

## MEMORANDUM

**TO:**       **Real Estate & Transportation Committee**  
Commissioner Bill Read, Chairman  
Commissioner Justin Troller  
Commissioner Phillip Walker

**FROM:**     City Attorney's Office

**DATE:**     March 4, 2019

**RE:**       **Use Agreement with Lakeland Community Theatre**

Attached hereto for your consideration is a Use Agreement with the Lakeland Community Theatre for the use of the City's Lake Mirror Center Theater Complex (Lake Mirror Center). The Lakeland Community Theatre has provided live theater productions to the community for more than thirty (30) years.

This Agreement sets forth the terms and conditions upon which the Lakeland Community Theatre will utilize the Theater, adjacent executive office area and certain other portions of the Lake Mirror Center for theatrical productions and classes on a non-exclusive basis. Specifically, Lakeland Community Theatre's scope of use will be limited to the schedule of published theatrical productions/events it submits to the City each year during the term of the Agreement. Any additional uses of the Lake Mirror Center will be charged in accordance with the City's standard charges and rentals for Parks and Recreation Facilities and Programs as set forth by Resolution adopted by the City Commission.

Pursuant to this Agreement, Lakeland Community Theatre will rent the Lake Mirror Center for a term of three (3) years, effective upon City Commission approval, and continue through March 3, 2021. The Lakeland Community Theatre will pay the City 2% of any ticket sales derived from theatrical productions at the complex for use of the Lake Mirror Center facility. The compensation to the City for the use of the Lake Mirror Center is comparable to financial arrangements between other municipalities and local theater groups. The City is able to recoup a portion of the costs for use of the Lake Mirror Center while providing minimal financial impact to the Lakeland Community Theatre so it can continue its services to the arts community in Lakeland.

In addition, the Agreement sets forth responsibilities for Lakeland Community Theatre for maintenance, repair and damages while using the facilities and affords the City with more defined liability protection from Lakeland Community Theatre for any damage or injury occurring on the leased premises. It is recommended the City Commission approve this Agreement with Lakeland Community Theatre for use of the Lake Mirror Center.

Attachment

## USE AGREEMENT

THIS AGREEMENT, made this 4th day of March 2019 between the CITY OF LAKE LAND, a municipality organized and existing in accordance with the laws of the State of Florida (hereinafter "City"), and LAKE LAND COMMUNITY THEATRE, a Florida not for profit corporation (hereinafter "LCT").

**WHEREAS**, the City is the owner of The Lake Mirror Center Theater Complex (hereinafter referred to as "Theater") located at 121 S. Lake Avenue, Lakeland, Florida 33801; and

**WHEREAS**, the LCT desires to utilize certain portions of the Theater for purposes of theatrical productions and classes; and

**WHEREAS**, the parties hereto desire to enter into an agreement specifying the terms under which the LCT may use certain facilities at the Theater.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, the parties agree as follows:

1. **Term**. The initial term of this Agreement shall be for a period of three (3) years, commencing on March 4, 2019 (the "Effective Date"), and continuing through March 3, 2021, unless earlier terminated under the provisions of this Agreement. This Agreement may be renewed subject to mutual written agreement of the parties.
2. **Permitted Premises**. Under the terms and conditions set forth herein, the LCT shall be permitted to utilize the Theater, adjacent executive office area, glass lounge and appurtenant backstage facilities. The LCT shall also be permitted to utilize the box office. The permitted premises are hereinafter referred to as the "Facilities". A diagram of the Theater is contained in **Exhibit "A"** attached hereto and made a part hereof.
3. **Scope of Use**.
  - a. The LCT shall be permitted to utilize the Facilities on a non-exclusive basis for the purpose of theatrical productions, rehearsals and classes for no other purpose during the term of this Agreement except as otherwise specified in this Agreement or upon written approval of the City. The LCT shall provide a schedule of theatrical production dates, no later than December 31<sup>st</sup> for the following season, throughout the term of this Agreement that specifically includes the LCT's schedule of event dates. LCT shall provide the City with written notification of any cancellations of its scheduled events as soon as reasonably possible such that the City can utilize the Facilities for rental to other interested third parties. The City shall reserve the Facilities for such theatrical productions and events, in accordance with the LCT's schedule, attached hereto as **Exhibit "B"**, provided such schedule is submitted by the date set forth hereinabove. In addition, the LCT shall have non-exclusive

use of the area in the Theater designated as the "Green Room" during its theatrical productions, auditions and rehearsals. For purposes of this Agreement the Green Room is identified in **Exhibit "A"**. LCT's use of the Facilities for additional theatrical classes not included in the aforementioned schedule of event dates shall be subject to facility availability, to be determined by the City.

- b. The LCT shall have exclusive use of the following areas during the term of this Agreement for the sole purpose of office space: i.) Office space on the second floor lobby area of the Theater as more specifically shown in **Exhibit "A"**; and ii.) Lake Mirror Auditorium Box Office as more specifically shown in **Exhibit "C"**.
  - c. During the term of this Agreement, the City shall also be entitled to attend, free of charge, any scheduled theater productions for its Children's Summer and Enrichment Program, also known as "Camp Blast". Additionally, LCT shall ensure that the City's dance classes have access to the Facilities for its recitals during which LCT shall be required to set the stage with legs, boards, foil curtains and the City's sound system for such use.
  - d. Any additional uses must be approved, in writing, by the City and LCT will be charged in accordance with Resolution 14-053 adopted by the City Commission relating to "Charges and Rentals for Parks and Recreation Facilities & Programs" as may be amended from time to time. In no event shall LCT be permitted to assign use of the Theater to any third parties or groups for theatrical productions. Any third parties or groups seeking to use the Theater for such purposes shall be required to enter into a separate rental agreement with the City.
  - e. The LCT may serve beer and wine at its shows and fundraising events provided that the LCT complies with all local and state laws, regulations and ordinances governing the sale, distribution and/or consumption of alcohol and assumes liability related to service of alcohol at such events.
4. **Use Fee.** The LCT shall pay to the City compensation for use of the Facilities a percentage fee as follows:
- a. Two (2%) percent of the LCT's revenues derived from theatrical productions at the complex. For purposes of this Agreement, revenue shall be defined as the gross amount of monies collected by the LCT for ticket sales (including season tickets and general admission), and monies received for any other special events in ticket sales, which may be conducted at the Theater. For purposes of this Agreement, revenue shall not include monies received through sponsorships, donations, grants, or from special events held in City owned facilities for which LCT has paid separate rental fees in accordance with Resolution 14-053 adopted by the City Commission relating to "Charges and Rentals for Parks and Recreation Facilities & Programs" as may be amended from time to time.
  - b. For purposes of this Agreement, LCT shall provide City with a written report following each scheduled theatre main stage production run and after LCT's

season ticket drive documenting the ticket sales in calculating the percentage fee due to the City.

