Staff Summary Report

Tempe

Council Meeting Date: January 8, 2009 **Agenda Item Number: _____**

SUBJECT: Request approval of a five-year agreement with two three-year options with Childsplay, Inc., for use of the Tempe Center for the Arts (TCA).

DOCUMENT NAME: 20090108csar01 **TEMPE ARTS CENTER (0109-19)**

SUPPORTING DOCUMENTS: Yes

COMMENTS: Childsplay, Inc. desires to enter into a five-year agreement with two three-year options for the use of portions of the Tempe Center for the Arts (TCA) for the purpose of presentation of theatrical performances and programs for young audiences and other events.

PREPARED BY: Don Fassinger, Cultural Facilities Administrator, 480-350-2881

REVIEWED BY: Tom Canasi, Community Services Manager, 480-350-5305
Adrienne Richwine, Deputy Community Services Manager, 480-350-5237

LEGAL REVIEW BY: Andrew Ching, City Attorney, 480-350-8575
Judith Morgan, Assistant City Attorney, 480-350-8779

DEPARTMENT APPROVAL: Tom Canasi, Community Services Manager, 480-350-5305

FISCAL NOTE: Under License Agreement, Childsplay, Inc. will be assessed Licensed Facility use fees as set forth in Council-approved TCA Operating Policies.

RECOMMENDATION: Staff recommends that City Council approve License Agreement with Childsplay, Inc.

ADDITIONAL INFO: Childsplay, in its thirtieth year as a Tempe-based arts organization, provides quality theater performances for children and families. Childsplay is one of the primary users of the TCA and a TCA Partner group. Producing performances at the TCA for 40 weeks each season, a long-term agreement with Childsplay will ensure a solid foundation of arts offerings for the Tempe community and the surrounding region.

Tempe Center for the Arts

LICENSE AGREEMENT WITH CHILDSPLAY, INC.

This LICENSE AGREEMENT (AGREEMENT), is made and entered into this _____ day of _____, 2008, by and between the CITY OF TEMPE, a municipal corporation of the State of Arizona and the governing body of the Tempe Center for the Arts (CITY), and CHILDSPLAY, INC., an Arizona non-profit corporation, (CHILDSPLAY).

RECITALS

1. The CITY has constructed, owns and operates the Tempe Center for the Arts (TCA), 700 West Rio Salado Parkway, Tempe, AZ 85281. The facilities located within the TCA are hereinafter referred to as the PREMISES.

2. The TCA, as defined by its mission statement, is "A vibrant artistic home that engages young people, families and adults; celebrates the fundamental role of the arts in our community; and explores the collaboration of artists and audience. The TCA values accessibility, diversity, creativity and innovation realizing its mission through innovative programming that enriches, enlightens, inspires and expands the artistic horizons of our community; and an environment that supports the collaboration and exchange of diverse arts groups."

3. CHILDSPLAY is recognized as a local, regional and national force in the production and presentation of theater for young audiences. CHILDSPLAY can and will provide innovative programming that celebrates the role of the arts in our community and enhances the artistic horizons of our community, in particular, those of the youth of our community.

4. CHILDSPLAY desires to enter into an AGREEMENT for the use of certain portions of the PREMISES for purposes of presentation of theatrical performances and programs for young audiences and the CITY is willing to offer an AGREEMENT for such use by CHILDSPLAY.

In consideration of the mutual promises, covenants and undertakings as more particularly set forth below, the parties hereto do hereby agree as follows:

AGREEMENT

1. This AGREEMENT shall become effective upon execution and shall terminate, subject to the rights and options hereinafter provided, on June 30, 2013. The period of time between the commencement of this AGREEMENT and the expiration, or earlier termination, of this AGREEMENT is referred to herein as the TERM.

2. The CITY shall offer to CHILDSPLAY, upon mutual agreement with CHILDSPLAY, two (2) options (each an OPTION, collectively the OPTIONS) to extend the TERM for an additional three (3) years for each OPTION exercised. The TERM, as extended by the OPTIONS, shall be on all of the same terms and conditions as are set forth in this AGREEMENT or as are mutually agreed upon. CHILDSPLAY may exercise the first OPTION by providing written notice to the CITY on or before June 30, 2012. If the first OPTION is timely exercised, the TERM shall be extended to June 30, 2016. If CHILDSPLAY timely exercises the first OPTION, then CHILDSPLAY may exercise the second OPTION by providing written notice to the CITY on or before June 30, 2015. If the second OPTION is timely exercised, the TERM shall be extended to June 30, 2019.

3. CHILDSPLAY shall be subject to Tier 1 Licensed Facility use fees as described in Attachment B. The CITY agrees not to increase the Licensed Facility use rates payable by CHILDSPLAY for the Theater and Studio, for the first two (2) years of this AGREEMENT or prior to July 1, 2010. After such date, the CITY reserves the right to make reasonable adjustments to the Licensed Facility use fees, as approved by Tempe City Council, with such increase to be effective 12 months after written notification to CHILDSPLAY and to not exceed three percent (3%) increase in each year of years three (3) through five (5) of this AGREEMENT. The CITY agrees to deliver, in writing to CHILDSPLAY, notification of Licensed Facility use fee increase, if any, effective July 1, 2010, on or before July 1, 2009. Future Licensed Facility use fees will be negotiated in good faith and mutually agreed upon.

4. The CITY and CHILDSPLAY agree to work together to maintain a positive and productive work environment which promotes mutual respect and courtesy.

SECTION 1. DEFINITIONS

A. CFA: Cultural Facilities Administrator - the person assigned to manage and act on behalf of the TCA.

B. CITY: The City of Tempe and/or its representatives.

C. CITY PROGRAM: An activity or event sponsored by, presented by or at the direction of the City of Tempe, its departments, management or any other entity directly connected to the CITY.

D. EVENT: A single, distinct activity. For example: a performance, banquet or meeting.

E. EVENT DAY: Any day Monday through Sunday from 7:00 a.m. until 12:00 a.m. (midnight) during which the LICENSED FACILITY is used to present an event or activity attended by the public, audience, or members of a group. Any such event or activity during any portion of the time period shall deem the day an EVENT DAY.

F. LICENSE AGREEMENT (AGREEMENT): This written document entered into by CHILDSPLAY and the CITY. This AGREEMENT is not, nor should it be construed as, a lease or an agreement in the nature of a lease.

G. LICENSED FACILITY: The specific EVENT space (and associated PRODUCTION SUPPORT AREA), event space, or other activity space directly referenced by the confirmed schedule and/or LICENSE AGREEMENT.

H. LICENSEE: Any person, firm, association, organization, partnership, company or corporation that enters into a written agreement to use the facilities of the Tempe Center for the Arts.

I. NON-EVENT DAY: Any day Monday through Sunday from 8:00 a.m. until 12:00 a.m. (midnight) during which the LICENSED FACILITY is occupied by a LICENSEE but not open to the public, audience, or members of a group and is used for any purpose not amounting to an EVENT DAY. NON-EVENT DAY use includes, but is not limited to, rehearsals, technical rehearsals, moving in and out of sets and equipment and dark days. No more than thirty-five (35) persons not directly related to the activity of LICENSEE shall be permitted in the audience chamber at any rehearsal or other NON-EVENT DAY activity unless authorized by the CFA. The presence of more than thirty-five (35) persons in the audience chamber shall convert a NON-EVENT DAY to an EVENT DAY and the LICENSEE shall pay the EVENT DAY rate.

