

File No. 04-1000-20-2017-086

April 21, 2017

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of February 24, 2017 for:

All information relating to, an operating agreement or music/entertainment use agreement, between Live Nation Entertainment and Theatre Under the Stars and the Vancouver Parks Board relating to Malkin Bowl. This would include a copy of the agreement and any communication relating to the negotiation and/or approval of the agreement and details of the RFP process for such agreement. Date range is May 1, 2006 to February 24, 2017.

All responsive records are attached. Some information in the records has been severed, (blacked out), under s.22(1) of the Act. You can read or download this section here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

- Agreement is enclosed;
- Links to related Board reports and minutes in 2006 and 2007:
 - Link to June 2, 2006 Board Report:
http://parkboardmeetings.vancouver.ca/2006/060612/tuts_2006_operating_agreement.pdf
 - Link to June 12, 2006 Minutes:
http://parkboardmeetings.vancouver.ca/2006/060626/mom_jun12_06.pdf
 - Link to May 4, 2007 Board Report:
http://parkboardmeetings.vancouver.ca/2007/070514/tuts_operating_agreement_07_09.pdf
 - Link to May 14, 2007 Minutes:
http://parkboardmeetings.vancouver.ca/2007/070528/mom_07_may14.pdf
- May 5, 2010 Board Report and the May 17, 2010 Minutes reference the Board's approval of the original agreement on page 3. The 2010 report also provides the background on TUTS usage of Malkin Bowl and further outlines the terms of the 2010 agreement, option to renew, and financial terms with both TUTS and Live Nation as the main concert promoter.

- Link to May 5, 2010 Board Report:
http://parkboardmeetings.vancouver.ca/2010/100517/TUTs_NewLicenceAgreement.pdf
- Link to May 17, 2010 Minutes:
<http://parkboardmeetings.vancouver.ca/2010/100607/Minutes17May2010.pdf>
- The Park Board confirms that there was no reference of an RFP and no communications on file.

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, info@oipbc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2017-086); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at foi@vancouver.ca if you have any questions.

Yours truly,



Barbara J. Van Fraassen, BA
Director, Access to Information

Barbara.vanfraassen@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4
Phone: 604.873.7999
Fax: 604.873.7419

Encl:

cf

THEATRE LICENCE AGREEMENT

THIS AGREEMENT made as of the 28 day of July, 2006,

BETWEEN:

CITY OF VANCOUVER

as represented by its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4,

(the "Park Board")

AND:

THEATRE UNDER THE STARS MUSICAL SOCIETY

a society incorporated under the laws of the
Province of British Columbia (Incorporation No. S-0008472)
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "User")

WHEREAS:

- A. The User desires to use the Theatre in Stanley Park during the Licence Period; and
- B. The Park Board requires the User to execute this agreement to set out the agreement of the parties with respect to the use of the Theatre,

NOW THEREFORE in consideration of the covenants and agreements contained in this agreement, the parties hereby covenant and agree as follows:

1. Definitions

In this agreement, including the recitals and the schedule, the following terms have the following meanings:

- (a) "broadcast" means to televise, record, tape or reproduce by any means whatsoever, for public or private use;
- (b) "City" means the City of Vancouver;
- (c) "Claim" means any claim, demand, action, cause of action, complaint (including without limitation a complaint pursuant to human rights legislation), damage, loss, deficiency, liability, cost or expense (including without limitation actual legal fees and disbursements);

- (d) "Events" means the events to be staged at the Theatre by the User as described in Schedule "A" or as approved by the General Manager in advance;
- (e) "Licence Fee" means \$1.00;
- (f) "Licence Period" means May 1, 2006 to and including September 30, 2006;
- (g) "General Manager" means the General Manager of the Park Board or her successor in function and her respective nominees;
- (h) "Personnel" means any officers, officials, employees, agents, licensees, sublicensees, guests, invitees, volunteers, contractors, and subcontractors or anyone for whom the party is responsible in law in connection with any matter governed by this agreement;
- (i) "Theatre" means Malkin Bowl in Stanley Park;
- (j) "User Personnel" means the User's directors, officers, employees, material suppliers, agents, patrons, invitees, guests, sublicensees, contractors and subcontractors; and
- (k) "wages" includes holiday pay and other deductions as required under federal and provincial laws (Employment Insurance, Workers Compensation, Canada Pension Plan, etc) and current union agreements.

2. Grant of Licence

Subject to the terms and conditions of this agreement, and to the condition that the User takes the Theatre in the condition that it finds it, the Park Board hereby grants to the User the right to use the Theatre for the Licence Period.

3. Permitted Use

The User may use the Theatre during the Licence Period only for the Events and for no other purpose unless the User obtains the prior written approval of the General Manager.

4. Licence Fee

The User will pay the Licence Fee to the Park Board at the commencement of the Licence Period (the receipt and sufficiency of which is hereby confirmed and acknowledged).

5. User's Responsibilities

Unless otherwise provided in this agreement, the User will:

- (a) pay all costs and expenses in connection with the Events, including without limitation:
 - (i) the wages and expense of all stage hands and performers; and

- (ii) the cost of contracting with any person to broadcast the Events or anything else originating from the Theatre;
- (b) construct or install, at its expense, all stage work for the Events, provided that the User must obtain the written approval of the General Manager before the User makes any alterations of any kind to the Theatre, including without limitation:
 - (i) installing any wires, electrical appliances, plumbing fixtures or pipes; and
 - (ii) affixing any nails, tacks or screws of any kind;
- (c) be responsible at its sole cost for ongoing maintenance and repair of the Theatre except for those items that the General Manager has agreed in advance will be paid for by the Park Board;
- (d) otherwise conduct its activities in the Theatre in a safe and responsible manner and so as not to endanger any person in the Theatre;
- (e) pay to the Park Board on demand the cost incurred by the Park Board to repair any damage to the Theatre, if any part of the Theatre is damaged by the act, default or negligence of the User or the User Personnel, including without limitation, the cost to repair any damage to the lawn or landscaping surrounding the Theatre; and
- (f) return at the end of the Licence Period all keys, including duplicate keys, for the Theatre provided by the Park Board to the User and the User will pay to the Park Board the cost of replacing any key which has not been returned to the Park Board; and
- (g) appoint a liaison person to make contact with the General Manager.

6. Prohibited/Restricted Uses

Unless the User obtains the prior written approval of the General Manager, the User will not permit any of the following in the Theatre:

- (a) smoking, except in areas designated for smoking by the Park Board;
- (b) consumption of liquor;
- (c) use of the Theatre for sleeping or lodging purposes;
- (d) use of any liquid or solid substance of an explosive or highly flammable nature;
- (e) use of any controlled substance without appropriate labelling, provided that if the General Manager approves the use of any controlled substance the User will provide the General Manager with a Material Safety Data Sheet for same in

accordance with the Workplace Hazardous Materials Information System and provincial and federal legislation;

- (f) use of any boiler, motor, stove or machinery operated by electricity or other power; and
- (g) use of an animal, provided that if the General Manager approves the use of any animal such animal may be in the Theatre only when required for a performance and then only during the hours when the performance and rehearsals are in actual progress.

7. Objectionable Performance

The General Manager may require that the User immediately change or omit from the Events any song, speech, dialogue, business or costume if the General Manager, at his discretion, considers that it is offensive, defamatory, indecorous or improper.

8. Signs In or Outside the Theatre

The User must obtain the written approval of the General Manager before the User places or affixes any signs, decorations, advertisements, show bills, lithographs, posters or cards of any description in or outside the Theatre, provided that if the General Manager approves such placement the method of, and material used for, such placement must be approved by the General Manager.