- c. All payments due to the City from the LCT shall be made payable to: The City of Lakeland and mailed or hand delivered as set forth in Section 20 of this Agreement.

5. **Maintenance, Repair and Damages.**

a. ***LCT's Responsibilities.***

i. When in use by the LCT, the LCT shall maintain, and keep in a neat and orderly condition, all facilities at the Theater. The City shall be responsible for janitorial services such as sweeping, dusting, mopping and for the replacement and repair of equipment. The LCT, at its own expense, may make improvements to the facilities, with prior written consent of the City. All repairs, maintenance or improvements shall be accomplished in accordance with the City of Lakeland's rules, regulations ordinances and codes.

ii. The LCT shall be responsible for the repair of any damages caused by its agents, employees, volunteers, participants, or patrons at the Theater, including but not limited to, property owned by the LCT such as lighting, equipment, costumes and props. The City shall have no responsibility or liability for any property owned by the LCT left in the Theater when the Theater is not in use by the LCT. However, the City shall be responsible for the repair or replacement of property caused by the negligence or willful misconduct of its employees or its agents. The LCT shall be the solely liable for any resulting damage that may occur to such property. The City shall refer any interested parties seeking to rent the Theater to the LCT such that LCT may provide its own authorized representative to be present to prevent damage to LCT property.

iii. In addition to the provisions set forth herein, LCT shall be required to comply with the City's Requirements for Maintenance, Repair, Housekeeping, Damages and General Expectations for the Theater specifically set forth in **Exhibit "D"**, attached hereto and incorporated herein by reference.

- b. ***City's Responsibilities.*** The City shall perform structural maintenance on the Theater, including the keeping in good repair of the structural members, and the repair of casualty damage to the Theater, excluding any damage caused by the LCT. The City agrees to make such repairs as soon as reasonably practicable.

6. **Legal Taxes and Assessments.** The LCT shall pay all legal taxes and assessments associated or attributable to the LCT's use or occupancy of the premises during the term of this Agreement or any renewal thereof. Such taxes and assessments

may include the Florida State Use Tax. However, the LCT shall not be responsible for payment of ad valorem property assessments against the building or the land.

7. **Annual Statement/Records**

a. *Annual Statement.* The LCT shall submit to the City an annual report containing a statement of business transacted, certified by an officer of the LCT as to its correctness. The annual report shall include data regarding attendance at its theatrical productions and income from its ticket sales. The annual statement and financial condition of the organization may be audited by the City Auditor or designated representative of the City at any time. The City shall be responsible for payment of any auditing fees.

b. *Public Records.* The parties to this Agreement understand and acknowledge that the City is a public agency subject to Florida Statute, Chapter 119, the Florida Public Records Law. As such, LCT agrees to maintain and allow public access to all documents and/or materials provided to the City under this agreement.

8. **Utilities.** The City shall be responsible for utilities at the Theater including electric, water and sewer. However, the City shall not be responsible for any telephone service utilized by the LCT. The LCT shall be required to reimburse the City within thirty (30) days of receipt of any telephone expenses incurred as a result of its use of the Complex. Further, the City shall not be held responsible for temporary utility failures, and any such utility failure shall not constitute a default by the City under this Agreement.

9. **Insurance.** The LCT shall furnish the City with evidence of insurance coverage as specifically set forth in **Exhibit "E"**, attached hereto and incorporated herein by reference.

10. **Indemnification.** The LCT shall hold harmless, indemnify, and defend the City, its officers and employees, representatives or agents in accordance with the Hold Harmless/Indemnification Agreement set forth in **Exhibit "F"**, attached hereto and incorporated herein by reference.

11. **LCT as Licensee/Tenant.** In conducting its activities hereunder, the LCT acts as an independent contractor and not as an agent of the City. The selection, retention, assignment, direction and payment of the LCT's employees shall be the sole responsibility of the LCT.

12. **Assignment.** This Agreement, or any part thereof, may not be assigned, or transferred by the LCT without prior written consent of the City.

13. **Access.** The LCT shall permit the City, its officer, agents, or employees free access to the facilities while in use by the LCT, in order that the City may verify the LCT's compliance with this Agreement, including sufficiency of maintenance, and to make any necessary repairs or improvements, to the

extent such are required to be made by the City under the terms of this Agreement.

14. **Rights Reserved.** The City reserves the right to make modifications, improvements, or alterations to any portion of the Theater, in its sole discretion.
15. **Acknowledging Contribution.** The LCT shall acknowledge the City as a contributor on all printed literature and publications.
16. **Compliance with Laws.** In conducting its activities at the Theater, the LCT shall comply with all applicable federal state, and local laws, regulations, and ordinances, as well as policies of the City of Lakeland. Further, the LCT agrees that it will not use the facilities, or allow same to be used, for any illegal or unsafe purpose.

The LCT shall, at its sole expense, obtain all permits and licenses required by any governmental agency to conduct its activities as provided for in this Agreement.

17. **Signs.** The LCT shall not attach, affix, or permit to be attached or affixed upon the outside of the Theater, any flags, placards, signs, banners, poles, wires, aerials, antennas, or fixtures without prior written consent of the City.

