

## LEASE AGREEMENT

THIS LEASE is made effective the 18<sup>th</sup> day of October, 2012, by and between THE CITY OF BILLINGS, MONTANA ("Lessor"), and THE ALBERTA BAIR THEATER CORPORATION ("Lessee").

### WITNESSETH

1. **Description of Leased Premises and Uses.** Lessor leases to Lessee and Lessee leases from Lessor, for the purpose of establishing and operating a performing arts center dedicated to the presentation and development of all of the performing arts for the benefit of the public, certain land, improvements, structures, and appurtenances more particularly described as follows (the "premises"):

Lots 1, 2, 3 and 4, Block 45, of the Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312.

As used herein, the "premises" refers to the land, building, and any and all improvements located, constructed or established upon the property described above, whether made prior to the commencement of the term of this Lease, during the term of this Lease, or during the renewal term thereof.

2. **Term and Possession of Premises.** Upon execution by both parties this Lease shall replace and supersede the previous lease between Lessor and Lessee dated October 18, 1982. The term of this Lease shall be for thirty (30) years. The commencement date shall be the date shown above or, if different, the date when the Lease has been executed by both parties.

3. **Rent.** Lessor recognizes the value to the City of Billings and its citizens of the development, continued use, and improvement of the premises as a performing arts

center. In consideration of the above and the covenants and conditions of this Lease Agreement, Lessee agrees to pay the Lessor rent for the premises in the amount of \$1.00 each year, payable on the date of this Lease Agreement and yearly on the anniversary of that date, for the full term of this Lease.

4. **Covenants of Use and to Make Improvements.** Lessee covenants and agrees to use the premises as a performing arts center in accordance with plans and schedules, and pursuant to a program developed by its board of directors. The term "performing arts" as used in this Agreement shall mean any of the performing arts such as theater, film, music and dance of all kinds, all forms of cultural activities, and lectures, seminars, meetings, conventions, and like activities.

Notwithstanding any provision to the contrary, Lessee shall not be obligated to make any renovations or improvements to the premises which are not authorized by its board of directors. Lessee's board of directors shall make the sole determination as to the extent of such renovations and improvements and the time or date when such renovations and improvements shall be made. Lessor shall have no right to determine the nature, extent or timeliness of such improvements, but Lessee shall provide Lessor with such reasonable information as Lessee has developed concerning such renovations and improvements as may be requested by Lessor.

All renovations and improvements made by Lessee shall conform to applicable codes, ordinances, laws and regulations of the City of Billings and any other governmental authority or agency.

5. **Warranties of Title and Quiet Possession.** Lessor covenants that Lessor has a right to occupy the premises and has the full right to make this Lease and that Lessee shall have quiet possession of the premises during the term hereof.

6. **Use Prohibited.** Lessee shall not use, or permit the demised premises, or any part thereof, to be used, for any unlawful or illegal purpose or purposes.

7. **Waste and Nuisance Prohibited.** During the term of this Lease, Lessee shall comply with all applicable laws affecting the premises, the breach of which might result in any penalty to Lessor or forfeiture of Lessor's title to the premises. Lessee shall not commit or suffer to be committed any waste on the premises, or any nuisance.

8. **Abandonment of Premises.** Lessee shall not vacate or abandon the demised premises at any time during the term hereof. If Lessee shall abandon, vacate, or surrender the demised premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the demised premises shall, at the option of the Lessor, be deemed to be abandoned unless appropriate arrangements for removal have been agreed to by Lessor and Lessee.

9. **Notices.** All notices, demands or other writings in this Lease provided to be given or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To Lessor:	The City of Billings Attention: City Administrator City Hall 210 North 27th Street Billings, MT 59101
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With copy to: City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

To Lessee: The Alberta Bair Theater Corporation  
Attention: Executive Director  
2801 3<sup>rd</sup> Avenue North  
Billings, MT 59103

With copy to: The Alberta Bair Theater Corporation  
Attention: Registered Agent  
P.O. Box 1556  
Billings, MT 59103

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

**10. Taxes and Assessments.**

- (a) It is agreed that the premises shall be subject to, and Lessee shall pay and discharge as they become due, such taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, only to the extent such charges are imposed on other buildings owned by Lessor.
- (b) It is agreed that the premises shall be subject to, and Lessee shall pay and discharge as they fall due during the term of this Lease, such special assessments, levies or charges, made by any municipal or political subdivision for local improvements only to the extent that such charges are imposed on other buildings owned by Lessor.

**11. Utilities.** Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service and other public utilities of every kind furnished to the demised premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the demised premises and all activities conducted thereon, and Lessor shall have no responsibility of any kind for any thereof.