9. Insurance

The User will, without limiting any of its obligations or liabilities under this Licence, obtain and continuously carry during the Licence Period, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence or such higher limit of coverage as the City's Director of Risk and Emergency Management may require from time to time and the policy will:
 - (i) indemnify and protect the User and its Personnel against all claims for loss, damage, injury or death to any person or persons and for damage to the Premises or to any public or private property occurring within or about the Premises or arising by virtue of the User's occupation or possession of the Premises;
 - (ii) add the City, the Park Board, the Vancouver Police Board and their respective Personnel as additional insureds;
 - (iii) contain a cross liability clause insuring the User, the City, the Park Board, the Vancouver Police Board and their respective Personnel in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any

breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;

- (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Licence; and
- (v) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000.) or such other limit as the City's Director of Risk and Emergency Management may sanction from time to time.

(b) All Risk (Broad Form) including Earthquake and Flood Insurance:

- (i) Property of every description up to full replacement cost of all building structures and improvements including without limitation fittings, fixtures, plate glass (both interior and exterior), installations, alterations, additions, partitions, trade fixtures, furniture or equipment located within the Premises owned by the User or installed by or on behalf of the User for which the User is legally liable.

The insurance policies described under this section (b) will:

- (i) provide for a limit of deductibility not greater than Five Thousand (\$5,000) per occurrence with respect to all perils except earthquake. The deductible for any claim will be paid by the User.

General Requirements of Insurance

The following will apply to all insurance policies:

- (a) the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the City's Director of Risk Management and will provide the City with Sixty (60) days prior written notice of material change or cancellation. Notice will be given to the City of Vancouver, c/o Risk and Emergency Management Division, Attention: Insurance Administrator. Notice must identify the name of the User as set out in this Licence and the location or address of the Premises;
- (b) neither the providing of insurance by the User in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the User from any other provisions of this Licence with respect to liability of the User or otherwise;
- (c) the insurance coverage will be primary insurance as respects the City, the Park Board, the Vancouver Police Board and their respective Personnel and any insurance or self-insurance maintained by or on behalf of the City, the Park

Board, the Vancouver Police Board and their respective Personnel will be excess of this insurance and will not contribute with it; and

- (d) subject to the provisions of this Section 9, the User will provide at his/their own cost any additional insurance which the User is required by law to provide or which the User considers necessary.

Evidence of Insurance

Prior to the commencement of the Licence Period, and from time to time during the Licence Period within 10 days after demand by the City, the User will deliver to the Revenue Services Division of the Park Board, for each insurance policy the User must obtain under this Licence, a certificate of insurance, satisfactory to the City, and a certified copy of the policy. If the User fails to deliver to the City any such certificate or policy of insurance within the stipulated time, the City may obtain such insurance, and the User will pay to the City the cost of the premiums on demand by the City from time to time.

10. Indemnity

The User will indemnify and save harmless the Park Board, the City, the Vancouver Police Board and their respective Personnel from and against any and all Claims that the Park Board or the City or their respective Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, arising out of:

- (a) the Events or the User's use or occupation of the Theatre;
- (b) any breach by the User of any of its covenants and obligations under this agreement;
- (c) any activity of the User or the User Personnel;
- (d) the User's infringement of any right of any person; or
- (e) any defamation or controversial content contained in any promotional material related to the Events, any broadcast of the Events, any activity related to the Events, or the Events themselves,

provided that the User's covenant to indemnify and save harmless the Park Board and the City and their respective Personnel will not apply to the extent that the Claim is caused by the gross negligence of the Park Board, the City, the Vancouver Police Board or their respective Personnel.

11. Release

The User waives any right of claim against the Park Board or the City or their respective Personnel for any Claims that the User or the User Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, from any cause whatever, unless caused by the gross negligence of the Park Board or the City or their respective Personnel. Without limiting the generality of the foregoing, the User acknowledges that, in the receipt, handling, care or custody of property of any kind shipped or otherwise delivered by the User to the Theatre either prior to, during or subsequent to the Licence Period,

the Park Board is only accommodating the User and will not be liable for any Claims with respect to such property.

12. Compliance with Laws

The User will, at its expense, comply with all federal, provincial and municipal statutes, ordinances, regulations and by-laws applicable to the User's use of the Theatre.

13. No Discrimination

The User must not engage in any discriminatory conduct that is prohibited by the *Human Rights Code* of British Columbia and, in particular, must not publish, issue or display any statement or other representation that is likely to expose a person or a group to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group.

14. Permits, Licences and Approvals

The User will obtain any and all necessary permits, licences and approvals required in connection with the Event or the User's use of the Theatre.

15. Security Measures

- (a) If either the Park Board or the User considers that safety and security are a concern with respect to any of the Events, the parties will discuss necessary measures with the Vancouver Police Department and will implement any recommendations made by the Vancouver Police Department and the User will pay the cost of such safety and security measures; and
- (b) The Park Board reserves the right to eject or bar entry to any objectionable person from the Theatre, including any person appearing intoxicated or otherwise disoriented, who acts ill mannerly, boorish or unruly or who constitutes an apparent threat to the safety of others or to the security of the Theatre, including its fixtures, fittings, furnishings, displays and landscaping, and the User hereby waives any Claim for damages or compensation by reason of the Park Board exercising this right.

16. Sale of Refreshments, Etc.

The User will sell only goods sold at the concession trailer as permitted by the General Manager.

17. Termination on Default by User

The Park Board may immediately terminate this agreement by notice in writing to the User if the User breaches any provision of this agreement and fails to remedy such breach within five (5) days of receipt of notice from the Park Board, or within such shorter time as determined by the Park Board in the event of a breach of a safety or security measure this agreement will be terminated without prejudice to the claims of the Park Board in respect to any monies due to the Park Board or in respect of any breach of this agreement by the User, and the covenants in

this agreement on the part of the User will continue in full force and effect until all liability incurred prior to termination is satisfied in full.

18. Termination on Damage or Force Majeure

The Park Board may immediately terminate this agreement by notice in writing to the User if the Theatre or any material part of the Theatre is destroyed or damaged by fire or any other cause; and the User hereby waives any claim for damages or compensation for such termination.

19. Vacant Possession

The User will deliver up vacant possession of the Theatre on or before five o'clock p.m. on the date of expiry or termination of the Licence Period and will leave the Theatre in a sanitary, neat, tidy and safe condition and will ensure that the Theatre is in the same condition as it was at the date of the commencement of the Licence Period, reasonable wear and tear excepted.

20. Removal of Goods on Expiry or Termination

The User will remove all goods and chattels of whatsoever nature or kind brought into the Theatre by the User at a time agreed to by the General Manager and if the User fails to remove any of its goods and chattels, such goods and chattels will become the property of the Park Board without compensation to the User but without prejudice to any other right or remedy of the Park Board at law or equity, except to the extent that the Park Board requires the User to remove such goods and chattels.

21. No Assignment

The User may not assign or otherwise transfer the rights granted to the User in this agreement, which rights are personal to the User. Notwithstanding the foregoing, the User may sublicense the Theatre to third parties subject to the prior written approval of the General Manager.

22. Municipal Powers

Nothing contained in this agreement will be construed as a limitation on the powers of the City as a municipal corporation.

23. Governing Law

This agreement will be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada.

24. Time of the Essence

Time is of the essence of this agreement.

25. Park Board Remedies Are Cumulative

The remedies provided to the Park Board in this agreement are cumulative and are in addition to any remedies to the Park Board available at law or in equity including injunctive relief. No

remedy will be exclusive and the Park Board may have recourse to any or all remedies simultaneously or at various times.

26. Notices

Any notice, approval or request required or permitted to be given under this agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia, in the case of the User addressed to it at:

James Cronk

s.22(1)



and in the case of the Park Board addressed to it at:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4
Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: Director of Legal Services

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

27. Approvals in Writing

Any approval, authorization, consent or waiver by the Park Board of any act or omission of the User under this agreement is effective only if given in writing and duly executed on behalf of the Park Board.

28. No Landlord/Tenant Relationship

It is the express intention of the Park Board and the User that the granting of the licence in this agreement will not create between the Park Board and the User a landlord and tenant relationship.