18. **Default and Termination.**

a. *Termination by City.* This Agreement shall be subject to termination by the City in the event of any one or more of the following events:

- i. The material default by the LCT in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of the LCT to remedy or undertake to remedy, to the City's satisfaction, such default for a period of thirty (30) days after receipt of notice from the City to remedy same, except insurance requirements set forth in Paragraph 9 which must be remedied within seven (7) days.
- ii. The LCT files a Voluntary Petition in Bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt, or if a receiver is appointed for property or affairs of the LCT and such receivership is not vacated within thirty (30) days after the appointment of such receiver.
- iii. Upon one hundred and twenty (120) days written notice, with or without cause.

b. *Termination by the LCT.* This Agreement shall be subject to termination by the LCT in the event of any one or more of the following events:

- i. The material default by the City in the performance of any of the terms, covenants, or conditions of this Agreement, and the failure of the City to remedy, or undertake to remedy, to the LCT's satisfaction, such default for a period of thirty (30) days after receipt of notice from the LCT to remedy same.
  - ii. 2. Upon thirty (30) days written notice, with or without cause.
- 19. **Removal of Property.** Upon termination of this Agreement, the LCT, at its sole expense, shall remove from the facilities, all LCT owned personal property, equipment, furnishings, and signs which the LCT was permitted to install or maintain under the rights granted herein, provided such removal can be done without damage to the Complex. If the LCT fails to do so within a reasonable time, then the City may effect such removal or restoration at the LCT's expense, and the LCT agrees to pay the City such expense promptly upon receipt of a proper invoice therefore. Any fixed improvements made to the facilities, by either party, shall remain the property of the City.
- 20. **Severability.** If any provision hereof shall be finally declared void or illegal by any Court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- 21. **Notice.** Any notice given by one party to the other in connection with the Agreement shall be in writing and shall be sent by Registered Mail, Return Receipt Requested, with postage and registration fees prepaid:

*As to the City:*

City of Lakeland  
Attn: Bob Donahay, Director, Parks & Recreation  
228 S. Massachusetts Ave.  
Lakeland, Florida 33801

*As to the Theatre:*

Lakeland Community Theatre  
Attn: Alan Reynolds, Artistic Managing Director  
P.O. Box 2603  
Lakeland, Florida 33806

- 22. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter, and facilities hereof. Any change or modification hereof must be in writing and signed by both parties.
- 23. **Headings.** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of

this Agreement.

24. **Jurisdiction, Venue and Governing Law.** The Parties irrevocably consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement, document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement, or breach of this Agreement or any such document or instrument. This Agreement shall be governed by the laws of the State of Florida.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Use Agreement to be executed and their respective seals to be hereunto affixed, the day and year first above written.

CITY OF LAKELAND, FLORIDA  
a municipal corporation

ATTEST:

BY: \_\_\_\_\_  
Kelly S. Koos, City Clerk

BY: \_\_\_\_\_  
H. William Mutz  
Mayor

(Seal)

APPROVED AS TO FORM AND CORRECTNESS:

BY: \_\_\_\_\_  
Timothy J. McCausland  
City Attorney

LAKELAND COMMUNITY THEATRE

Signed in the presence of:

BY: \_\_\_\_\_  
(Authorized Representative)

Witness \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

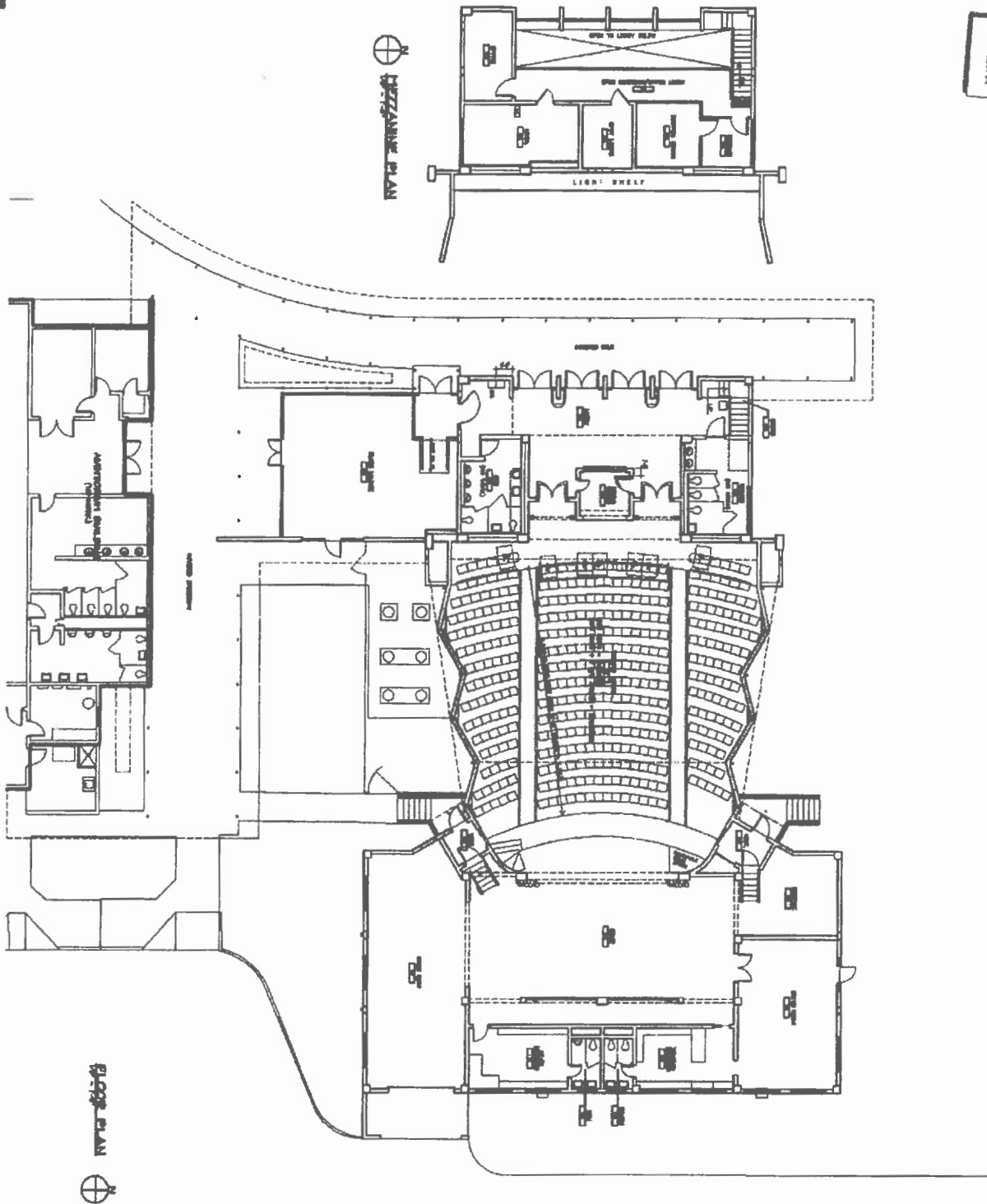
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# Exhibit A

DATE: 08/14/01

EXHIBIT A



**A101**  
 CITY OF LAKE MIRROR, FLORIDA  
**LAKE MIRROR CENTER THEATER**  
 101 SOUTH LAKE AVE.  
 LAKE MIRROR, FLORIDA  
 FLOOR PLAN