12. **Insurance.**

- (a) Insurance Coverage of Demised Premises. Except as otherwise provided herein, Lessee shall at all times during the full term of this Lease and at Lessee's sole expense insure the demised premises with fire and extended coverage insurance in an amount equal to the replacement cost of the demised premises with loss payable to Lessor, Lessee, and the holder of any mortgage as their interests may appear and in accordance with paragraph 18 below. Lessor agrees that the premises may be so insured under any such insurance policy maintained by or in the name of the Lessor, but the applicable portion of any premium paid by the Lessor which relates to the premises shall be paid by the Lessee within thirty (30) days after notice to Lessee that Lessor has made such payment.
- (b) Liability Insurance. Lessee shall maintain in effect throughout the term of this Lease liability insurance covering the demised premises, appurtenances, sidewalks, and parking lots abutting thereon in the minimum amount of Two Million Dollars, (\$2,000,000.00), combined single limits of liability for each occurrence for bodily injury or property damage regardless of the number of persons or organizations who sustain bodily injury or property damage or the number of claims made, or suits brought, on account of bodily injury or property damage.

Such insurance shall specifically insure Lessee against all liability assumed by them hereunder, as well as liability imposed by law and shall insure both Lessor and Lessee. Lessor shall be endorsed on any policies as a primary, additional named insured.

In addition, said policy or policies shall contain a provision that no cancellation thereof shall be effective by the insurer without thirty (30) days written notice to the Lessor.

Lessee agrees that the premises may be so insured under any such insurance policy maintained by the Lessor, but the applicable portion of any premium paid by the Lessor which relates to the premises shall be paid by the Lessee within thirty (30) days after notice to Lessee that Lessor has made such payment.

Unless the above insurance coverages are provided under policies maintained by the Lessor, at least twenty (20) days prior to the date of expiration of any of the insurance policies above mentioned, the Lessee shall deliver to the Lessor a certificate of renewal of such policy indicating payment of the premiums therefore. All

insurance policies carried by either party covering the property or the demised leased premises shall expressly waive any right, including subrogation, on the part of either party against the other. All policies shall require the insurance companies to notify the Lessor in writing prior to any cancellation of the insurance.

13. **Indemnification of Lessor and Lessee.** Lessee agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all claims, demands, losses, damages, liabilities, judgments, litigation costs and expenses including reasonable attorneys fees occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission by Lessee or its agents, subcontractors or employees.

Lessor agrees to indemnify, defend and save Lessee, its agents, subcontractors and employees harmless from any and all claims, demands, losses, damages, liabilities, judgments, litigation costs and expenses including reasonable attorneys fees occasioned by, growing out of or in any way arising or resulting from any intentional or negligent act or omission by Lessor, its agents or employees.

14. **Effect of Eminent Domain.** In the event the demised premises, or any part thereof, shall be appropriated or taken under the power of eminent domain or conveyed under the threat of eminent domain by any public or quasi-public authority so that the premises can no longer be operated as a performing arts center in the manner operated at the time of such appropriation or taking, this Lease shall thereby terminate, and Lessee shall have the following rights:

- (a) to share in the award for such condemnation when paid based on the value of any improvements or renovations to the premises made by Lessee compared to the value of the premises on

October 18, 1982 when the parties signed the first Lease Agreement, which the parties agree was \$650,000.00; and

- (b) to recover such compensation from the condemning authority for any loss or damage caused to Lessee by such condemnation.

15. **Default.** In the event Lessee shall be in default of any covenant, agreement or condition provided for in this Agreement, or abandon or vacate the demised premises, or become a voluntary or involuntary bankrupt, or make an assignment for the benefit of creditors, or, in the event of a receiver or trustee being appointed for Lessee, then upon the occurrence of any one or more of such defaults, and after Lessee has been given notice by certified mail of such default, Lessee shall have thirty (30) days from the mailing of such notice within which to correct such default or defaults, and if no such corrections are made, Lessor, in addition to any other rights or remedies it may have shall have the immediate right of re-entry and may remove all persons and property from the premises and may terminate this Lease, or at the option of the Lessor, the Lessor may proceed against the Lessee for all rentals to accrue under this Lease, or extension thereof.

16. **Waiver.** The failure of Lessor to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that Lessor may have regarding that specific instance only, and shall not be deemed a waiver of (1) Lessor's right to insist on strict performance of the same or any other of the terms and conditions of this Agreement at any time subsequent thereto or (2) Lessor's rights or remedies for any other subsequent breach or default in any terms or conditions.

17. **Mortgages.** Lessee shall have no right to place mortgages or have liens placed on the premises in connection with any renovations or improvement, without the

written approval of Lessor. Lessor shall have no right to place mortgages or have liens placed on the premises without the written approval of Lessee.