29. No Registration of Licence

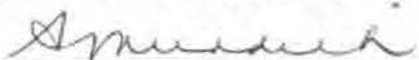
The rights and privileges granted by the Park Board are purely contractual and are not grants of an easement, right of way or any other interest in land and the User will not register any instrument, claim or notice respecting this agreement in any Land Title Office.

30. Entire Agreement and Amendments


The provisions contained in this agreement constitute the entire agreement between the parties with respect to the subject matter of this agreement and supercede all previous communication, representations, expectations, understanding and agreements, whether written or unwritten between the parties with respect to the subject matter of this agreement. No amendment of this agreement will be effective unless it is in writing signed by the parties.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Per: 

THEATRE UNDER THE STARS MUSICAL SOCIETY

Per:  (JAMES CRONK - TUS PRESIDENT)
Authorized Signatory

**APPROVED BY THE VANCOUVER BOARD OF PARKS AND RECREATION
ON THE 12TH DAY OF JUNE, 2006.**

SCHEDULE "A"

Schedule of Events and Dates

07.11	Jason Mraz with Mat Kearney
07.26	The Raconteurs with special guest Kelley Stoltz
07.27	Bedouin Soundclash
08.19	City and Colour
08.20	Sarah Harmer
08.25	Blue Rodeo
08.26	Blue Rodeo
09.01	Great Big Sea with special guest Jeremy Fisher
09.02	Great Big Sea with special guest Ridley Bent
09.03	Corb Lund

THEATRE LICENCE AGREEMENT

THIS AGREEMENT made effective as of the 1st day of May, 2007,

BETWEEN:

CITY OF VANCOUVER

as represented by its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4,

(the "Park Board")

AND:

THEATRE UNDER THE STARS MUSICAL SOCIETY

a society incorporated under the laws of the
Province of British Columbia (Incorporation No. S-0008472)
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the "User")

WHEREAS:

- A. The User desires to use the Theatre in Stanley Park during the Licence Period; and
- B. The Park Board requires the User to execute this agreement to set out the agreement of the parties with respect to the use of the Theatre,

NOW THEREFORE in consideration of the covenants and agreements contained in this agreement, the parties hereby covenant and agree as follows:

1. Definitions

In this agreement, including the recitals and the schedule, the following terms have the following meanings:

- (a) "broadcast" means to televise, record, tape or reproduce by any means whatsoever, for public or private use;
- (b) "City" means the City of Vancouver;
- (c) "Claim" means any claim, demand, action, cause of action, complaint (including without limitation a complaint pursuant to human rights legislation), damage, loss, deficiency, liability, cost or expense (including without limitation actual legal fees and disbursements);

- (d) "Events" means all events to be staged at the Theatre by the User approved by the General Manager in advance;
- (e) "General Manager" means the General Manager of the Park Board or her successor in function and her respective nominees;
- (f) "Licence Area" means the Malkin Bowl and the surrounding area that lies within the fence line approved in writing in advance each year by the General Manager;
- (g) "Licence Fee" means \$1.00;
- (h) "Licence Period" means May 1, 2007 to and including September 30, 2007, May 1, 2008 to and including September 30, 2008 and May 1, 2009 to and including September 30, 2009;
- (i) "Personnel" means any officers, officials, employees, agents, licensees, sublicensees, guests, invitees, volunteers, contractors, and subcontractors or anyone for whom the party is responsible in law in connection with any matter governed by this agreement;
- (j) "Theatre" means Malkin Bowl in Stanley Park;
- (k) "User Personnel" means the User's directors, officers, employees, material suppliers, agents, patrons, invitees, guests, sublicensees, contractors and subcontractors; and
- (l) "wages" includes holiday pay and other deductions as required under federal and provincial laws (Employment Insurance, Workers Compensation, Canada Pension Plan, etc) and current union agreements.

2. Grant of Licence

Subject to the terms and conditions of this agreement, and to the condition that the User takes the Theatre in the condition that it finds it, the Park Board hereby grants to the User the right to use the Theatre for the Licence Period.

3. Permitted Use

The User may use the Theatre during the Licence Period only for the Events and for no other purpose.

4. Licence Fee

The User will pay the Licence Fee to the Park Board at the commencement of the Licence Period (the receipt and sufficiency of which is hereby confirmed and acknowledged).

5. User's Responsibilities

Unless otherwise provided in this agreement, the User will:

- (a) pay all costs and expenses in connection with the Events, including without limitation:
 - (i) the wages and expense of all stage hands and performers; and
 - (ii) the cost of contracting with any person to broadcast the Events or anything else originating from the Theatre;
- (b) construct or install, at its expense, all stage work for the Events, provided that the User must obtain the written approval of the General Manager before the User makes any alterations of any kind to the Theatre, including without limitation:
 - (i) installing any wires, electrical appliances, plumbing fixtures or pipes; and
 - (ii) affixing any nails, tacks or screws of any kind;
- (c) be responsible at its sole cost for ongoing maintenance and repair of the Theatre except for those items that the General Manager has agreed in advance will be paid for by the Park Board;
- (d) otherwise conduct its activities in the Theatre in a safe and responsible manner and so as not to endanger any person in the Theatre;
- (e) pay to the Park Board on demand the cost incurred by the Park Board to repair any damage to the Theatre, if any part of the Theatre is damaged by the act, default or negligence of the User or the User Personnel, including without limitation, the cost to repair any damage to the lawn or landscaping surrounding the Theatre; and
- (f) return at the end of the Licence Period all keys, including duplicate keys, for the Theatre provided by the Park Board to the User and the User will pay to the Park Board the cost of replacing any key which has not been returned to the Park Board; and
- (g) appoint a liaison person to make contact with the General Manager.

6. Installation of Temporary Gateway Entrance

The User may install a temporary structure (the "Gateway") at the Theatre to incorporate patron admissions and concessions for food, beverages and merchandise, all details of same to be subject to the prior written approval of the General Manager. The User will obtain all required permits from the City of Vancouver including, without limitation, any required building permits. The Gateway will not be installed until twenty-one (21) days before the first performance of each season and will be dismantled twenty-one (21) days after the last

performance of each season. The Gateway must be stored off-site and the Gateway footprint left in a safe condition to the satisfaction of the General Manager.

7. Prohibited/Restricted Uses

Unless the User obtains the prior written approval of the General Manager, the User will not permit any of the following in the Theatre:

- (a) smoking, except in areas designated for smoking by the Park Board;
- (b) use of the Theatre for sleeping or lodging purposes;
- (c) use of any liquid or solid substance of an explosive or highly flammable nature;
- (d) use of any controlled substance without appropriate labelling, provided that if the General Manager approves the use of any controlled substance the User will provide the General Manager with a Material Safety Data Sheet for same in accordance with the Workplace Hazardous Materials Information System and provincial and federal legislation;
- (e) use of any boiler, motor, stove or machinery operated by electricity or other power; and
- (f) use of an animal, provided that if the General Manager approves the use of any animal such animal may be in the Theatre only when required for a performance and then only during the hours when the performance and rehearsals are in actual progress.

8. Alcoholic Beverages

The User may sell alcoholic beverages at the Theatre provided that the User has received all required licences and permits to do so including, without limitation, a licence from the Liquor Control and Licensing Branch.

9. Objectionable Performance

The General Manager may require that the User immediately change or omit from the Events any song, speech, dialogue, business or costume if the General Manager, at his discretion, considers that it is offensive, defamatory, indecorous or improper.

10. Signs In or Outside the Theatre

The User must obtain the written approval of the General Manager before the User places or affixes any signs, decorations, advertisements, show bills, lithographs, posters or cards of any description in or outside the Theatre, provided that if the General Manager approves such placement the method of, and material used for, such placement must be approved by the General Manager.

11. Utilities

Effective the 2008 season, the User will pay for all utilities used in the Licence Area during the Licence Period. The Park Board will estimate water and electricity usage (and any other User utility charges paid by the Park Board) and will invoice the User accordingly.