J. PRODUCTION SUPPORT AREA(s): The dressing rooms and laundry/wardrobe room directly associated with the Theater or the Studio. The dressing rooms and laundry/wardrobe room directly to the south of each respective performance space (Theater and Studio) are designated as the associated PRODUCTION SUPPORT AREA. PRODUCTION SUPPORT AREA(s) are reserved for use by the LICENSEE of the respective performance space unless otherwise arranged through mutual agreement of all parties and the CFA. PRODUCTION SUPPORT AREA shall include, as non-exclusive shared space, the performers' lounge and courtyard, loading dock, loading passage, assembly area and common corridors.

K. SEASON: Period beginning July 1 of any given year and ending June 30 of the following year.

L. TCA: For purposes of this AGREEMENT: The Tempe Center for the Arts, Tempe, Arizona and all facilities therein, including the Theater and associated production support area, Studio and associated production support area, Lakeside, Gallery, lobby, administrative areas, service areas, the immediately adjacent outdoor reflecting pool plaza, and all other interior public and non-public areas. Use of adjacent exterior grounds (Ash Avenue alignment to Hardy Drive alignment) shall be under a separate agreement and rules and regulations of the Cultural Services Division and Parks and Recreation Division of the City of Tempe Community Services Department. The TCA, as defined herein, is managed by the Cultural Services Division of the Tempe Community Services Department.

M. TIER 1 USER: A TCA PARTNER organization and/or the Friends of the Tempe Center for the Arts.

N. TIER 2 USER: Noncommercial entities. Those organizations not connected with or engaged in commercial enterprise with profit as an end goal. TIER 2 USERS may include nonprofit arts organizations, nonprofit charter and professional schools, Tempe public and private schools, organizations holding official IRS nonprofit status, community organizations, etc.

O. TIER 3 USER: Commercial entities: Those organizations, agencies, and/or entities which focus on profit as an end goal. TIER 3 USERS may include retail corporations, charter and professional schools operating for profit, utility companies, presenters and promoters of performances, seminars, lectures and workshops which operate for profit, trade shows, etc.

SECTION 2. AUTHORITY

The CFA is the CITY'S managing agent with full responsibility for the daily operation of the TCA, acting for and on behalf of the CITY in the management, supervision and control of these facilities.

SECTION 3. PAYMENTS

A. CHILDSPLAY shall pay a Licensed Facility use fee for each Event, or group of events, as outlined in Attachment B. For purposes hereof, each specific single date and/or, more typically, date grouping of a specific production shall be considered a production.

B. The CITY shall collect Licensed Facility use fees for each CHILDSPLAY production, at close of said production, from total box office single ticket sales receipts for said production. In the event the Licensed Facility use fees exceed sales receipts, CHILDSPLAY shall pay the difference to the City within thirty (30) days following the final performance of each production. Fees remaining unpaid thirty (30) days after date due shall bear interest until paid in full at a rate of one and one-half percent (1½%) per month of the total unpaid balance.

C. The CITY agrees to waive payment of deposits pending timely payment of Licensed Facility use fees assessed to CHILDSPLAY for use of the Theater and Studio. If CHILDSPLAY fails to pay Licensed Facility use fees due to the CITY for use of the TCA within one hundred twenty (120) days of date due, then immediately upon receipt of written notice from the CITY, CHILDSPLAY shall pay the Licensed Facility use fees for all future EVENTS not less than thirty (30) days prior to the EVENT. Waiver of payment of deposits applies to the Theater and Studio only. Other facilities within the TCA are subject to payment of deposits.

D. All deposits, fees and related charges shall be due in U.S. funds via check made payable to the CITY OF TEMPE - TCA and delivered to the CFA. All monies collected shall be deposited with the City Financial Services Department. Payment of fees and deposits via credit card is not allowable.

E. CITY payments due to CHILDSPLAY shall be issued via check within twenty (20) business days following the final performance of production from which funds were collected.

F. The CITY shall prepare and deliver to CHILDSPLAY a settlement report outlining production-related receipts and expenses on a weekly basis, or as otherwise mutually agreed upon, for each CHILDSPLAY production.

SECTION 4. SCHEDULING OF LICENSED FACILITY

A. For the purpose of this AGREEMENT, scheduling of LICENSED FACILITY shall be based upon a performance season (SEASON) beginning July 1 of any given year and ending June 30 of the following year.

B. The CITY agrees to offer, and CHILDSPLAY agrees to utilize, a minimum combined total of twenty (20) weeks in the Theater and/or Studio of the TCA per SEASON.

C. CHILDSPLAY recognizes and agrees that the CITY will establish, per SEASON, a calendar of dates available for use prior to the selection of dates by CHILDSPLAY. The CITY reserves the right to hold dates in reserve for selected CITY PROGRAMS and events, preventative maintenance and other activities as deemed necessary.

The CITY shall provide a calendar of available dates according to the following schedule:

SEASON beginning July 1, 2010 – dates provided no later than January 31, 2009 or as mutually agreed upon
SEASON beginning July 1, 2011 – dates provided no later than November 1, 2009
SEASON beginning July 1, 2012 – dates provided no later than November 1, 2010
SEASON beginning July 1, 2013 – dates provided no later than November 1, 2011

D. CHILDSPLAY shall have priority in selection of season performance dates in all TCA spaces available for non-shared, exclusive-use prior to all other organizations after the CITY has established a listing of open calendar dates in said spaces.

E. CHILDSPLAY agrees to devise SEASON dates with a minimum of four (4) consecutive weeks of non-activity between engagements in the Studio and a minimum of two (2) consecutive weeks of non-activity between engagements in the Theater.

F. Notwithstanding the provisions of Attachment B, the CITY agrees to allow CHILDSPLAY to conduct fourteen (14) performances per week at the License Facility rates specified above; provided that CHILDSPLAY shall limit the weekly total number of hours of performance to twenty-eight (28).

G. CHILDSPLAY shall request dates of use for the Theater and Studio approximately eighteen (18) months in advance of start of SEASON. The CITY and CHILDSPLAY agree that requested dates will be secured upon receipt of an executed letter of confirmation. Any and all changes to the letter of confirmation, and/or approved schedule, shall be by mutual agreement between CHILDSPLAY and the Cultural Facilities Administrator (CFA) acting as the agent for the CITY and shall be confirmed by both parties in writing. [Selection schedule at the outset of AGREEMENT shall be altered, by mutual agreement, to best accommodate both parties.]

CHILDSPLAY shall submit date requests to CITY on appropriate forms, if applicable, according to the following schedule:

SEASON beginning July 1, 2010 – date requests no later than March 31, 2009 or as mutually agreed upon.
SEASON beginning July 1, 2011 – date requests no later than January 15, 2010
SEASON beginning July 1, 2012 – date requests no later than January 15, 2011
SEASON beginning July 1, 2013 – date requests no later than January 15, 2012

2. Requests for any and all changes to the confirmed schedule by either party shall be delivered to the other party via telephone, to be confirmed in writing not later than two (2) business days thereafter. CHILDSPLAY and the CITY acknowledge and agree that some change requests may be delivered on a short-term basis and that each party will work closely with the other party to accommodate said requests.