SCALE: 1/8" = 1'-0"  
 DATE: 08/14/01

**SCMH ARCHITECTS**  
 SHIRLEY GORDON HENRY FERGUSON ASSOCIATES ARCHITECTS INC.  
 100 SOUTH LAKE AVENUE, SUITE 200, LAKE MIRROR, FLORIDA 32050  
 TEL: 407/298-1111 FAX: 407/298-1112  
 WWW.SCMHARCHITECTS.COM



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ALL TICKETS GO ON SALE

AUGUST 1

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863 603 7529



Music by Jeanine Tesori

Book and Lyrics by

David Lindsay-Abaire

Based on the DreamWorks Animation Motion Picture and the book by William Steig

SHREK, THE MUSICAL

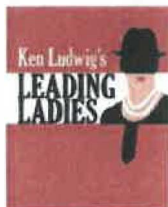
September 14,15,16 & 21,22,23 & 28,29,30, 2018

Everyone's favorite ogre is back in the hilarious stage spectacle based on the Oscar-winning, smash hit film, bringing all the beloved characters you know from the film to life on stage. Irreverently fun for the whole family, Shrek proves that beauty is truly in the eye of the ogre.

THIS SHOW HAS BEEN CAST

Bring 16 bars of music and wear comfortable clothes

Rated G



By Ken Ludwig

KEN LUDWIG'S LEADING LADIES

November 2, 3, 4 & 9, 10, 11, -2018

The hilarious comedy about two English Shakespearean actors, Jack and Leo, who find themselves so down on their luck that they are performing "Scenes from Shakespeare" on the Moose Lodge circuit in the Amish country of Pennsylvania. When they hear that an old lady in York, PA is about to die and leave her fortune to her two long lost

English nephews, they resolve to pass themselves off as her beloved relatives and get the cash.

AUDITIONS September 17 & 18, 2018 6pm

Rated PG



Music by Various  
Book and Lyrics by Stuart Ross

FOREVER PLAID, PLAID TIDINGS

December 7, 8, 9 & 14, 15, 16, 2018

The boys are back in this hilarious Christmas musical featuring everyone's favorite holiday music and loveable quartet. This truly "heaven-sent" holiday treat will lift audiences' spirits and fill them with nostalgia for a bygone era of classic music sung in perfect harmony.

AUDITIONS October 1 & 2 2018 6pm

Bring 16 bars of music and wear comfortable clothes

Rated PG

ANNIE GET YOUR GUN

February 22,23,24- March 1,2,3 & 8,9,10, 2019



Music and Lyrics by Irving Berlin  
Original Book by Herbert Fields and Dorothy Fields  
As Revised by Peter Stone

Irving Berlin's classic musical about Annie Oakley remains one of the best-loved musicals in history. The rousing, sure-fire finale hit's the mark every time. With songs such as "There's No Business Like Show Business" and "Anything You Can Do" this Irving Berlin score will score a hit for all of us!

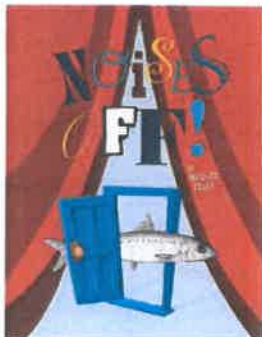
AUDITIONS December 10 & 11 6pm

Bring 16 bars of music and wear comfortable clothes

Rated G

NOISES OFF

April 5, 6, 7 & 12, 13, 14, 2019



By Michael Frayn

A hilarious and classic comic play by Michael Frayn, often called "The funniest farce ever written." "The most dexterously realized comedy ever about putting on a comedy. A spectacularly funny, peerless backstage farce. This dizzy, well-known romp is festival of delirium." - The New York Times

AUDITIONS February 4 & 5, 2019 6pm

Rated PG-13

THE WHO'S TOMMY

July 12, 13, 14 & 19, 20, 21 2019



A deaf, dumb and blind boy's journey from pain to triumph is a sensory-defying rock and roll experience. This Tony Award-winning musical was translated to the stage by theatrical wizard, Des McAnuff. Based on the 1969 rock concept album, The Who's Tommy is an exhilarating story of hope and the human spirit.

AUDITIONS April 22 & 23, 2019 6pm

Bring 16 bars of music and wear comfortable clothes

Rated M

Book by Des McAnuff Pete Townshend

Music and Lyrics by Pete Townshend

Additional Music and Lyrics by

John Entwistle Keith Moon



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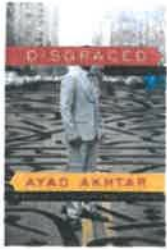
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## The Edge 2018-2019



Auditions Sept 24, 2018 6pm

### DISGRACED

October 17 & 18, 2018

Terrorism, race and religion are just some issues that swirl through a New York apartment, in Ayad Akhtar's Pulitzer prizewinning play. "In a dialogue that bristles with wit and intelligence, Akhtar puts contemporary attitudes toward religion under a microscope, revealing how tenuous self-image can be for people born into one way of being who have embraced another." - New York Times

**Rated M**

### DETROIT

February 6 & 7, 2019



Auditions Jan 7, 2019 6pm

"A sharp X-ray of the embattled American psyche as well as a smart, tart critique of the country's fraying social fabric, Lisa D'Amour's dark comedy is as rich and addictively satisfying as a five-layer dip served up with a brimming bowl of tortilla chips." - NY Times. "Totally nails the great, deep malaise of middle-class suburbia, with a sustained energy and a wicked eye for telling details...funny as hell." -NY Post

**Rated M**

### ASSASSINS

May 1 & 2, 2019



Auditions Jan 18, 2019 6pm

The multiple Tony Award-winning theatrical tour-de-force combines Stephen Sondheim's signature blend of intelligently stunning lyrics and beautiful music with a panoramic story of our nation's culture of celebrity and the violent means some will use to obtain it. Assassins lays bare the lives of nine individuals who assassinated or tried to assassinate the President of the United States, in a one-act historical "revisical" that explores the dark side of the American experience.