12. Insurance

The User will, without limiting any of its obligations or liabilities under this Licence, obtain and continuously carry during the Licence Period, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence or such higher limit of coverage as the City's Director of Risk and Emergency Management may require from time to time and the policy will:
 - (i) indemnify and protect the User and its Personnel against all claims for loss, damage, injury or death to any person or persons and for damage to the Premises or to any public or private property occurring within or about the Premises or arising by virtue of the User's occupation or possession of the Premises;
 - (ii) add the City, the Park Board, the Vancouver Police Board and their respective Personnel as additional insureds;
 - (iii) contain a cross liability clause insuring the User, the City, the Park Board, the Vancouver Police Board and their respective Personnel in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
 - (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Licence; and
 - (v) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000.) or such other limit as the City's Director of Risk and Emergency Management may sanction from time to time.
- (b) All Risk (Broad Form) including Earthquake and Flood Insurance:
 - (i) Property of every description up to full replacement cost of all building structures and improvements including without limitation fittings, fixtures, plate glass (both interior and exterior), installations, alterations, additions, partitions, trade fixtures, furniture or equipment

located within the Premises owned by the User or installed by or on behalf of the User for which the User is legally liable.

The insurance policies described under this section (b) will:

- (i) provide for a limit of deductibility not greater than Five Thousand (\$5,000) per occurrence with respect to all perils except earthquake. The deductible for any claim will be paid by the User.

General Requirements of Insurance

The following will apply to all insurance policies:

- (a) the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the City's Director of Risk Management and will provide the City with Sixty (60) days prior written notice of material change or cancellation. Notice will be given to the City of Vancouver, c/o Risk and Emergency Management Division, Attention: Insurance Administrator. Notice must identify the name of the User as set out in this Licence and the location or address of the Premises;
- (b) neither the providing of insurance by the User in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the User from any other provisions of this Licence with respect to liability of the User or otherwise;
- (c) the insurance coverage will be primary insurance as respects the City, the Park Board, the Vancouver Police Board and their respective Personnel and any insurance or self-insurance maintained by or on behalf of the City, the Park Board, the Vancouver Police Board and their respective Personnel will be excess of this insurance and will not contribute with it; and
- (d) subject to the provisions of this Section 9, the User will provide at his/their own cost any additional insurance which the User is required by law to provide or which the User considers necessary.

Evidence of Insurance

Prior to the commencement of the Licence Period, and from time to time during the Licence Period within 10 days after demand by the City, the User will deliver to the Revenue Services Division of the Park Board, for each insurance policy the User must obtain under this Licence, a certificate of insurance, satisfactory to the City, and a certified copy of the policy. If the User fails to deliver to the City any such certificate or policy of insurance within the stipulated time, the City may obtain such insurance, and the User will pay to the City the cost of the premiums on demand by the City from time to time.

13. Indemnity

The User will indemnify and save harmless the Park Board, the City, the Vancouver Police Board and their respective Personnel from and against any and all Claims that the Park Board or the City or their respective Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, arising out of:

- (a) the Events or the User's use or occupation of the Theatre;
- (b) any breach by the User of any of its covenants and obligations under this agreement;
- (c) any activity of the User or the User Personnel;
- (d) the User's infringement of any right of any person; or
- (e) any defamation or controversial content contained in any promotional material related to the Events, any broadcast of the Events, any activity related to the Events, or the Events themselves,

provided that the User's covenant to indemnify and save harmless the Park Board and the City and their respective Personnel will not apply to the extent that the Claim is caused by the gross negligence of the Park Board, the City, the Vancouver Police Board or their respective Personnel.

14. Release

The User waives any right of claim against the Park Board or the City or their respective Personnel for any Claims that the User or the User Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, from any cause whatever, unless caused by the gross negligence of the Park Board or the City or their respective Personnel. Without limiting the generality of the foregoing, the User acknowledges that, in the receipt, handling, care or custody of property of any kind shipped or otherwise delivered by the User to the Theatre either prior to, during or subsequent to the Licence Period, the Park Board is only accommodating the User and will not be liable for any Claims with respect to such property.

15. Compliance with Laws

The User will, at its expense, comply with all federal, provincial and municipal statutes, ordinances, regulations and by-laws applicable to the User's use of the Theatre.

16. No Discrimination

The User must not engage in any discriminatory conduct that is prohibited by the *Human Rights Code* of British Columbia and, in particular, must not publish, issue or display any statement or other representation that is likely to expose a person or a group to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group.

17. Permits, Licences and Approvals

The User will obtain any and all necessary permits, licences and approvals required in connection with the Event or the User's use of the Theatre.

18. Security Measures

- (a) If either the Park Board or the User considers that safety and security are a concern with respect to any of the Events, the parties will discuss necessary measures with the Vancouver Police Department and will implement any recommendations made by the Vancouver Police Department and the User will pay the cost of such safety and security measures; and
- (b) The Park Board reserves the right to eject or bar entry to any objectionable person from the Theatre, including any person appearing intoxicated or otherwise disoriented, who acts ill mannerly, boorish or unruly or who constitutes an apparent threat to the safety of others or to the security of the Theatre, including its fixtures, fittings, furnishings, displays and landscaping, and the User hereby waives any Claim for damages or compensation by reason of the Park Board exercising this right.

19. Sale of Refreshments, Etc.

The User will only sell goods in the Gateway and other areas within the Licence Area as permitted by the General Manager.

20. Termination on Default by User

The Park Board may immediately terminate this agreement by notice in writing to the User if the User breaches any provision of this agreement and fails to remedy such breach within five (5) days of receipt of notice from the Park Board, or within such shorter time as determined by the Park Board in the event of a breach of a safety or security measure this agreement will be terminated without prejudice to the claims of the Park Board in respect to any monies due to the Park Board or in respect of any breach of this agreement by the User, and the covenants in this agreement on the part of the User will continue in full force and effect until all liability incurred prior to termination is satisfied in full.

21. Termination on Damage or Force Majeure

The Park Board may immediately terminate this agreement by notice in writing to the User if the Theatre or any material part of the Theatre is destroyed or damaged by fire or any other cause; and the User hereby waives any claim for damages or compensation for such termination.

22. Vacant Possession

The User will deliver up vacant possession of the Theatre on or before five o'clock p.m. on the date of expiry or termination of the Licence Period and will leave the Theatre in a sanitary, neat, tidy and safe condition and will ensure that the Theatre is in the same condition as it was at the date of the commencement of the Licence Period, reasonable wear and tear excepted.

23. Removal of Goods on Expiry or Termination

The User will remove all goods and chattels of whatsoever nature or kind brought into the Theatre by the User at a time agreed to by the General Manager and if the User fails to remove any of its goods and chattels, such goods and chattels will become the property of the Park Board without compensation to the User but without prejudice to any other right or remedy of the Park Board at law or equity, except to the extent that the Park Board requires the User to remove such goods and chattels.

24. No Assignment

The User may not assign or otherwise transfer the rights granted to the User in this agreement, which rights are personal to the User. Notwithstanding the foregoing, the User may sublicense the Theatre to third parties subject to the prior written approval of the General Manager.

25. Municipal Powers

Nothing contained in this agreement will be construed as a limitation on the powers of the City as a municipal corporation.

26. Governing Law

This agreement will be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada.

27. Time of the Essence

Time is of the essence of this agreement.

28. Park Board Remedies Are Cumulative

The remedies provided to the Park Board in this agreement are cumulative and are in addition to any remedies to the Park Board available at law or in equity including injunctive relief. No remedy will be exclusive and the Park Board may have recourse to any or all remedies simultaneously or at various times.

29. Notices

Any notice, approval or request required or permitted to be given under this agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia, in the case of the User addressed to it at:

s.22(1)

Attention: James Cronk

and in the case of the Park Board addressed to it at:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4
Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: Director of Legal Services

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

30. Approvals in Writing

Any approval, authorization, consent or waiver by the Park Board of any act or omission of the User under this agreement is effective only if given in writing and duly executed on behalf of the Park Board.

31. No Landlord/Tenant Relationship

It is the express intention of the Park Board and the User that the granting of the licence in this agreement will not create between the Park Board and the User a landlord and tenant relationship.

