider
Other - *LICENSEE* will set staffing levels and use *CITY*'s exclusive provider
- Taxes – As applicable.

In the event this Agreement is assigned to a not-for-profit entity pursuant to Paragraph 20.1 hereof, the non-profit rent amounts listed above shall apply.