**Rated M**

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Lakeland Community Theatre Inc



By Marsha Norman & Lucy Simon

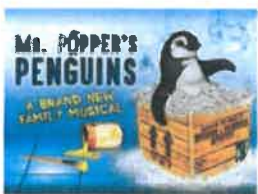
**THE SECRET GARDEN, Spring Version**

October 12, 13, 14, 2018

The enchanting musical about the spoiled orphan girl that is sent to live with her uncle and discovers renewed life, for herself and her sickly cousin, in bringing her dead aunt's secret garden back to life. Winner of the 1991 Tony® Award for Best Book of a Musical. The enchanting musical based on the 1911 novel of the same name by Frances Hodgson Burnett

Auditions August 6 & 7, 2018 5:30pm

Rated G



Book and Lyrics by Jody Davidson

Music by Brett Schrier

Based on the novel by Richard & Florence Atwater

**MR. POPPER'S PENGUINS**

January 25, 26, 27, 2019

In the small town of Stillwater, Mr. and Mrs. Popper are pleasant, practical, predictable people. But when a package for the Poppers produces a penguin, chaos waddles into their lives! With catchy original songs and performing penguin puppets, this delightful, action packed musical adaptation of Richard and Florence Atwater's popular book is the perfect family treat!

Auditions Nov 26 & 27, 2018 5 30pm

Rated G

**DISNEY'S SLEEPING BEAUTY KIDS**

June 14, 15, 16, 2019





The sleeping Disney princess, her fairy friends and her handsome prince face off against the evil Maleficent in this adaptation of the classic Disney animated film. Based on one of the most treasured Disney animated films of all time, and featuring some of the world's most memorable songs, Disney's Sleeping Beauty KIDS is pure, delightful fun for the entire family.

Music and Lyrics by Pyotr Ilyich Tchaikovsky. Auditions April 15 & 16, 2019 5:30pm  
Georg Bruns and Tom Adair. Winston Hibler  
and Ted Sears. Sammy Fain and Jack  
Lawrence

Rated G

Music adapted & Arranged and Additional  
Music by Bryan Louiselle

Book Adapted and Additional Lyrics by  
Marcy Heisler

Based on the 1959 film "Sleeping Beauty"  
and the story "Sleeping Beauty in the Wood"  
by Charles Perrault

[Purchase Tickets Online](#)

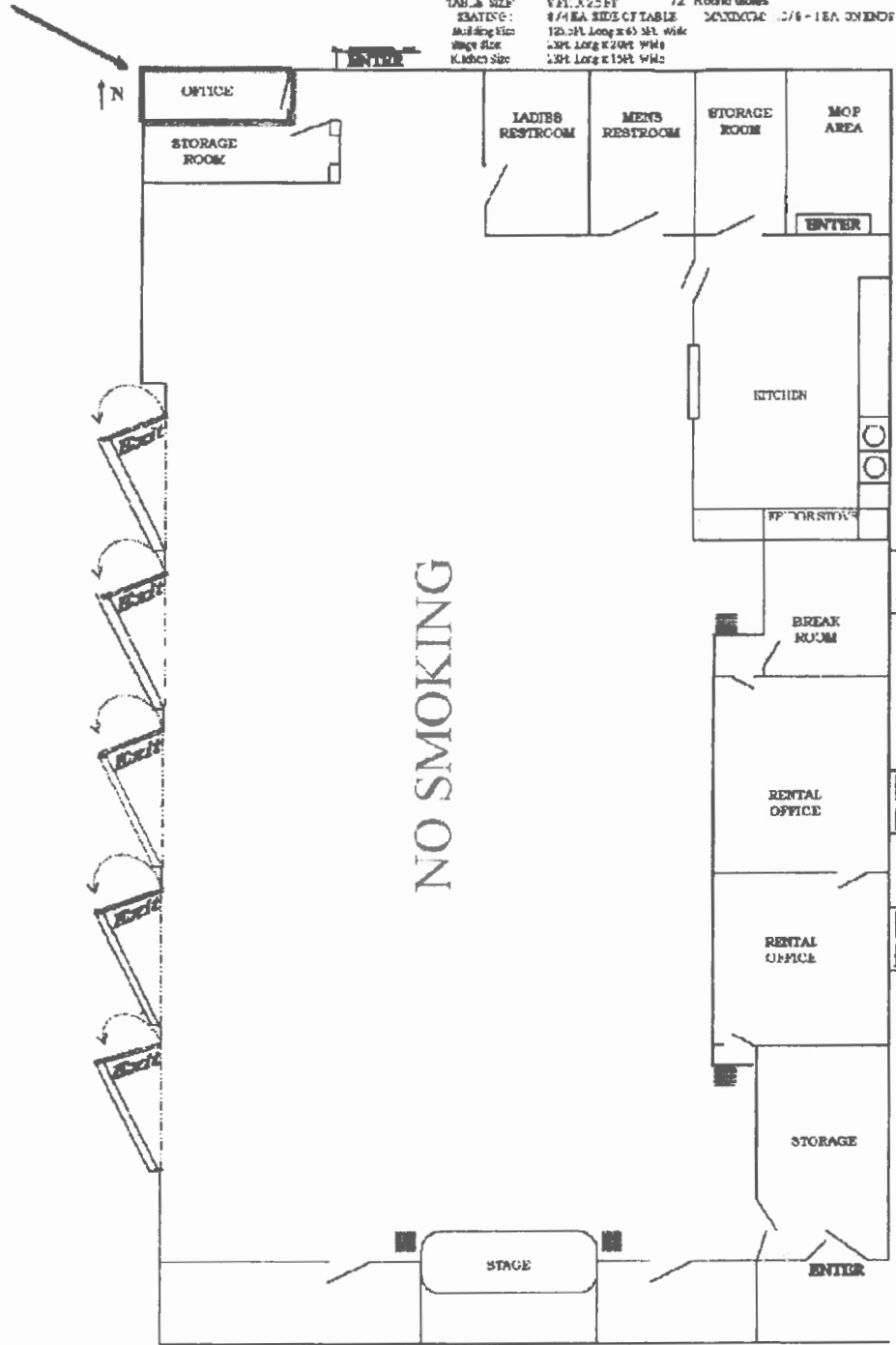
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# Exhibit C

LAKE MIRROR AUDITORIUM

CHAIR = X  
 TABLE = □  
 USE SQUARE FOR TABLE #72' DESIGNATE CAMEL FOR  
 CAMP, GIFTS, ETC.  
 TABLE SIZE: 72' Round tables  
 SEATING: 8 / 4 EA. SIDES OF TABLE  
 Molding Size: 12.5ft Long x 6.5ft wide  
 Stage Size: 2.5ft Long x 2.0ft wide  
 Kitchen Size: 1.5ft Long x 1.0ft wide

Exhibit C



© 1988 Lake Mirror Aud. Co. Inc.