32. No Registration of Licence

The rights and privileges granted by the Park Board are purely contractual and are not grants of an easement, right of way or any other interest in land and the User will not register any instrument, claim or notice respecting this agreement in any Land Title Office.


33. Entire Agreement and Amendments

The provisions contained in this agreement constitute the entire agreement between the parties with respect to the subject matter of this agreement and supercede all previous communication, representations, expectations, understanding and agreements, whether written or unwritten between the parties with respect to the subject matter of this

agreement. No amendment of this agreement will be effective unless it is in writing signed by the parties.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Per: 

THEATRE UNDER THE STARS MUSICAL SOCIETY

Per: 
Authorized Signatory

APPROVED BY THE VANCOUVER BOARD OF PARKS AND RECREATION
ON THE 14TH DAY OF MAY, 2007.

LICENCE AGREEMENT

THIS RENEWAL LICENCE is dated for reference this 26th day of August, 2014

BETWEEN:

CITY OF VANCOUVER
as represented by its
BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, BC V6G 1Z4

(the "Park Board")

AND:

THEATRE UNDER THE STARS MUSICAL SOCIETY
a society incorporated under the laws of the Province of British
Columbia (Society No.-S-0008472)
2099 Beach Avenue
Vancouver, BC V6G 1Z4

(the "Licensee")

WHEREAS:

- A. The Park Board has the control, management and jurisdiction over the permanent public parks of the City of Vancouver, including Stanley Park, the site of the Licence Area;
- B. By way of a licence agreement made effective as of May 1, 2010 (the "Original Licence"), a copy of which is attached hereto as Schedule "A", the Park Board granted to the Licensee the right to use the Licence Area for the Licence Period;
- C. The Original Licence contains an option to renew the Original Licence for the Renewal Term and the Licensee has duly exercised such option to renew;
- D. The Original licence as modified by this Renewal Licence is called the "Licence"; and
- E. All capitalized terms used in this Renewal Licence have the meanings ascribed to such terms in the Original Licence unless otherwise defined herein,

NOW THEREFORE in consideration of the covenants and agreements contained in this Renewal Licence, the parties hereby covenant and agree as follows:

1. Renewal Term. The Park Board hereby grants to the Society this Renewal Licence for the Renewal Term of five (5) years commencing on May 1, 2015 and expiring on April 30, 2020 on the same terms and conditions as set out in the Original Licence save and except that:
 - (a) there will be no further right of option to renew the Licence;

- (b) the Park Board will have no obligation to pay or provide to the Licensee any allowance, concession or inducement of any nature, or do or perform any Park Board's work in, on, to or for the Licence Area;
- (c) the Capital Improvement Fee will be agreed upon by the parties prior to the commencement date of the Renewal Term;
- (d) if the Capital Improvement Fee for the Renewal Term has not been determined on or before the commencement date of the Renewal Term, then either of the parties may elect to arbitrate the issue by so notifying the other in writing of such election and this issue will be determined by a single arbitrator if the parties can agree upon a single arbitrator and failing that by three arbitrators, one appointed by each and the third by the two arbitrators. If by three arbitrators, the issue will be determined by majority vote. The arbitration will be conducted pursuant to the *Commercial Arbitration Act* of British Columbia. Each party will bear its own cost of presenting the arbitration; and
- (e) if the Capital Improvement Fee for the Renewal Term has not been determined on the first day of the commencement of the Renewal Term, then, until such determination is made, the Licensee will continue to pay the Park Board the Capital Improvement Fee set out in Section 4 of the Original Lease, provided however, that when the Capital Improvement Fee for the Renewal Term has been determined as aforesaid, the Licensee will pay the Park Board the new Capital Improvement Fee.

2. General.

- (a) This Renewal Licence will be deemed to incorporate all of the terms and provisions of the Original Licence, as amended by this Renewal Licence, and the Park Board and the Licensee mutually ratify and confirm all of the terms and conditions of the Original Licence as so modified.
- (b) This Renewal Licence will enure to the benefit of and be binding upon the successors and assigns of the Park Board and the Licensee.

IN WITNESS WHEREOF the parties have executed this Renewal Licence as of the day and year first above written.

CITY OF VANCOUVER
as represented by its
BOARD OF PARKS AND RECREATION

Per:

Authorized Signatory

**THEATRE UNDER THE STARS MUSICAL
SOCIETY**

Per:

Authorized Signatory

SCHEDULE "A"
ORIGINAL LICENCE

LICENCE AGREEMENT

THIS AGREEMENT made effective as of the 1st day of May, 2010,

BETWEEN:

CITY OF VANCOUVER

as represented by its **BOARD OF PARKS AND RECREATION**

2099 Beach Avenue

Vancouver, British Columbia

V6G 1Z4,

(the "Park Board")

AND:

THEATRE UNDER THE STARS MUSICAL SOCIETY

a society incorporated under the laws of the

Province of British Columbia (Incorporation No. S-0008472)

2099 Beach Avenue

Vancouver, British Columbia

V6G 1Z4

(the "Licensee")

WHEREAS:

A. The Licensee desires to use the Licence Area in Stanley Park during the Licence Period;
and

B. The Park Board requires the Licensee to execute this agreement to set out the
agreement of the parties with respect to the use of the Licence Area,

NOW THEREFORE in consideration of the covenants and agreements contained in this
agreement, the parties hereby covenant and agree as follows:

1. Definitions

In this agreement, including the recitals and the schedule, the following terms have the
following meanings:

- (a) "broadcast" means to televise, record, tape or reproduce by any means
whatsoever, for public or private use;
- (b) "Capital Improvement Fee" means a fee agreed to by both parties that each year
will be allocated to the Malkin Bowl Capital Reserve Fund;
- (c) "Capital Reserve Fund" means a fund managed by the Park Board that will consist
of Federal infrastructure funds, Park Board capital funds and the Licensee's

Capital Improvement Fee. The allocation of monies from this Fund is for specific improvements to the Licence Area.

- (d) "City" means the City of Vancouver;
- (e) "Claim" means any claim, demand, action, cause of action, complaint (including without limitation a complaint pursuant to human rights legislation), damage, loss, deficiency, liability, cost or expense (including without limitation actual legal fees and disbursements);
- (f) "Commercial Events" means events held at the Licence Area where a fee is being charged by the holder of the event, including without limitation, weddings, rentals, corporate events and movie shoots but excluding any theatre productions;
- (g) "Events" means all events to be held at the Licence Area, including without limitation, Commercial Events or theatre productions staged at the Theatre by the Licensee or Non-Profit Events;
- (h) "General Manager" means the General Manager of the Park Board or his successor in function, or designate, and his respective nominees;
- (i) "Licence Area" means the Malkin Bowl and the surrounding area that lies within the fence line approved in writing in advance each year by the General Manager;
- (j) "Licence Fee" has the meaning set out in Section 5;
- (k) "Licence Period" means May 1, 2010 to and including April 30, 2015;
- (l) "Non-Profit Events" means any event where no fee is being charged by the holder of the event including without limitation the use of the Licence Area for school productions, non-profit groups, rehearsals and by choirs;
- (m) "Licensee Office" means the office space in the Pavilion Building, (which is outside the License Area) and which is currently provided by the Licensor for use by the Licensee;
- (n) "Personnel" means any officers, officials, employees, agents, licensees, sublicensees, guests, invitees, volunteers, contractors, and subcontractors or anyone for whom the party is responsible in law in connection with any matter governed by this agreement;
- (o) "Theatre" means Malkin Bowl and other theatre structures such as entranceway and technical trailer;
- (p) "Licensee Personnel" means the Licensee's directors, officers, employees, material suppliers, agents, patrons, invitees, licensees, permittees, guests, sublicensees, contractors and subcontractors or by any other person who may be in or about the Licence Area; and

- (q) "wages" includes holiday pay and other deductions as required under federal and provincial laws (Employment Insurance, Workers Compensation, Canada Pension Plan, etc) and current union agreements.