**18. Repairs and Destruction of Improvements.**

- (a) Maintenance of Improvements. Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the demised premises and all appurtenances thereto, including sidewalks, and parking lots adjacent thereto, in good, sanitary, and neat order, condition and repair, and shall, subject to the conditions described in subparagraph (b) below, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatever, to the demised premises or any building, or improvements thereon except to the extent that insurance proceeds are available in accordance with subparagraph (b) below. Lessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the demised premises, the improvements thereon or any activity or condition on or in such premises.
- (b) Damage and Destruction of Improvements. Except as stated herein, the damage, destruction or partial destruction of any part of the premises shall not release Lessee or Lessor from any obligation hereunder. If insurance is maintained in the name of Lessor pursuant to paragraph 12(a), it is agreed that any proceeds covering damage or destruction of the premises shall be made available to Lessee for such repair or restoration. If the premises are partially damaged but remain usable for their intended purpose with little or no interruption to Lessee for repairs, Lessee shall use all available insurance proceeds to, so far as such proceeds allow, promptly repair and restore the same. If the premises are substantially damaged or destroyed and thereby rendered completely unusable for their intended purpose, or their repair or reconstruction would substantially interrupt the operations of Lessee, the parties shall mutually agree on how insurance proceeds resulting from the loss shall be used for the repair, rebuilding, new construction, and/or relocation of a performing arts center or facilities supportive of a performing arts center.

**19. Right to Sublease.** Lessee shall not have the right to sublease or assign the demised premises in whole or in part except upon the express written consent of the

Lessor. Nothing in this paragraph shall limit or restrict Lessee's ability to rent, license, let, or otherwise contract the premises in whole or in part for short-term use by performance groups and other users in a manner typical of a performing arts center.

20. **Surrender.** Upon the expiration or other termination of this Lease and any renewal thereof, Lessee shall quit and surrender to Lessor the demised premises broom clean, in good order and condition, ordinary wear and damage by elements excepted.

21. **Parties Bound.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the successors, assigns, or trustees of the parties hereto.

22. **Net Lease.** It is the intention of the parties hereto that this should be a net lease and Lessor shall have no obligation whatsoever, except as herein specified, to make any expenditures for any reason whatsoever in connection with the leased premises.

23. **Remedies.** In the event of a breach of this Agreement, and unless expressly limited or supplemented herein, the parties shall have all remedies normally available to them whether by terms of contract, statute, or common law. In addition to any remedies for default given to Lessor pursuant to paragraph 15 above, or by law, Lessor and Lessee, in the event of a breach or a threatened breach by Lessee or Lessor of any of the terms or conditions hereof, shall have the right of injunction to restrain the other party and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided herein.

The rights and remedies given to the parties in this Lease are distinct, separate, and cumulative, and no one of them, whether or not exercised by a particular party, shall be deemed to be in exclusion of any of the others herein, or by law or equity provided.

24. **Renewal of Lease.** If Lessee is not in material default under the terms and covenants of this Agreement, then Lessee may renew this Agreement at the expiration of the term described in paragraph 2 for an additional thirty (30) year term on the same terms and conditions, subject to the renewal procedures described herein. Lessee shall provide Lessor with written notice of its intent to renew at least one year before the Agreement expires, but the right to renew shall not terminate unless Lessor, if it does not receive such notice by that date, first gives Lessee written notice that the right to renew will terminate forever if Lessee fails to provide notice of renewal within 60 days of the date of Lessor's notice to Lessee. If Lessee then provides notice of renewal within the time required, this Agreement shall renew at the end of the term, but if Lessee does not provide notice within the time required then the right to renew shall terminate.

25. **Miscellaneous.** Notwithstanding anything to the contrary herein contained, the successful party in any litigation resulting from the dispute between the parties in connection with this Lease shall be entitled to reasonable attorney's fees.

26. **Inspection of Premises.** Lessor shall have free access to the demised premises at all reasonable times for the purpose of examining or inspecting the conditions thereof or in order to exercise any right or power granted by law or reserved to Lessor under the terms and provisions of this Lease Agreement.

27. **Time of Essence.** Time is of the essence in all provisions of this Lease.

28. **Governing Law.** It is agreed by and between the parties hereto that the terms of this Lease shall be governed by the laws of the State of Montana.

29. **Relationship of Parties.** It is understood and agreed that the relationship of the parties hereto is strictly that of landlord and tenant and that this Lease shall not be construed as a joint venture or partnership. Lessee is not and shall not be deemed to be agent or representative of Lessor.

30. **Amendments in Writing.** Any addenda or amendments to this Lease, including but not limited to any extensions of the initial term of this Lease shall be valid only if in writing and signed by the parties.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease this 22nd day of October, 2012.

CITY OF BILLINGS

By Thomas W. Hanel

Thomas W. Hanel, Mayor

ATTEST:

Cari Martin

City Clerk

THE ALBERTA BAIR THEATER CORPORATION

By   
Alice Gordon, President

ATTEST:

  
Secretary