H. Should CHILDSPLAY cancel a confirmed EVENT, there shall be no charge assessed to CHILDSPLAY, other than actual costs incurred by the CITY directly related to the cancelled event, the cost of refunds to ticket holders for that EVENT who purchased tickets through the TCA Box Office and a two hundred dollar ($200.00) administrative fee, if the City is able to re-schedule the portion of the LICENSED FACILITY subject to the cancellation. If the City is not able to reschedule that portion of the LICENSED FACILITY subject to cancellation, CHILDSPLAY shall pay a cancellation fee calculated as follows. No fee will be assessed if cancellation is one hundred twenty (120) days or more prior to first day of the EVENT(s). Fifty percent (50%) of the Licensed Facility use fee will be assessed if cancellation is sixty (60) to and including one hundred nineteen (119) days prior to the first day of the EVENT(s). Seventy-five percent (75%) of the Licensed Facility use fee will be assessed if cancellation is thirty (30) to and including fifty-nine days (59) days prior to first day of the EVENT(s). One hundred percent (100%) of the Licensed Facility use fee shall be assessed if cancellation is less than thirty (30) days prior to first day of the EVENT(s). CHILDSPLAY agrees to pay any and all costs incurred by the CITY directly related to the cancelled EVENT(s). In all cases, a two hundred dollar ($200.00) administrative fee will be charged for cancellation of the LICENSE AGREEMENT.

I. The CITY reserves the right to schedule events into the portion of the LICENSED FACILITY, otherwise reserved for CHILDSPLAY'S use pursuant to this AGREEMENT, during times when CHILDSPLAY activities are not scheduled. The CITY shall consult with CHILDSPLAY as to the feasibility

and schedule of such use. Such use of the LICENSED FACILITY by the CITY will be by mutual agreement between CHILDSPLAY and the CITY and shall be confirmed by both parties in writing. In the event of use of the LICENSED FACILITY, as described in this paragraph, by a user to which facility use fees are assessed, CHILDSPLAY shall be offered a rebate of fees according to the following schedule:

1. On days with no scheduled use of LICENSED FACILITY by CHILDSPLAY, CHILDSPLAY shall receive a rebate equal to the current non-event day fee, as assessed to CHILDSPLAY, for the appropriate space in use.

2. On days with scheduled use of LICENSED FACILITY by CHILDSPLAY, CHILDSPLAY shall receive a rebate equal to fifty percent (50%) of the current event day fee, as assessed to CHILDSPLAY, for the appropriate space in use.

3. The CITY agrees to reimburse CHILDSPLAY for any direct costs, including but not limited to storage, labor and transportation costs, related to the preparation of the LICENSED FACILITY for alternate users.

SECTION 5. LICENSE RULES AND REGULATIONS

A. CHILDSPLAY shall be entitled to exclusive use of the LICENSED FACILITY on the dates and times specifically outlined in the confirmed schedule. Use shall include principal space (LICENSED FACILITY), and associated PRODUCTION SUPPORT AREA. In addition, CHILDSPLAY shall be entitled to non-exclusive use of the performers' lounge and courtyard, loading dock, loading passage, assembly area and common corridors. If CHILDSPLAY agrees to permit the use of the LICENSED FACILITY by another person or entity during CHILDSPLAY'S use of the LICENSED FACILITY, then CHILDSPLAY, the CFA and such other person or entity shall mutually arrange for and agree upon such use.

B. Licensed use of facility includes four walls, general house lighting, routine custodial care, heating and/or air conditioning, daytime stage door reception, associated PRODUCTION SUPPORT AREA, use of non-exclusive shared areas as defined in Attachment C, and standard systems and equipment including performance lighting and audio controls, theatrical lighting fixtures, theatrical audio equipment, lighting and audio cables and accessories, draperies, tables, chairs, music stands, dance floor covering, and other items that are in the available inventory of the TCA. A complete listing of available inventory is included in the TCA Technical Information Packet. Licensed use of meeting and banquet facilities includes four walls, general lighting, routine custodial care, heating and/or air conditioning, one facility representative, use of non-exclusive shared areas as defined in Attachment C, audio equipment and accessories, draperies, tables, chairs and other items that are in the available inventory of the TCA and basic room setup. All other event-related expenses incurred by the CITY will be billed to CHILDSPLAY.

C. Licensed use does not include any special services or equipment not typically supplied by the CITY. Non-included specialty equipment, as defined in the Technical Information Packet, shall be available on an additional fee basis.

D. CHILDSPLAY shall have no right to sublet, sub-lease or sub-license any facility, space and/or area in the TCA or within the adjacent and/or surrounding grounds.

E. The CITY reserves the right to license other parts of the TCA at the same time as the LICENSED FACILITY is in use by CHILDSPLAY. Uses of the lobby and other public and support areas made available to CHILDSPLAY are at the discretion of the CFA and may be concurrent with use by others and may be restricted as the CFA may determine, provided that such use or restrictions by others shall not unreasonably interfere with the use of the LICENSED FACILITY by CHILDSPLAY. CHILDSPLAY agrees not to disrupt, hinder or diminish any other LICENSEE'S use of other parts of the TCA and agrees to exercise its best efforts to coordinate CHILDSPLAY'S agents' and patrons' use of the LICENSED FACILITY to maximize use of the TCA.

F. CHILDSPLAY may "hold" requested dates until an additional inquiry for date(s) is received by CFA. At such time, upon notification by CFA, CHILDSPLAY will be allowed fourteen (14) days to release date(s) or confirm date(s) in writing with an executed LICENSE AGREEMENT and deposit, if required. All dates on "hold" shall be subject to terms of cancellation as described in Section 4H of this AGREEMENT.

G. CHILDSPLAY may be requested to furnish, thirty (30) days prior to EVENT(s), information required by the CFA to determine facilities, arrangements, special services and equipment necessary for the staging and proper management of EVENT(s). Failure to provide such information may result in additional fees to CHILDSPLAY as incurred by the CITY.

H. The CITY reserves the right to contract food and beverage caterer(s) and concessionaire(s) on a preferred-list or exclusive basis. Service of any and all alcoholic beverages will be regulated by the CITY under current licensed beverage stipulations and conditions as they may be amended by the CITY.

I. This AGREEMENT may be subject to cancellation by either party immediately upon written notice should either party breach any terms or provisions of this AGREEMENT, subject to the terms described in Section 38 of this AGREEMENT. In the event of such cancellation, either party may be subject to assessment of any and all expenses and/or charges incurred by the cancelling party to the date of such cancellation plus a two hundred dollar ($200.00) administrative fee.

SECTION 6. FACILITY STAFFING

A. Except as otherwise required hereby or by applicable law, CHILDSPLAY may hire, and shall assume all costs for said hires, technical/theatrical personnel for CHILDSPLAY production activities. Before any such personnel shall be allowed to work on or about the PREMISES, all such personnel hired by CHILDSPLAY shall be required to successfully complete a CITY-provided TCA production training program, at no cost to CHILDSPLAY, in the specific area of practice. Those employees and volunteers of CHILDSPLAY who have not completed the appropriate training program will not be allowed to operate, install, or otherwise engage in activities associated with any theatrical systems within the TCA. TCA shall provide and schedule training programs as determined by need.