2. Grant of Licence

Subject to the terms and conditions of this agreement, and to the condition that the Licensee takes the Licence Area in the condition that it finds it, the Park Board hereby grants to the Licensee the exclusive right to use the Licence Area for the Licence Period for events hosted by the Licensee or third parties approved in writing by the Licensor for the Licence Period. The Park Board will, at its sole discretion, on an annual basis, grant to the Licensee the exclusive right to use the Licensee Office at no charge during the License Period.

3. Permitted Use

The Licensee may use the Licence Area during the Licence Period only for the Events and for no other purpose. All events must be approved in advance in writing by the General Manager.

4. Fees Charged by Licensee

During the Term the Licensee will charge a Capital Improvement Fee of \$1.00 to all patrons of the Theatre purchasing a ticket and pay same to the Park Board. The Licensee will pay to the Park Board ten percent (10%) of the monies received by the Licensee for any commercial rentals of the Licence Area for Commercial Events as a Capital Improvement Fee. In the case of the use of the Theatre by Live Nation or other promoters or organizations staging commercial productions in the Theatre the Licensee will charge a Capital Improvement Fee of \$1.00 for each patron for the year 2010 and \$2.00 per patron for the four remaining years of the Term and pay same to the Park Board. All payments described herein will be paid to the Park Board pursuant to Section 5 of this agreement. If any non-profit organization or school group is using the Licence Area for Non-Profit Events there will be no amount payable to the Park Board and the Licensee agrees to keep the fee charged as low as possible for these types of organizations. At any time the Licensee may provide complimentary and/or in-kind tickets to Licensee events and in such case there will be no amount payable to the Park Board.

5. LICENSE FEE

The Licensee agrees to pay the Park Board the amounts set out in Section 4 (the "License Fee") monthly, with each payment being paid to the Park Board on or before the 15th day following the end of each calendar month during the Term.

6. CAPITAL RESERVE FUND

The first \$300,000 contributed by the Licensee to the Capital Reserve Fund will be allocated to complete both phases of the Theatre restoration project. Once both phases are complete, additional funds contributed by the Licensee may be used for capital improvements to the Theatre and surrounding grounds, including the entranceway and technical trailer, and other theatre specific capital needs such as lighting, scaffolds, chairs, etc. The allocation of all funds in the Capital Reserve Fund will be determined jointly by the Park Board and the Licensee.

7. AUDITED ANNUAL FINANCIAL STATEMENTS OF REVENUE

The Licensee will, at its expense, prepare and submit to the Park Board an audited revenue report, or mutually agreed upon independent financial report prepared by the Licensee, that accurately reports the revenue collected by the Licensee (the "Revenue Report") for each year during the Term (each year commences January 1 and expires on December 31) (the "Licence Year") and the following will apply:

- (a) such audited Revenue Report must be submitted on or before ninety (90) days after the end of each calendar year and for any partial year to the expiry or earlier termination of this agreement, within ninety (90) days of such expiry or earlier termination;
- (b) the audit must be certified by an independent Certified General Accountant, Chartered Accountant or Certified Management Accountant who is in good standing in the Province of British Columbia and is acceptable to the Park Board;
- (c) the audit report must be unqualified (notwithstanding the foregoing, if there are any qualifications these qualifications must be reviewed and approved by the Park Board) and in the form recommended by the Canadian Institute of Chartered Accountants for such an engagement;
- (d) the audit report must be supplemented by a management letter prepared by the auditor that states whether the Revenue Report presents fairly the revenue, as (the "Gross Revenue"), for that reporting period or, if the Revenue Report is inaccurate, sets out the correct Gross Revenue for that reporting period and identifies and comments on any internal control weaknesses regarding the collection and reporting of revenue and, if no such weaknesses are identified, the audit report must be supplemented by a letter from the auditor in which this is indicated;
- (e) the Licensee will retain possession of all documents pertaining to its revenue from the Licence Area for not less than seven (7) years;
- (f) the Park Board reserves the right to audit the books, records and accounts of the Licensee with respect to the Gross Revenue at any reasonable time and the Licensee will make available to the Park Board, at any reasonable time, all documents related thereto;
- (g) if any audit conducted by the Park Board discloses that the actual Gross Revenue for any License Year is greater by two percent (2%) or more than that disclosed by the audited revenue statements provided by the accountant for the Licensee, the Licensee will pay the cost of such audit forthwith on demand by the Park Board;
- (h) if any audit conducted by the Park Board discloses that the actual Gross Revenue for any License Year is greater by five percent (5%) or more than that disclosed by the audited revenue statements provided by the accountant for the Licensee, if in the reasonable opinion of the General Manager the misstatement of Gross Revenue

is intentional, the Park Board, in addition to its other rights in this agreement, may terminate this agreement on thirty (30) days' written notice to the Licensee; and

- (i) any monies owing by the Licensee to the Park Board will be paid to the Park Board at the time of the submission of the Revenue Report. Any refund payable by the Park Board will be paid to the Licensee within thirty (30) days of receipt by the Park Board of the Revenue Report. Notwithstanding the foregoing, if the monies owing or the amount to be refunded following said audit is One Dollar (\$1.00) or less, it will not be payable by the applicable party.

8. Licensee's Responsibilities

Unless otherwise provided in this agreement, the Licensee will:

- (a) pay all costs and expenses in connection with the Events, including without limitation:
 - (i) the wages and expense of all stage hands and performers; and
 - (ii) the cost of contracting with any person to broadcast the Events or anything else originating from the Licence Area;
- (b) construct or install, at its expense, all stage work for the Events, provided that the Licensee must obtain the written approval of the General Manager before the Licensee makes any major alterations of any kind to the Licence Area, including without limitation:
 - (i) installing any wires, electrical appliances, plumbing fixtures or pipes; and
 - (ii) affixing any nails, tacks or screws of any kind;
- (c) be responsible at its sole cost for ongoing care and maintenance of the Licence Area, other than the grounds, except for those items that the General Manager has agreed in advance will be paid for by the Park Board;
- (d) otherwise conduct its activities in the Licence Area in a safe and responsible manner and so as not to endanger any person in the Licence Area;
- (e) pay to the Park Board on demand the cost incurred by the Park Board to repair any damage to the Licence Area, if any part of the Licence Area is damaged by the act, default or negligence of the Licensee or the Licensee Personnel, including without limitation, the cost to repair any damage to the lawn or landscaping; and
- (f) return at the end of the Licence Period all keys, including duplicate keys, for the Theatre provided by the Park Board to the Licensee and the Licensee will pay to the Park Board the cost of replacing any key which has not been returned to the Park Board; and

- (g) appoint a liaison person to make contact with the General Manager.

9. Prohibited/Restricted Uses

Unless the Licensee obtains the prior written approval of the General Manager, the Licensee will not knowingly permit any of the following in the Licence Area:

- (a) smoking;
- (b) use of the Licence Area for sleeping or lodging purposes;
- (c) use of any liquid or solid substance of an explosive or highly flammable nature;
- (d) use of any controlled substance without appropriate labelling, provided that if the General Manager approves the use of any controlled substance the Licensee will provide the General Manager with a Material Safety Data Sheet for same in accordance with the Workplace Hazardous Materials Information System and provincial and federal legislation; and
- (e) use of an animal, provided that if the General Manager approves the use of any animal such animal may be in the Licence Area only when required for a performance and then only during the hours when the performance and rehearsals are in actual progress.

10. Alcoholic Beverages

The Licensee may sell alcoholic beverages at the Licence Area provided that the Licensee has received all required licences and permits to do so including, without limitation, a licence from the Liquor Control and Licensing Branch. The Park Board will not hinder the Licensee's ability to obtain such permits without reasonable cause.

11. Objectionable Performance

The Licensee will communicate to the General Manager in advance the titles of each year's productions and will not knowingly promote and/or produce any performance that infringes on Section 18 of this Agreement.