## Exhibit "D"

### City of Lakeland (City) Requirements for Maintenance, Repair, Housekeeping and Damages, and General Expectations for the Lake Mirror Center Theater Complex (Theater)

- a. **Equipment Care:** The City requires proper maintenance and care of all of its Theater equipment, including, but not limited to: stage curtains, cables, fire curtains, sound board, projection screens, auditorium seats and carpeting. The inappropriate use of tapes, adhesives, fasteners, or cleaning compounds on equipment is considered damaging. As such, in the event City property is destroyed, LCT is responsible for repairing or replacing said property.
- b. **Energy Conservation:** At the end of each day the LCT utilizes the Theater, LCT shall be required to shut off/down the lighting, sound and any other control systems in the Theater, including turning off all stage, work and house lighting and place a ghost light on stage. The City and its staff shall not be responsible for any of the aforementioned tasks, unless LCT has not accessed the Theater that day.
- c. **Stage Floor Surface:** LCT shall be required to coordinate with the City regarding any modification or restoration of the stage floor surface. The City shall require that the stage floor is painted black. The color shall be pre-approved by the City and shall cover the entire stage floor visible to the audience in a professional manner. Painting of the stage floor in a different color for a production shall require prior written notice to the City, via email. Upon completion of such a production, LCT will be required to repaint the floor in black at its sole cost and expense. LCT shall be required to use drop cloths when painting scenery on stage when necessary to protect stage deck.
- d. **Keys:** Keys to the Theater should only be held by designated employees of LCT, which include the Artistic Director, Business Manager, Education Manager, and Technical Director. No more than four (4) keys shall be available to LCT. If a key is lost or broken, LCT is required to report this to the Lake Mirror Recreation Supervisor as soon as possible. A broken key must be handed in to the Recreation Supervisor in order for a new one to be produced.
- e. **Painting Outside:** The Loading dock area, all parking areas, concrete and grass areas around the theater shall not be used for painting, staining or other types of scenic decoration unless steps have been taken to protect the ground and wall surfaces from over-spray or over-painting. In addition, the Main entrance, Foyer, Auditorium and Glass Lounge or any other indoor area may not be used for painting.
- f. **Welding:** Welding inside the Theater is strictly prohibited unless proper permits have been issued and fire and safety recommendations have been adhered to. Welding outside the theater dock door is acceptable, provided that all appropriate safety equipment is used, applicable fire codes are complied with and that a designated person is charged with fire watch duties. The designated fire watch is required to have access to an appropriate fire extinguisher.
- g. **Parking:** Parking is free at the theater and is offered on a first come, first serve basis. Reservation of spots is not permitted, with the exception of ten (10) additional ADA spots for a show run. LCT is required to comply with all City Parking Regulations.
- h. **Clean up:** It is the responsibility of LCT and their employees, volunteers and performers to clean up after themselves. The theater, dressing rooms, green room, stage area, lobby and Glass Lounge are to be kept clean and tidy during rehearsals. LCT is required to ensure a safe and clean environment before and after each performance or rehearsal.

- i. **Food:** Food and drink are permitted in the theater house/glass lounge/green room during rehearsals and show runs. It is the responsibility of LCT to ensure that employees, crew and performers place empty containers in the garbage cans provided. All volunteers who bring food back stage to consume before a rehearsal, tech rehearsal or show, due to time restraints or health issues, must clean up and dispose of all waste in garbage cans provided by the City in backstage areas.
- j. **Post-Performance Clean up:** LCT shall restore the Theater to its pre-performance state within five (5) days of a final performance. This shall include all costuming and props returned to their storage spaces and sets taken out of the Theater. All staging areas, back stage, green room, dressing room and loading dock areas are required to be free of clutter and cleaned. All garbage produced shall be placed in a dumpster.
- k. **Paint/Stains:** LCT is not permitted to leave any oil or flammable paint, spray paint, stains, or other hazardous materials out. All such products shall be stored in the Hazard lock box provided by the City. Spray painting is not permitted unless the loading door is open and it occurs in a well-ventilated area. Toxic materials are not permitted. Water Based paints such as latex or casein (non-flammable) can be stored next to sink during load in and set completion before show opening, but must be stored on shelves or road box or removed when not in use.
- l. **Stage areas during Production:** LCT shall require its Stage Management staff to sweep, the stage deck and backstage areas before a performance or rehearsal, if required, and that the stage and backstage areas are kept tidy pursuant to LCT's Policy.

#### **Safety & Security Requirements:**

- a. **Accident Reporting:** In the event of an accident or other emergency, LCT shall immediately contact Emergency Services if Emergency Services are warranted. LCT shall make available to the City its Accident reporting form and LCT's Policy. In addition, in the event of an emergency or accident witnessed by City Staff when LCT staff is not present, the City shall contact Emergency Services if warranted, and contact LCT staff as soon as reasonably possible.
- b. **Child Protection Policy:** LCT shall have "custody, control or supervision" of any child/minor, under the age of 18. Under no circumstance, should a minor be left alone in the Theater or awaiting pickup as pursuant to LCT's standing policy. Those student volunteers who are under 18, but are driving, will be released to their cars.
- c. **Animal Protection Policy:** When using animals on stage for a production, LCT and The City shall require a copy of all licenses for all performance animals appearing on stage. LCT's use of privately owned animals and animals provided by the SPCA or Humane Society is permitted if said animal has all shots and licenses required. LCT shall be required to ensure any animals used are trained and housed in acceptable conditions in accordance with all applicable local, state and federal laws. Performance animals shall be under the control of a volunteer animal handler at all times. All other animals, with the exception of Service Animals, are strictly prohibited in the Theater. Under no circumstances shall performance animals or any animals be left in the Theater unattended.
- d. **Scenery:** The City requires that all scenery constructed within, or brought into the Theater to be constructed and rigged properly so as not to pose a danger to any person or persons working on or near it pursuant to industry standards and LCT's policies. LCT shall ensure that elevated platforms are sufficiently supported and guarded to prevent falls, wagons are not prone to

tipping and are anchored when in use by the use of breaks, stairs and ramp slopes are sufficiently gradual pursuant to industry standards, floor surfaces are free of tripping hazards and are appropriate for performer footwear. In addition, LCT shall ensure that proper hardware is utilized on flown elements pursuant to industry standards and that all scenery shall meet applicable Fire Codes.