1. The CITY reserves the right to require and approve trained, qualified and certified low riggers and high riggers appropriate to the specific theatrical application as determined by TCA staff. The cost of such personnel shall be the sole responsibility of CHILDSPLAY.

2. The CITY requires that all connections to and disconnections from temporary electrical service supply devices shall be performed by a TCA-approved technician.

B. If specialty personnel, or personnel beyond the normal operational staff of the TCA, are required for any given CHILDSPLAY production and/or project, the distribution of costs for said personnel shall be determined by mutual agreement between CHILDSPLAY and the CITY and shall be confirmed by both parties in writing.

C. The CITY shall provide staff to install and remove front-of-house hospitality items, including but not limited to tables, chairs, stanchions, etc., upon request with advance notice of forty-eight (48) hours. In all cases, requested items will be limited to available inventory of the TCA. The CITY shall not be responsible for providing items beyond the TCA available inventory.

D. When TCA-provided contracted temporary technical staff are required for CHILDSPLAY productions, CHILDSPLAY agrees to schedule and provide a minimum one (1) hour meal break every five

(5) hours of work for event staff. If said meal break cannot be provided, CHILDSPLAY agrees to, at CHILDSPLAY'S expense, provide a meal approved by the TCA Production Coordinator or designee. If a break or meal is not provided after five (5) hours of work, event staff wages will be billed at one and one half (1.5) times the base rate until a meal or a one (1) hour break is given.

SECTION 7. ACCESS TO PREMISES

A. CHILDSPLAY shall have the option to access the PREMISES beginning at 7:00 a.m. with no charge for overtime use of the LICENSED FACILITY on scheduled dates for use of the LICENSED FACILITY. In the event that CHILDSPLAY will not require use of the LICENSED FACILITY at 7:00 a.m., CHILDSPLAY agrees to notify the CFA, or designee, at least seventy-two (72) hours in advance. Use of LICENSED FACILITY prior to 7:00 a.m. and after 12:00 midnight will be subject to overtime charges as defined in Attachment B. Overtime rates are quoted and shall be charged in whole hour increments.

B. Parking for patrons, employees and volunteers of CHILDSPLAY activities will be available, on site, at no cost to CHILDSPLAY or to the patrons, employees or volunteers thereof. CHILDSPLAY acknowledges that multiple LICENSEES may occupy TCA simultaneously on any given day. The CITY will pursue every attempt to make parking available and will not schedule parking areas for alternative non-TCA use on EVENT DAY(s) listed in the confirmed schedule. However, this AGREEMENT to use the TCA shall in no way obligate the CITY to provide parking for employees and/or patrons of CHILDSPLAY. If parking is not available on site, the CITY will work with CHILDSPLAY to determine an alternate parking location.

C. CHILDSPLAY shall have use of one (1) loading dock bay during use of any LICENSED FACILITY for theatrical production. Simultaneous use of two (2) loading dock bays may be available, through arrangement with the CFA, pending activities of other users of the PREMISES. Long term parking of trucks or other vehicles in the loading dock is prohibited except by prior arrangement with the CFA.

SECTION 8. CONCESSIONS

A. The CITY reserves the rights to the following to insure quality of service to CHILDSPLAY: food and beverage concessions (including sale and distribution of alcoholic beverages), banquet services, parking operations, telephone services, security guard services, and ushering services. Should the CITY add a new service or change an existing service after this AGREEMENT is executed, the CITY will provide CHILDSPLAY reasonable notice of such change of service.

B. The CITY will allow CHILDSPLAY to contract for the sale and distribution of photographs, tapes, books and other materials related specifically to its own EVENT(s), performers and/or delegates. The sale of merchandise shall be allowed only from area(s) approved by the CFA or designee. The CITY will make every effort to provide a visible and appropriate location for such activities. When the CITY supplies TCA personnel as sellers, twenty percent (20%) of total sales, after tax, shall be due the CITY at close of the EVENT(s) or in final settlement. The CITY will allow CHILDSPLAY to supply personnel as sellers. In such case, no portion of sales shall be due the CITY. In all instances, CHILDSPLAY shall be responsible for payment of sales tax and all other applicable local, state and federal taxes applicable to the sale of such merchandise. CHILDSPLAY shall be responsible for the acquisition of all applicable sales and tax licenses and permits.

SECTION 9. TICKETING AND BOX OFFICE SERVICES

A. The CITY shall be responsible for all box office operations including, but not limited to or specified as, window sales, internet sales and/or telephone sales for all CHILDSPLAY performance events. The CITY reserves the right to establish and revise hours of operation based on comparison to local industry practice, performance schedule demand and seasonal demand. Generally, box office telephone

and window sales hours of operation will be Monday through Friday from 10 a.m. until 6 p.m. and 12 p.m. until 5 p.m. on weekends. The CITY agrees that if not currently open, box office telephone and window sales shall open one (1) hour prior to any CHILDSPLAY performance event and remain open until the conclusion of intermission or one (1) hour past opening curtain, whichever is later. The CITY agrees to maintain open box office hours, during days upon which multiple public performances occur, from one (1) hour prior to the start of the first public performance to the close of intermission of the final public performance of that day. This provision does not apply to days which include morning school performances and evening public performances.

B. CHILDSPLAY agrees to abide by the Ticketing/Box Office Policies as set forth in Attachment A or as altered in this section of this AGREEMENT.

C. The CITY reserves the right to assess and/or adjust ticket service fees to CHILDSPLAY and to CHILDSPLAY patrons as determined by ticketing vendor. Current ticket service fees, effective for the 2008-2009 season are:

Window and telephone sales:	One dollar ($1.00) per ticket
Online sales convenience fee:	Three dollars ($3.00) per ticket
Print-at-home convenience fee:	No fee
Mailing:	No fee

D. The CITY agrees to provide notice to CHILDSPLAY of any changes (increases and/or decreases) in ticket service fees by January 15 of each season for changes effective in the following season. (e.g., service fee changes effective in the 2009-2010 season will be announced by January 15, 2009.)

E. The CITY agrees to offer online internet ticket sales on a twenty-four (24) hour basis, except in the event of system failure beyond the control of the CITY. In such event, the CITY will pursue all measures within the control of the CITY to restore online internet sales capabilities in an expeditious manner.

SECTION 10. FACILITY CAPACITY

Persons will not be permitted inside any facility in excess of the established occupant capacity as follows:

Theater	600
Studio	257
Lakeside	219
Donor Lounge	64
Terrace	65
Gallery	235
Lobby	656

SECTION 11. SAFE PRACTICE & LIFE SAFETY

A. CHILDSPLAY agrees to abide by all policies and accepted safety practices as determined by the CITY, the TCA, state and national regulating agencies and/or manufacturer instructions/requirements concerning the safe operation and use of any and all equipment within the TCA.

B. CHILDSPLAY agrees to inform and instruct all appropriate CHILDSPLAY employees, volunteers, sub-contractors and any and all other agents of the policies of the TCA and of accepted theatrical and general safety practices.

C. It is the responsibility of CHILDSPLAY to familiarize employees and other volunteers with the life safety procedures and regulations governing all parts of the TCA used by CHILDSPLAY. CHILDSPLAY, in cooperation with the CFA or designee, shall instruct employees and volunteers on the building evacuation plan in the event of fire or other disaster and formulate a specific plan to evacuate any persons with disabilities among them.