12. Signs In or Outside the Licence Area

The Licensee must obtain the written approval of the General Manager before the Licensee places or affixes any signs, decorations, advertisements, show bills, lithographs, posters or cards of any description outside the Licence Area, provided that if the General Manager approves such placement the method of, and material used for, such placement must be approved by the General Manager.

13. Utilities

The Licensee will pay for all utilities used in the Licence Area during the Licence Period. The Park Board will meter or estimate water and electricity usage (and any other Licensee utility charges paid by the Park Board) and will invoice the Licensee accordingly. If requested by the Licensee, the Park Board will provide relevant documentation detailing water and electricity usage.

14. Insurance

The Licensee will, without limiting any of its obligations or liabilities under this Licence, obtain and continuously carry during the Licence Period, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence or such higher limit of coverage as the City's Director of Risk Management may require from time to time and the policy will:
 - (i) indemnify and protect the Licensee and the Licensee Personnel against all claims for loss, damage, injury or death to any person or persons and for damage to the Licence Area or to any public or private property occurring within or about the Licence Area or arising by virtue of the Licensee's occupation or possession of the Licence Area;
 - (ii) add the City, the Park Board, the Vancouver Police Board and their respective Personnel as additional insureds solely with respect to the operations of the Licensee;
 - (iii) contain a cross liability clause insuring the Licensee, the City, the Park Board, the Vancouver Police Board and their respective Personnel in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
 - (iv) include All Risk (Broad Form) Tenants' Legal Liability insurance for an amount equal to the full replacement cost of the Licence Area (but not less than \$1,000,000 per occurrence). Such coverage to include the activities and operations conducted by the Licensee and third parties in the Licence Area;
 - (v) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Licence; and
 - (vi) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000.) or such other limit as the City's Director of Risk Management may sanction from time to time.

- (b) All Risk (Broad Form) insurance on property of every description and kind owned by the Licensee or for which the Licensee is legally liable or installed by or on behalf of the Licensee (and which is located in the Licence Area), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Licence Area in an amount not less than ninety percent (90%) of the full replacement cost thereof. The City and Park Board shall be added as additional insured and loss payee for its interest.

The insurance policies described under this section (b) will:

- (i) provide for a limit of deductibility not greater than Five Thousand (\$5,000) per occurrence with respect to all perils except earthquake and flood. The deductible for any claim will be paid by the Licensee.
- (c) Comprehensive Crime Insurance as follows:
- Employee Dishonesty Coverage - Form A for a limit not less than \$100,000
 - Broad Form Money/Securities - Loss inside and/or outside the Licence Area limit not less than \$10,000
 - Money Order and Counterfeit Paper Currency - limit not less than \$10,000
 - Depositors Forgery - limit not less than \$10,000

General Requirements of Insurance

The following will apply to all insurance policies:

- (a) the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the City's Director of Risk Management and will provide the Park Board with sixty (60) days prior written notice of material change or cancellation. Notice will be given to the Park Board pursuant to Section 31. Notice must identify the name of the Licensee as set out in this Licence and the location or address of the Licence Area;
- (b) neither the providing of insurance by the Licensee in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Licensee from any other provisions of this Licence with respect to liability of the Licensee or otherwise;
- (c) the insurance coverage will be primary insurance as respects the City, the Park Board, the Vancouver Police Board and their respective Personnel and any insurance or self-insurance maintained by or on behalf of the City, the Park Board, the Vancouver Police Board and their respective Personnel will be excess of this insurance and will not contribute with it; and

- (d) subject to the provisions of this Section 14, the Licensee will provide at his/their own cost any additional insurance which the Licensee is required by law to provide or which the Licensee considers necessary.

Evidence of Insurance

Prior to the commencement of the Licence Period, and from time to time during the Licence Period within 10 days after demand by the City, the Licensee will deliver to the Revenue Services Division of the Park Board, for each insurance policy the Licensee must obtain under this Licence, a certificate of insurance, satisfactory to the City, and a certified copy of the policy. If the Licensee fails to deliver to the City any such certificate or policy of insurance within the stipulated time, the City may obtain such insurance, and the Licensee will pay to the City the cost of the premiums on demand by the City from time to time.

15. Indemnity

The Licensee will indemnify and save harmless the Park Board, the City, the Vancouver Police Board and their respective Personnel from and against any and all Claims that the Park Board or the City or their respective Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, arising out of:

- (a) the Events or the Licensee's use or occupation of the Licence Area by the Licence or the Licensee Personnel;
- (b) any breach by the Licensee of any of its covenants and obligations under this agreement;
- (c) any activity of the Licensee or the Licensee Personnel;
- (d) the Licensee's infringement of any right of any person; or
- (e) any defamation or controversial content contained in any promotional material related to the Events, any broadcast of the Events, any activity related to the Events, or the Events themselves,

provided that the Licensee's covenant to indemnify and save harmless the Park Board and the City and their respective Personnel will not apply to the extent that the Claim is caused by the gross negligence of the Park Board, the City, the Vancouver Police Board or their respective Personnel.

Without limiting anything else contained in this agreement, the Licensee will at all times be liable to the park Board for the actions of any third party that the Licensee knowingly permits to use the Licence Area. If those actions result in any damage or loss to the Licence Area or if the park Board and/or its Personnel sustain any loss of any kind due in whole or in part to such actions, the Licensee will repair the damage or loss to the Park Board's satisfaction and will indemnify the Park Board and its Personnel for any loss they might sustain due in whole or part to such actions, except where such damage or loss was caused by or contributed to by the gross negligence of the Park Board or its Personnel.

Forthwith after becoming aware of significant liability concerns regarding the operation of or any matter relating to the Licence Area or the use of the Licence, the Licensee will notify the Park Board in accordance with Section 33 of this agreement.

16. Release

The Licensee waives any right of claim against the Park Board or the City or their respective Personnel for any Claims that the Licensee or the Licensee Personnel may sustain, incur, suffer or be put to at any time, either before or after the expiration or termination of this agreement, from any cause whatever, unless caused by the gross negligence of the Park Board or the City or their respective Personnel. Without limiting the generality of the foregoing, the Licensee acknowledges that, in the receipt, handling, care or custody of property of any kind shipped or otherwise delivered by the Licensee to the Licence Area either prior to, during or subsequent to the Licence Period, the Park Board is only accommodating the Licensee and will not be liable for any Claims with respect to such property.

17. Compliance with Laws

The Licensee will, at its expense, comply with all federal, provincial and municipal statutes, ordinances, regulations and by-laws applicable to the Licensee's use of the Licence Area.

18. No Discrimination

The Licensee must not engage in any discriminatory conduct that is prohibited by the *Human Rights Code* of British Columbia and, in particular, must not publish, issue or display any statement or other representation that is likely to expose a person or a group to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group.

19. Permits, Licences and Approvals

The Licensee will obtain any and all necessary permits, licences and approvals required in connection with the Event or the Licensee's use of the Licence Area.

20. Security Measures

- (a) If either the Park Board or the Licensee considers that safety and security are a concern with respect to any of the Events, the parties will discuss necessary measures with the Vancouver Police Department and will implement any recommendations made by the Vancouver Police Department and the Licensee will pay the cost of such safety and security measures; and
- (b) The Park Board reserves the right to eject or bar entry to any objectionable person from the Licence Area, including any person appearing intoxicated or otherwise disoriented, who acts ill mannerly, boorish or unruly or who constitutes an apparent threat to the safety of others or to the security of the Licence Area, including its fixtures, fittings, furnishings, displays and landscaping, and the Licensee hereby waives any Claim for damages or compensation by reason of the Park Board exercising this right.

21. Sale of Refreshments, Etc.

The Licensee will only sell goods in the Gateway and other areas within the Licence Area as permitted by the General Manager.