- e. **Ladders:** The City allows the use of ladders, with the exception of wooden ladders over six (6) feet in height, provided that such ladders will be utilized according to the manufacturer's safety instructions. Wooden ladders utilized as props or part of the scenery of a production are permitted, provided that ladders over six (6) feet in height must be safely and properly secured.
- f. **Stage Traps:** If stage traps are opened, the appropriate barriers must be in place at all times.
- g. **Catwalks:** All catwalks must be clear of any foreign objects that could fall and cause injury.
- h. **House Lighting:** The City will maintain the House Lighting system. If there are any maintenance issues, LCT should notify the City immediately. The City requires that the house lighting be turned on to maximum whenever the audience is in motion. Aisle lighting must be illuminated while an audience is in attendance.
- i. **Fire Curtain:** The City requires that the plane of the fire curtains remain clear of obstruction. Should a fire occur in the Theater while occupied by LCT or the City or its employees or its rental tenants, it is the responsibility of LCT or the City or its employees or its rental tenants to immediately lower the fire curtain using the activation handle. It is the responsibility of LCT to train its stage management, stage crew and the City to train its employees, and rental tenants regarding the fire curtain's proper operation.
- j. **Flames/Pyrotechnics/Smoke & Fog Effects:** LCT must employ safe use of all the aforementioned effects and they must be compliant with the mandates of the Lakeland City Fire Marshal and standard safety practices, including any Lakeland Fire Department permit requirements for the use of any pyrotechnics, fireworks and flame effects. High dissipating fog/smoke effects such as a Chauvet Geysers Jr. are permitted that do not affect the Theatre Fire Suppression System, along with dry ice systems and Vaporflame. If atomized fog/haze/smoke that would affect the Fire Suppression System is required for a specific production, LCT must get permission from the City and the Lakeland Fire Marshall to disable the Fire Alarm System and set up a manned fire watch for each performance or rehearsal utilized. LCT will help absorb the cost of manning any such fire watch.
- k. **Blank Firing Guns:** LCT is to use only blank guns with safety baffling in the barrel and/or in the cylinder, with the exception of antique replicas where no firing capacity is enabled. Percussion caps are allowed per industry safety standards (example: replica mussel loaders for "Le Mis"). Guns without such safe guards are NOT to be fired at any time, no exceptions (example: starter pistols, real fire arms, etc.)
- l. **Smoking on Stage:** If a realistic portrayal of smoking must occur on stage, it is required that an electronic cigarette prop, or a non-flame puffer prop cigarette designed and approved specifically for theater use, be utilized.
- m. **Seating Configurations:** Any alterations to the audience seating configuration in the Theater must be pre-approved, in writing via email, by the City and must be in accordance with all applicable fire codes.
- n. **Performer Flying:** Performer flying is acceptable if: 1) Rigging of equipment is performed by a suitable licensed and insured company. 2) The operator is at least 18 years old. 3) All

insurances are up to date and copies have been provided to the City from LCT and Performer Flying company. 4) The name, Date of Birth, emergency contact of operators and fliers are submitted to the Recreation Supervisor prior to any flying. 5) Operator is properly trained in the flying operation and emergency procedures. 6) Any CAD drawings, scope of work invoices from the rigging company are required to be submitted to City Recreational Supervisor prior to flying.

- o. **Visitors & Guests:** For security reasons, individuals not connected with the current show should not attend rehearsals, unless it is pre-arranged through the Stage Manager and personnel are accounted for in the daily register. Dressing Rooms, Backstage areas, on-stage area, orchestra Pit, are Restricted Areas and Visitors and those not connected with the show are not permitted, unless accompanied by LCT Staff or Production Staff.
- p. **Trip Hazards:** All cords and cables in backstage areas are required to be taped down, covered with a rug, marley matt or ran through a yellow jacket. All cords in public areas must be covered with a rug, marley matt or yellow jacket.
- q. **Fire Extinguishers:** The City will provide, maintain and locate the proper Fire Extinguishers in all Fire Code mandated positions throughout the Theater Facility. LCT staff, volunteers, City employees and all venue rental tenants will maintain access to ALL Fire Extinguishers.

### **Venue Reservation**

- a. The City will promote renting the Theater during times that it is not in use by LCT. The City will continue to have any renters contact LCT if they require technical assistance during their rental. All monies for technical assistance will be paid directly to LCT by the renter. For a City event, LCT is required to have the stage set with downstage and mid-stage legs and borders hung, and cyclorama hung, and LCT's mid-stage black hung if requested by City. Lighting should be a generic bright stage wash. All City equipment such as the City's audio consoles should be patched in correctly and ready for use when power is turned on.

### **Dressing Space**

The Theater is equipped with male and female dressing rooms, and a green room. Use of these spaces is for the dressing and holding of cast and crew. All spaces used for dressing or holding purposes must have clear traffic pathways for entrance/exit and the maximum occupancies for use shall not be exceeded. All spaces shall be kept free of trash and food, and personal belongings will be appropriately tended to. The City is not responsible for personal belongings left in any part of the Theater.

### **Front of House:**

LCT is responsible for providing all house management and box office personnel. The City shall not be responsible for ticket sales and/or show house management.

- a. **House Managers:** The City shall require one (1) House Manager who is a LCT Staff Member for every LCT event. The House Manager is in charge of front of house staffing. The House Manager and LCT House volunteers are expected to direct audience admission, hand out program materials, seat patrons who require assistance, direct patrons to restrooms, collect trash in the house and lobby post events and ensure guests comply with the applicable rules/regulations of the Theater pursuant to LCT's policies.

- b. **Fire Code/Standards/Patron Safety & Security:** The LCT shall comply with all fire code and standards including, but not limited to: 1) Ceasing Admission when maximum capacity is reached; 2) ensuring patrons are only sitting in designated seating areas; 3) Keeping the aisles, Foyer, Glass Lounge and outdoor areas clear of obstructions; 4) removing patrons that smoke in the building, are in possession of alcohol not purchased within the Theater, or are otherwise repeatedly disruptive to others; and providing Crowd Manager Training for LCT staff as required by applicable Fire Codes. Uncooperative patrons should be reported to the Lakeland Police Department (863)-834-6900. The City requires that LCT trains all house management volunteers in emergency procedures and preparedness such as 1) Illness to patrons; 2) Evacuation due to fire/emergency situations; and 3) unruly patrons. All emergency issues should be reported to City staff when it is safe to do so. Written reports should be gathered and sent to City staff supervisor for submission to the appropriate departments.
- c. **Strobe Lighting:** House Managers are expected to clearly display at the points of audience admission notices stating that strobe lighting will be used during performances. Alternatively, this notice can be displayed in the program and announced verbally to the entire audience before the performance begins.
- d. **Tables:** Any tables/chairs that House Management setup shall not interfere with emergency exits.
- e. **Tapes:** House Management is responsible for ensuring that no adhesive tapes are attached to any of the walls, window, flooring of the Foyer, Glass Lounge or Auditorium.