SECTION 12. FREE ADMISSION EVENTS

The CITY reserves the right to require attendees to EVENTS within the TCA, as defined in Section 1-C, including EVENT(S) without admission charge, to present a ticket for admission. Tickets will be audited through the computerized ticketing system and subject to a per printed ticket charge.

SECTION 13. INSURANCE

CHILDSPLAY shall, at its sole cost and expense, procure and maintain through the term of AGREEMENT, the following insurance coverage. Adjustment of limits of liability and insurance coverage shall be at the sole discretion of the CITY Risk Management and Legal staff upon assessment of exposures and risks of EVENT(S).

A. Commercial General Liability insurance against claims for bodily injury (including death) and property damage occurring in or upon or resulting from the LICENSED FACILITY hereunder. Such insurance shall be in per occurrence form and shall afford immediate protection to limits of not less than $1,000,000 per occurrence with a $2,000,000 general aggregate; further, such insurance shall include Contractual Liability coverage sufficient to fulfill LICENSEE'S contractual liability assumed under the indemnification provisions listed below in Section 16. All policies of insurance shall name the City of Tempe, a municipal corporation, its officers, agents, volunteers and employees as additional insureds.

B. Commercial Auto Liability insurance providing $1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

C. CHILDSPLAY shall be solely and entirely responsible for providing salary, wages, retirement, withholdings, workers' compensation and employer's liability insurance, unemployment insurance, other benefits and all taxes and premiums appurtenant thereto concerning agents, employees, and volunteers during the term of the LICENSE AGREEMENT, and shall save and hold the CITY harmless with respect thereto. Evidence of workers' compensation and employer's liability coverage that meets Arizona Statutory requirements will be provided on a Certificate of Insurance or a Letter of Certification from the Industrial Commission of Arizona that shows CHILDSPLAY is an authorized self-insurer.

D. When applicable, CHILDSPLAY shall provide an additional certificate of general liability specific to fireworks or other pyrotechnical displays for the EVENT(S) with minimum insurance limits of $5,000,000.

E. CHILDSPLAY shall keep and maintain documentation evidencing CHILDSPLAY compliance with the insurance and shall, at all times, deliver and maintain with the CITY a certificate with respect to such insurance in a form satisfactory to the CITY. Each policy of insurance shall provide for no less than thirty (30) days prior written notice to the CITY before the cancellation or termination of any such insurance.

F. Insurance policies and insurance coverage shall remain in full force and effect during the term of LICENSEE'S occupancy and shall be obtained from reliable insurance companies authorized to transact business in the State of Arizona or named on the list of qualified authorized insurers maintained by the Arizona Department of Insurance. These insurers must have a "Best's" rating of no less than A-

VII. Certificates of insurance or photocopies of the policies shall be filed with the CITY at least thirty (30) days prior to EVENT.

G. CHILDSPLAY shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverages for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for CHILDSPLAY.

H. Insurance specified under this section is the minimum amount required of CHILDSPLAY. CHILDSPLAY remains free to obtain such additional insurance as it may independently determine to be necessary.

SECTION 14. WAIVER OF SUBROGATION

Each party hereto waives any and every claim arising in its favor and against the other party hereto during the term of this agreement or any extension or renewal thereof for any and all loss of, or damage to, any of its property when such loss or damage is covered by valid and collectible first party property insurance policies, not including coverage under a Self-Insurance Retention Program, to the extent that such loss or damage is recovered under said insurance policies. If the CITY has an applicable deductible or retention, CHILDSPLAY would still be responsible to reimburse CITY for any deductible or retention amounts expended due to losses caused in whole or in part by CHILDSPLAY. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this agreement with respect to any loss or damage to property of the parties hereto. In as much as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued property insurance policies written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverage by reason of such waivers.

SECTION 15. DAMAGE TO BUILDINGS AND CONTENTS

A. CHILDSPLAY shall compensate the CITY for the full amount of any and all damage, excluding normal wear and tear, to buildings, furnishings, fixtures or equipment, caused by CHILDSPLAY, CHILDSPLAY'S employees, agents, guests, volunteers or contractors. CHILDSPLAY and the CITY shall conduct a joint inspection of the LICENSED FACILITY, furnishings, fixtures and equipment prior to move-in for the purpose of noting any existing damage. At the conclusion of EVENT(s), CHILDSPLAY shall, together with the CITY, jointly inspect the LICENSED FACILITY, furnishings, fixtures and equipment for event-related damage. Failure of the CHILDSPLAY to participate in such inspection shall be considered a waiver of CHILDSPLAY'S right to participate and the CITY alone shall make the inspection. The CITY will notify CHILDSPLAY within a reasonable time as to the extent of damage, if any, and cost of repair.

B. No decorative or other materials shall be attached to any part of the TCA so as to cause damage to the TCA. All decorative or other materials shall be of a noncombustible type or be suitably treated with a flame retardant approved by the CITY. No person shall bring, exhibit or ignite fireworks or explosives on the PREMISES without the prior written consent of the CFA, a permit from the City of Tempe Fire Department and appropriate insurance as specified in Section 13-A. Damages to the PREMISES shall be at the sole cost and expense of CHILDSPLAY. CHILDSPLAY may be required to make suitable arrangements with the CFA and/or supply extended insurance coverage for the protection of the CITY.

SECTION 16. INDEMNITY

A. Except as noted in paragraph "B" below, CHILDSPLAY agrees to defend, indemnify and hold harmless the CITY, its officers, agents, contractors, volunteers and employees, from all suits,

including attorney's fees and cost of litigation, actions, losses, damages, expenses, costs or claims, of any character or any nature arising or alleged to have arisen, in whole or in part, out of CHILDSPLAY'S use of the PREMISES or any part thereof, during the terms of this agreement. It is the intent of the parties to this LICENSE AGREEMENT that the CITY shall, in all instances, except for loss or damage resulting from sole negligence of the CITY, be indemnified against all liability, of any nature whatsoever for or on account of any injuries or death of a person or damages to or destruction of property belonging to any person arising out of, or in any way connected with CHILDSPLAY'S use of the PREMISES or any part thereof regardless of whether or not the liability, loss or damage is caused, or alleged to be caused, in whole or in part by the willful or negligent act, omission, misconduct, or fault of CHILDSPLAY or any of its agents, employees, contractors, patrons, guests, invitees or of any other person entering upon the PREMISES hereunder with the implied or expressed invitation or permission of CHILDSPLAY. It is agreed that CHILDSPLAY will be responsible for primary loss investigation, defense and judgment costs under this contract of indemnity section.

B. Loss or damage resulting from the sole negligence of the CITY or from the design and condition of the basic structure (not including CHILDSPLAY'S configuration and/or control of the LICENSED FACILITY hereunder), shall be the responsibility of the CITY.