22. Option to Renew

If:

- (a) the Licensee due and punctually observes and performs the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this lease; and
- (b) the Licensee gives the Park Board not less than twelve (12) months and not more than eighteen (18) months written notice prior to the expiration of the Term of the Licensee's exercise of this option to renew;

then the Park Board will grant to the Licensee a renewal licence upon the expiration of the Term for a period of five (5) years commencing May 1, 2015 (the "Renewal Term") on the same terms and conditions as set out in this lease except that:

- (i) there will be no further right to renew;
- (ii) with respect to such Renewal Term, the Park Board will have no obligation to pay or provide to the Licensee any allowance, concession or inducement of any nature, or do or perform any Park Board's work in, on, to or for the Licence Area;
- (iii) the Capital Improvement Fee will be agreed upon by the parties prior to the commencement date of the Renewal Term;
- (iv) if the Capital Improvement Fee for the Renewal Term has not been determined on or before the commencement date of the Renewal Term, then either of the parties may elect to arbitrate the issue by so notifying the other in writing of such election and this issue will be determined by a single arbitrator if the parties can agree upon a single arbitrator and failing that by three arbitrators, one appointed by each and the third by the two arbitrators. If by three arbitrators, the issue will be determined by majority vote. The arbitration will be conducted pursuant to the *Commercial Arbitration Act* of British Columbia. Each party will bear its own cost of presenting the arbitration; and
- (v) if the Capital Improvement Fee for the Renewal Term has not been determined on the first day of the commencement of the Renewal Term, then, until such determination is made, the Licensee will continue to pay the Park Board the Capital Improvement Fee set out in Section 4, provided however, that when the Capital Improvement Fee for the Renewal Term has been determined as aforesaid, the Licensee will pay the Park Board the new Capital Improvement Fee.

23. Termination on Default by Licensee

The Park Board may immediately terminate this agreement by notice in writing to the Licensee if the Licensee breaches any provision of this agreement and fails to remedy such breach within five (5) days of receipt of notice from the Park Board, or within such shorter time as determined by the Park Board in the event of a breach of a safety or security measure this agreement will be terminated without prejudice to the claims of the Park Board in respect to any monies due to the Park Board or in respect of any breach of this agreement by the Licensee, and the covenants in this agreement on the part of the Licensee will continue in full force and effect until all liability incurred prior to termination is satisfied in full.

24. Termination on Damage or Force Majeure

The Park Board may immediately terminate this agreement by notice in writing to the Licensee if the Theatre or any material part of the Theatre is destroyed or damaged by fire or any other cause; and the Licensee hereby waives any claim for damages or compensation for such termination.

25. Vacant Possession

The Licensee will deliver up vacant possession of the Licence Area on or before five o'clock p.m. on the date of expiry or termination of the Licence Period and will leave the Licence Area in a sanitary, neat, tidy and safe condition and will ensure that the Licence Area is in the same condition as it was at the date of the commencement of the Licence Period, reasonable wear and tear excepted.

25. Removal of Goods on Expiry or Termination

The Licensee will remove all goods and chattels of whatsoever nature or kind brought into the Licence Area by the Licensee at a time agreed to by the General Manager and if the Licensee fails to remove any of its goods and chattels, such goods and chattels will become the property of the Park Board without compensation to the Licensee but without prejudice to any other right or remedy of the Park Board at law or equity, except to the extent that the Park Board requires the Licensee to remove such goods and chattels.

26. No Assignment

The Licensee may not assign or otherwise transfer the rights granted to the Licensee in this agreement, which rights are personal to the Licensee. Notwithstanding the foregoing, the Licensee may sublicense the Licence Area to third parties, pursuant to Schedule "A" attached hereto and forming part of this agreement, subject to the prior written approval of the General Manager.

27. Municipal Powers

Nothing contained in this agreement will be construed as a limitation on the powers of the City as a municipal corporation.

28. Governing Law

This agreement will be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada.

29. Time of the Essence

Time is of the essence of this agreement.

30. Park Board Remedies Are Cumulative

The remedies provided to the Park Board in this agreement are cumulative and are in addition to any remedies to the Park Board available at law or in equity including injunctive relief. No remedy will be exclusive and the Park Board may have recourse to any or all remedies simultaneously or at various times.

31. Notices

Any notice, approval or request required or permitted to be given under this agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia, in the case of the Licensee addressed to it at:

Theatre Under The Stars
2099 Beach Avenue
Vancouver, BC
V6G 1Z4

Attention: James Cronk

and in the case of the Park Board addressed to it at:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4
Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: Director of Legal Services

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the

date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

32. Approvals in Writing

Any approval, authorization, consent or waiver by the Park Board of any act or omission of the Licensee under this agreement is effective only if given in writing and duly executed on behalf of the Park Board.

33. No Landlord/Tenant Relationship

It is the express intention of the Park Board and the Licensee that the granting of the licence in this agreement will not create between the Park Board and the Licensee a landlord and tenant relationship.

34. No Registration of Licence

The rights and privileges granted by the Park Board are purely contractual and are not grants of an easement, right of way or any other interest in land and the Licensee will not register any instrument, claim or notice respecting this agreement in any Land Title Office.

35. Entire Agreement and Amendments

The provisions contained in this agreement constitute the entire agreement between the parties with respect to the subject matter of this agreement and supercede all previous communication, representations, expectations, understanding and agreements, whether written or unwritten between the parties with respect to the subject matter of this agreement. No amendment of this agreement will be effective unless it is in writing signed by the parties.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Per: _____



THEATRE UNDER THE STARS MUSICAL SOCIETY

Per: _____


Authorized Signatory

**APPROVED BY THE VANCOUVER BOARD OF PARKS AND RECREATION
ON THE 17TH DAY OF MAY, 2010.**

SCHEDULE "A"

OCCASIONAL THIRD PARTY USE POLICY

This Occasional Third Party Use Policy (the "Policy") forms part of the agreement made effective may 1, 2010 between Park Board and the Licensee.

1. Purpose of Policy

The purpose of this Policy is to provide for occasional use of the Licence Area by third parties at various times.

2. Amendments

This Policy will not be amended unless the Park Board and the Licensee agree to any amendment in writing.

3. Licensee Liable for Actions of Third Parties

Without limiting anything else contained in the agreement, the Licensee will at all times be fully responsible for the actions of any third party that the Licensee knowingly permits to use the Licence Area. If those actions result in any damage or loss to the Licence Area or if the Park Board sustains any loss of any kind due in whole or in part to such actions, the Licensee will repair the damage or loss to the Park Board's satisfaction and will indemnify the Park Board for any loss it might sustain due in whole or in part to such actions.

The Licensee will ensure that the Licensee's insurance is adequate to protect the Licensee for the actions of third parties.

4. Use by Third Parties

Any use by third parties of all or any portion of the Licence Area will only be a license to use on the terms set out in the Rental Agreement (hereinafter defined) and must receive the prior written approval of the park Board ; and

5. Rental Agreement

Before the Licensee permits a third party to use all or any portion of the Licence Area, the Licensee will enter into a written agreement with the third party (the "Rental Agreement"). At a minimum the Rental Agreement will contain the following information and requirements:

- (a) the full and correct legal name, address, contact name and telephone number of the third party;
- (b) identification of which area(s) of the Licence Area is/are to be used by the third party;
- (c) the purpose for which the area(s) is/are to be used by the third party;

- (d) the amount of the fee being paid by the third party including the amount of the deposit, if any;
- (e) the duration of the Rental Agreement;
- (f) proposed additional janitorial and security arrangements if such additional arrangements seem reasonably necessary in view of the proposed use; and
- (g) an obligation on the third party to comply with all federal, provincial or civic statutes, by-laws, regulations and orders in force at the time of execution of the Rental Agreement or thereafter relating to the Licence Area and the third party's use of the Licence Area.

6. No Occupation by Third Party Until Certain Conditions Met

The Licensee will not knowingly permit any third party to occupy all or any portion of the Licence Area unless:

- (a) the third party has executed the Rental Agreement; and
- (b) the third party has satisfied all the preconditions set out in the Rental Agreement.

7. Policy Part of Agreement

As this Policy forms part of the agreement, default by the Licensee in its obligations enumerated in this Policy is default under the agreement.