### **Lighting**

- a. **Rigging:** The City reserves the right to review the rigging of all lighting equipment for conformity to industry standard practices. Safety cables must be used on all lighting equipment.
- b. **Storage:** The City requires the neat and orderly storage of lighting instruments and related items. No instruments or related items should clutter any floor area. Surplus instruments should be either hung on lighting racks/dollies or taken to an external storage facility.
- c. **Restoration:** Between show runs, the stage lighting look should be a generic bright stage wash.

### **Sound**

- a. **Rigging:** The City reserves the right to review the rigging of all Audio equipment for conformity to industry standard practices. Safety cables must be used on all flown audio equipment.
- b. **Storage:** The City requires the neat and orderly storage of audio equipment.
- c. **Restoration:** Between show runs, the City's audio consoles should be patched in correctly and ready for use when power is turned on, if a Rental or City Event is scheduled for use after said show run.

### **Rigging**

- a. **Rigging:** The City reserves the right to review the rigging of all flown equipment for conformity to industry standard practices.
- b. **Rigging Alterations:** Any alterations to the fly system is not permitted, e.g. – moving the line sets pulley's and cradles.

- c. **Hardware:** Proper rigging hardware such as span sets, trim chains etc. should be used to rig scenic pieces. LCT shall be responsible for ensuring that the hardware can bare the load required.
- d. **Weight Schedule:** The City reserves the right to request a weight schedule if deemed necessary.
- e. **Soft goods:** LCT shall be responsible for the correct folding (nap in and Jute on top) and storage of the City's soft goods that may need to be taken down for the show run.
- f. **Contractors:** LCT shall be responsible for providing all insurance and scope of work for any third party vendors that are required for any specialty rigging required for show.
- g. **Performer Flying/Rigging:** Performer flying is acceptable if: 1) Rigging of equipment is performed by a suitable licensed and insured company; and 2) The operator is at least 18 years old; and 3) All insurance is up to date and copies have been provided to the City from LCT and the Performer Flying company; and 4) The names, Date of Birth, emergency contacts of operators and fliers are submitted to the Recreation Supervisor prior to any flying; and 5) Operator is properly trained in the flying operation and emergency procedures; and 6) Any CAD drawings, scope of work, Invoices from the rigging company are required to be submitted to the City Recreational Supervisor prior to flying. The City shall ensure that a City Rental Tenant will never rig/hang/or fly anything from the Fly System or use/access the Fly System and /or loft without the oversight and /or written permission of LCT's AMD, TD, ATD or Production Staff.
- h. **Restoration:** Between Show Runs, a full restoration will consist of: Downstage and mid-stage legs and borders hung, cyclorama hung and LCT's mid-stage black hung if requested by City.
- i. **Fly System and Grid Inspections:** The City is solely responsible for scheduling and covering all costs for timely certified inspection pursuant to industry safety standards of the Fly System, including but not limited to Grid, Arbors, Carriages, Ropes, Batons, Head Blocks etc. The City shall use the same interval time schedule of certified inspections it uses to maintain the Fly System at other City Theater facilities such as the R.P. Funding Center. LCT shall be responsible for any damage caused to the Fly System arising out of LCT's negligence.

### **Rehearsal Period**

**Schedule:** LCT shall ensure that staffing is available to lock and set the building alarm in the Theater post rehearsal if rehearsal runs long. Rehearsal end times are required to include enough time at the end for cleanup. If additional time is needed after a scheduled end time, City staff will lock the doors and either the Artistic Director, Business Manager, Education Manager, Technical Director, Assistant Technical Director will set the building alarm. Only the aforementioned persons will be permitted access to the alarm code. Chains on Lobby Doors and Doors in Glass Lounge shall NEVER be locked if building is occupied as pursuant to applicable Fire Codes.

**Cancellation/Change Policy:** Other than due to a Force majeure event, the City should be given twenty-four (24) hours prior notice of any change/cancellation to rehearsal. The City will endeavor to accommodate additional "pop-up" rehearsal times as long as staffing is on-site. Such "pop-up" rehearsals when staffing is required to come in for additional hours will be discussed on a case by case basis.

**Theater Facility Closures Due to Facility Failures:** The City is not responsible for any closure of the Theatre Facility due to any Force Majeure Event, including but not limited to: Acts of God or Force of Nature events such as Hurricanes or Natural Disasters. The City shall be responsible for the cost of facility failures due to Force Majeure Events such as, but not limited to, plumbing, structural issues, and power outages caused by building wiring.

# **Exhibit “E”**

## **INSURANCE REQUIREMENTS**

### **STATEMENT OF PURPOSE**

The City of Lakeland (the “City”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City’s interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

### **CITY DEFINED**

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

### **OTHER PARTY DEFINED**

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party’s subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

### **LOSS CONTROL/SAFETY**

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

### **INSURANCE - BASIC COVERAGES REQUIRED**

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party’s interests or liabilities, but are merely minimums.

"Except for workers’ compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as **additional insured**. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

### **INSURANCE – BASIC COVERAGES REQUIRED (cont’d)**



Except for worker's compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

**Commercial General Liability:** This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and **"Products and Completed Operations" coverage. This policy should also be inclusive of host liquor liability.**

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

**The liability limits shall not be less than:**

<b>Bodily Injury and Property Damage</b>	<b>\$1,000,000 Single limit each occurrence</b>
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**Workers' Compensation:** Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

**Excess Liability:** This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

**The liability limits shall not be less than: \$1,000,000**

## **EVIDENCE/CERTIFICATES OF INSURANCE**

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage, the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

## **Exhibit “F”**

### **Hold Harmless/Indemnification**

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the licensee/tenant shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the licensee/tenant, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the licensee/tenant, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the licensee/tenant or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the licensee/tenant, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

**Subrogation:** The licensee/tenant and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit licensee/tenant or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then licensee/tenant or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should licensee/tenant or Subcontractor enter such an agreement on a pre-loss basis.