C. CHILDSPLAY agrees to abide by all manufacturer regulations, CITY safety policies and accepted practice in the use of CITY-owned equipment of all types. CHILDSPLAY agrees to defend, indemnify and hold harmless the CITY, its officers, agents, contractors, volunteers and employees, from all suits, including attorney's fees and cost of litigation, actions, losses, damages, expenses, costs or claims, of any character or any nature arising or alleged to have arisen, in whole or in part, out of CHILDSPLAY'S use of CITY-owned equipment including, but not limited to ladders, personnel lifts, personal safety equipment, and other such equipment as might be found and/or used in the TCA. CHILDSPLAY agrees that all equipment will be used by employees, volunteers, agents and contractors of CHILDSPLAY, in accordance with applicable federal, state and local laws and ordinances including, but not limited to, OSHA and ANSI standards. CHILDSPLAY agrees that the use of CITY-owned equipment shall be at the risk of CHILDSPLAY. The CITY agrees to remove from use any CITY-owned equipment which is determined to be in need of repair or replacement.

SECTION 17. MACHINERY, FLAMMABLE LIQUIDS AND ELECTRICITY

No person shall erect any engine, motor or other machinery on the PREMISES or use any gas, electricity, flammable liquid or charcoal therein, without the prior consent of the CFA and the obtaining of all required official permits issued by the CITY or any government agency. All electrical connections must be made by the TCA Utilities Contractor or designated representative. All house theatrical lighting equipment must be operated by TCA personnel or TCA-approved personnel.

SECTION 18. OBSTRUCTION OF FIRE ALARMS, DOORS, PASSAGEWAYS, SIDEWALKS, CORRIDORS OR LOBBIES

No portions of the fire alarms, fire alarm pull boxes, fire hose cabinets, fire suppression system hardware, sidewalks, entries, passageways, doors, aisles, elevators, vestibules, windows, ventilators, lighting fixtures or ways of access to the public utilities of the TCA shall be obstructed, or caused to be obstructed, or caused to be used for any purpose other than ingress or egress. Any damage resulting on account of any misuse of any portion of the TCA shall be the responsibility of CHILDSPLAY. All EVENTS shall be in compliance with the City of Tempe Fire codes and Building Safety codes.

SECTION 19. SIGNS, POSTERS AND LITERATURE

CHILDSPLAY shall not post or permit to be posted any sign/poster or anything that will tend to injure, mar or in any manner deface TCA, and will not permit nails, hooks, adhesive fasteners, tacks or screws to

be installed on any part of TCA. Signs may only be posted in areas provided for such use, and all signs/posters must relate to EVENT(s) to be held at the TCA or EVENT(s) directly related to CHILDSPLAY. The hanging of pictures, banners or any other items on walls or draperies requires prior written approval of the CFA or designee.

SECTION 20. ADVERTISING AND PROMOTION

A. All media advertisements must include ticket sales location(s) and time and date of EVENT(S). In all advertisements the TCA shall be identified as follows: TEMPE CENTER FOR THE ARTS.

B. All advertising shall state CHILDSPLAY is performing "at the Tempe Center for the Arts." CHILDSPLAY will only reference the EVENT as being at the Tempe Center for the Arts and shall in no way imply that the EVENT is a project or presentation of the CITY, or reference the CITY as a producer, presenter, co-presenter, sponsor, or co-sponsor.

C. The CITY will not provide, for CHILDSPLAY, promotional services such as advertising, press releases, direct mail or any other promotional resources related to EVENT(S) of CHILDSPLAY. CHILDSPLAY therefore accepts sole responsibility for promoting its EVENT(s). The CITY will make all attempts to include, pending available space, CHILDSPLAY EVENT information in publications generated for the purpose of promoting events at the TCA. CHILDSPLAY EVENT information shall be included in such publications which promote other TCA Partner events.

SECTION 21. RECORDING AND BROADCASTING

A. The CITY agrees to waive fees associated with recording and broadcasting from the TCA except in the instance of multi-day broadcasting. In such instance, conditions and fees will be by mutual agreement between CHILDSPLAY and the CITY and shall be confirmed by both parties in writing.

B. No EVENT(S) may be broadcast without the consent of the CFA or designee. The locations of cameras and video equipment are subject to approval of the CFA or designee.

C. All recordings, except recordings made strictly for archival purposes, must give location credit "Recorded at the Tempe Center for the Arts in Tempe, Arizona."

SECTION 22. CONDITION OF LICENSED FACILITY

The CITY shall provide the LICENSED FACILITY in a clean, habitable condition and in the basic configuration for which CHILDSPLAY has contracted. In the event CHILDSPLAY finds it necessary to remove or change the location of any stage, rigging and/or equipment, such changes shall be made at CHILDSPLAY'S expense; and CHILDSPLAY agrees to change all such stage, rigging and/or equipment back to the condition in which same was found. CHILDSPLAY shall not make any permanent changes or alterations without the prior written approval of the CFA. At the conclusion of the EVENT, CHILDSPLAY shall surrender possession of the LICENSED FACILITY with all of CHILDSPLAY'S equipment and materials removed unless otherwise approved by the CFA or designee.

SECTION 23. OBJECTIONABLE USES OR PERSONS

Any use of the LICENSED FACILITY that is contrary to public policy, or is not in the best interests of the CITY, or is in violation of any laws of the United States, the State of Arizona, Maricopa County, or the CITY shall be a violation of this AGREEMENT and shall be grounds for immediate revocation of this AGREEMENT. Any person whose conduct is objectionable, disorderly or disruptive to facility use, or in violation of any law, shall be refused entry or, if already admitted, shall be immediately ejected from the PREMISES. CHILDSPLAY shall hold the CITY harmless from any claim resulting from such action

SECTION 24. CONTROL OF PREMISES

A. TCA shall at all times be under the control of the CITY and the CFA. The CITY reserves the right to have designated individuals enter the LICENSED FACILITY at any and all times. The designation of individuals authorized to enter the LICENSED FACILITY shall be made by the CITY or designee. CHILDSPLAY agrees to allow the CFA or designee to open the lobby area and front of house facilities at least sixty (60) minutes prior to the advertised start of the EVENT(S) and to make a best effort to permit patrons, upon coordination with CHILDSPLAY, to be seated at least thirty (30) minutes prior to the advertised start of the EVENT(S). All technical preparations including, but not limited to lighting and audio checks, lobby set up, and other activities shall be completed on the stage and in the lobby/front of house prior to admission of patrons.

B. CHILDSPLAY agrees to provide an approximate running schedule for each EVENT, including intermission times and any anticipated special needs, a minimum of seven (7) working days prior to the EVENT(S).

C. The CITY shall retain the right to cause the interruption of any EVENT when in the sole judgment of the CFA or designee, such interruption is necessary in the interest of public safety.

D. Consumption of food and beverages shall be limited to designated areas. Food and beverages are prohibited in the control booth(s), dimmer room(s), audio rack room(s) and all other areas where electronic control equipment is accessible.

E. The CITY shall retain the right to restrict the use of seating areas and public restrooms prior to EVENT(S) with the intent to avoid situations where it becomes necessary to re-clean said area(s) after having been cleaned in preparation for an EVENT.

SECTION 25. ABANDONED EQUIPMENT AND LOST OR MISPLACED ARTICLES

Any equipment or effects of CHILDSPLAY or its agents remaining past the close of a particular production may be deemed abandoned and disposed of by the CITY, as deemed advisable, at the cost of CHILDSPLAY. The CITY shall have the sole right to collect and maintain custody of articles left on PREMISES by CHILDSPLAY or its agents. The CITY shall assume no responsibility for losses suffered by CHILDSPLAY or its agents that are occasioned by theft or disappearance of equipment, articles or other personal property.

SECTION 26. LIABILITY FOR PROPERTY DELIVERED TO CHILDSPLAY

The CITY, its officials, agents, volunteers, employees or contractors shall not be liable for any loss, damage or injury to properties of any kind that are shipped or otherwise delivered to TCA or stored in the LICENSED FACILITY during periods when CHILDSPLAY is not occupying the LICENSED FACILITY. Properties shall not be received until CHILDSPLAY has made proper arrangements with the CFA or designee for receiving, handling and storage of such materials.

SECTION 27. UNAVAILABILITY OF LICENSED FACILITY

Should the LICENSED FACILITY, or any portion thereof, be unavailable for occupancy at the commencement of the LICENSE AGREEMENT, or during the term of the LICENSE AGREEMENT, due to fire, casualty, acts of God, strikes, national emergency or other cause beyond the control of the CITY, the LICENSE AGREEMENT and the obligations of the CITY and CHILDSPLAY hereunder shall terminate. CHILDSPLAY hereby waives any claim against the CITY for damages by reason of such termination; provided, however, that any unearned portion of the deposits, fees or payments due hereunder shall abate, or, if previously paid, shall be promptly refunded by the CITY to CHILDSPLAY.

SECTION 28. ENTRANCE AND EXIT

All persons, articles, exhibits, fixtures, displays and other equipment shall be brought into and out of TCA only at designated entrances and exits. Vehicular traffic and/or parking in areas not designated for that purpose shall be allowed only upon prior written approval of the CFA.

SECTION 29. EQUIPMENT FAILURE

The CITY will, through established relationships with local and/or regional equipment vendors, execute its best effort to expedite the repair, replacement or substitution of standard equipment. However, the CITY will not be responsible for the immediate replacement of any out-of-service equipment deemed, by mutual agreement, not critical to the success of the production, excluding audio and lighting control consoles and counterweight rigging system.

SECTION 30. PERMITS AND LICENSES

CHILDSPLAY is responsible for obtaining any additional permits and licenses required by federal, state, county, or City law, and shall permit inspection by appropriate government departments upon request.

SECTION 31. LASERS

CHILDSPLAY shall contact, register with and obtain all necessary licenses, permits and clearances from the Arizona Radiation Regulatory Agency (4814 South 40th Street, Phoenix, Arizona 85040, 602-255-4845) prior to the use of Class IIIb lasers.

SECTION 32. PYROTECHNICS

The use of pyrotechnics, flame, candles, matches and any other open flames or explosives in the TCA is prohibited unless written approval has been obtained from the City of Tempe Fire Inspector. Supervision of all such use shall be performed as prescribed by the City of Tempe Fire Department.

The use of fireworks on the TCA site and surrounding grounds requires written notification from the fireworks contractor to the FAA at Phoenix Sky Harbor International Airport. A copy of such letter shall be required with the LICENSE AGREEMENT.

SECTION 33. SECURITY AND SAFETY PERSONNEL

When additional safety and security measures are deemed necessary by the CFA and/or CHILDSPLAY, CHILDSPLAY shall employ, at its sole expense, such security and safety personnel as are required and approved by the CFA. CHILDSPLAY shall also comply with all applicable Fire Department regulations concerning occupancy, exhibits and procedures as outlined in the City of Tempe Fire Code.

SECTION 34. OBSERVANCE OF LAW

CHILDSPLAY shall comply with all laws of the United States and the State of Arizona and with all ordinances and regulations of the CITY. Violations by CHILDSPLAY may result in cancellation of the LICENSE AGREEMENT and discontinuance of CHILDSPLAY'S use of the LICENSED FACILITY unless compliance is assured.

SECTION 35. COPYRIGHT INFRINGEMENT

CHILDSPLAY shall accept full responsibility for the use of any composition, work or other material covered by copyright. In this regard, CHILDSPLAY shall indemnify, defend, save and hold harmless the CITY, its officers, agents, volunteers, contractors and employees from all suits, actions, losses, damages,

expenses, costs or claims of any character or any nature arising or alleged to have arisen, in whole or in part, from CHILDSPLAY'S use of any composition, work or other material covered by copyright.

SECTION 36. COLLECTIONS, DONATIONS, SOLICITATIONS

No collections or donations, other than those which directly and specifically benefit CHILDSPLAY or others as approved by the CFA, shall be made, attempted or announced on the PREMISES.

SECTION 37. DEFAULT

In the event that CHILDSPLAY shall fail to perform, keep or observe any of the terms, covenants or conditions of the LICENSE AGREEMENT, the CITY shall notify CHILDSPLAY at the address set forth herein, of such failure. CHILDSPLAY shall be provided twenty (20) days within which to cure or remedy the failure. In the event said failure is not remedied to the reasonable satisfaction and approval of the CITY within the time specified, CHILDSPLAY may be declared in default and all of its rights hereunder may be terminated by the City except with respect to any default that cannot reasonably be cured within twenty (20) days, in which case CHILDSPLAY will not be deemed in default as long it is taking steps to have the default cured. On the City's determination that a material default has occurred and at the direction of the CITY, CHILDSPLAY shall vacate the TCA and shall have no right to further operate therein and shall forfeit all rights under the LICENSE AGREEMENT to any monies due or paid the CITY including rents, payments, deposits or insurance. The CITY may resort to any and all legal remedies or combinations of remedies that it may desire to assert and to which it may be entitled, including re-licensing of the FACILITY. If the CITY finds it necessary to bring suit to collect any amount owed it under the LICENSE AGREEMENT, the CITY shall be entitled to collect reasonable attorney's fees and all other court costs and costs of collection.

In the event that the City shall fail to perform, keep or observe any material term, covenant or condition of the LICENSE AGREEMENT, CHILDSPLAY shall serve the CITY notice of such failure. The CITY shall be provided twenty (20) days within which to cure or remedy the failure. In the event said failure is not remedied within the time specified, the CITY may be declared in default except with respect to any default that cannot reasonably be cured within twenty (20) days, in which case the CITY will not be deemed in default as long it is taking steps to have the default cured. In the event of a default, CHILDSPLAY may pursue available remedies to it provided by law including recovery of reasonable attorney's fees and costs.

SECTION 38. ALTERNATIVE DISPUTE RESOLUTION

In the event of a dispute between the parties to the LICENSE AGREEMENT regarding a provision of the LICENSE AGREEMENT, a party's performance of its obligations as stated in the LICENSE AGREEMENT or any other matter governed by the terms of the LICENSE AGREEMENT, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a mutually agreed upon time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

SECTION 39. DISCRIMINATION

CHILDSPLAY shall not directly or indirectly discriminate against any person in its use of the LICENSED FACILITY. CHILDSPLAY shall not display, circulate, publicize or mail any advertisement, notice or communication that states or implies that any facility or service shall be refused or restricted because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age or disability or that any person, because of race, color, gender, gender identity, sexual orientation, religion,

national origin, familial status, age or disability would be unwelcome, objectionable, unacceptable or undesirable.

SECTION 40. AMERICANS WITH DISABILITIES ACT (ADA)

CHILDSPLAY shall comply with ADA requirements in its use of the LICENSED FACILITY.

SECTION 41. NO SMOKING POLICY

TCA is a no smoking facility. Smoking is allowed only in clearly identified exterior smoking areas. CHILDSPLAY shall not permit any smoking during its use of the Facility, except apart of an on-stage type production, with prior approval by CITY.

SECTION 42. CONSUMPTION OF ALCOHOLIC BEVERAGES

The CITY shall reserve the right to identify, and re-identify as necessary, those areas of the TCA where alcoholic beverages may and may not be consumed. Consumption of alcoholic beverages is not allowed in areas of the TCA that are not licensed for such consumption and designated as such.

SECTION 43. OTHER EVENTS

At the request of CHILDSPLAY, the CITY will provide complete disclosure of licensed EVENTS in the facility over the same or overlapping dates of CHILDSPLAY'S event at the time of the LICENSE AGREEMENT execution and thereafter. Both CHILDSPLAY and the CITY shall endeavor to avoid the scheduling of EVENTS that may compete with other scheduled EVENTS.

SECTION 44. CONFLICT OF INTEREST

The LICENSE AGREEMENT is subject to cancellation under the provisions of Arizona Revised Statutes § 38-511.

SECTION 45. SEVERABILITY

Should it be determined by a final judgment of a court of competent jurisdiction that all or any portion of this AGREEMENT does not comply with the laws of the State of Arizona or the laws of the United States of America, the parties agree in good faith to renegotiate such portions of this AGREEMENT as shall be necessary to bring this AGREEMENT into compliance, while continuing to carry out the lawful intents and purposes of this AGREEMENT.

SECTION 46. NON WAIVER BY FAILURE TO ENFORCE

The failure of either party to insist, in any one or more instances, upon a strict performance of any of the covenants or obligations of this AGREEMENT, shall not be construed as a waiver, or a relinquishment in the future of such covenant nor shall either party be estopped from enforcing any such covenant or obligation in the future unless they have expressly waived the right to do so in writing. Said covenant or obligation shall continue and remain in full force and effect. The receipt or payment of fees with knowledge of the breach of any covenant or obligation contained in this AGREEMENT shall not be deemed a waiver of such breach. No waiver by either party of any provision contained herein shall be deemed to have been made unless expressed in writing and signed by the waiving party.

SECTION 47. NOTICES

A. All notices, demands, requests and other communications desired or required to be given hereunder NOTICES shall be in writing and shall be given by: (i) hand delivery to the address for

NOTICES; or (ii) sending the same by United States certified mail return receipt requested, addressed to the address for NOTICES. All NOTICES shall be deemed given and effective upon the earliest to occur of: (x) the hand delivery of such NOTICE to the address for NOTICES; or (y) the date indicated on the return receipt request of NOTICE. All NOTICES shall be addressed to the following addresses:

If to the CITY:
Tempe Center for the Arts
700 West Rio Salado Parkway
Tempe, Arizona 85281
Attention: Cultural Facilities Administrator

If to CHILDSPLAY:
Childsplay, Inc.
900 South Mitchell Drive
Tempe, AZ 85281
Attention: Managing Director

or to such other persons or at such other place as any party hereto may by written NOTICE designate as a place for service of NOTICE.

SECTION 48. ADOPTION BY MAYOR AND COUNCIL; AUTHORITY TO EXECUTE MINOR AMENDMENTS

A. This AGREEMENT is subject to adoption by the City of Tempe Mayor and City Council. Upon approval of this AGREEMENT, the Mayor and Council authorize the Community Services Department Manager to sign other documents or make amendments to this AGREEMENT as may be necessary to effectuate this AGREEMENT and further authorize said Manager to act upon any other matters not presently contemplated but which may arise and require the CITY'S action in order to effectuate the purpose of this AGREEMENT.

B. The CITY reserves the right to make reasonable adjustments to the license rental fees, as approved by Tempe City Council, with notification to CHILDSPLAY at least twelve (12) months prior to the beginning of each SEASON.

ATTACHMENTS:
Attachment A: *Ticketing / Box Office Policies*
Attachment B: *License Fee Schedule*
Attachment C: *Area Use Designations*

IN WITNESS WHEREOF, the parties hereto have caused their authorized signatories to execute this AGREEMENT on their behalf, as their act, as of the date and year first above written

CITY OF TEMPE, a municipal corporation
of the State of Arizona

_____
Hugh Hallman
Mayor
Date:_____

ATTEST:

_____
Jan Hort
City Clerk
Date:_____

APPROVED AS TO FORM:

_____
Andrew B. Ching
City Attorney
Date:_____

CHILDSPLAY

By:_____
Print Name:_____

Title:_____
Date:_____

ATTACHMENT A

CHILDSPLAY TICKETING / BOX OFFICE POLICIES

The following constitute the policies for ticketing and box office operations for the Tempe Center for the Arts.

For purposes of this document, EVENT is defined as a single, distinct activity. For example, a performance is considered an EVENT.

A. CHILDSPLAY shall designate a representative to serve as liaison to the TCA Box Office. CHILDSPLAY shall identify liaison and/or designee at the commencement of ticket sales for each production, at the beginning of the performance season, or prior to individual performances, as applicable. CHILDSPLAY liaison and/or designee shall be available prior to and during all performances.

B. All tickets, including tickets purchased at the TCA Box Office, on consignment and/or from CHILDSPLAY, are subject to the policies herein where applicable.

C. The CITY, through the TCA Box Office, will process EVENTS for ticket sales and issue tickets for individual performance runs at the instruction of CHILDSPLAY after confirmation of performance dates.

D. In general, tickets will be sold on a "no refund" basis. The CITY recognizes and agrees that, on occasion, ticket refunds may be necessary to insure quality customer service. In such instances, refunds will be issued upon the approval of the CHILDSPLAY liaison to the TCA Box Office. Tickets may be exchanged for the same EVENT run, based on availability and approval of the Box Office Manager or CHILDSPLAY liaison. All requests for exchanges must be received in the TCA Box Office no later than twenty-four (24) hours prior to individual EVENT start time. Ticket exchanges are subject to an exchange fee.

E. All audience members, regardless of age, must have a ticket. Lap passes may be issued at the discretion of CHILDSPLAY.

F. All ticketed EVENTS shall be processed exclusively via the TCA-designated computerized ticketing system. No other ticket sales methods or systems shall be allowable. All sales will be subject to published TCA rates for credit card sales, per-ticket printing charges, set up fees and box office percentage of sales, if applicable.

G. TCA Box Office shall reserve the right to retain ten (10) seats per EVENT in the Theater and four (4) seats per EVENT in the Studio as house seats to be used at the discretion of the TCA Box Office in the event of double ticketing and/or other customer service issues. Such seats shall not be retained for the purpose of sale.

H. The TCA Box Office and/or CHILDSPLAY will not sell, distribute or permit to be sold or distributed, tickets in excess of established seating capacities.

I. TCA Box Office will not accept payment of any kind at the "Will Call" window. All tickets provided by CHILDSPLAY and held at the "Will Call" window must be pre-paid.

J. In the EVENT of cancellation, ticket refunds shall be available at the original point of purchase the next business day following the cancelled EVENT. The TCA Box Office will issue refunds for tickets sold at the TCA Box Office only. The TCA Box Office will not issue refunds for tickets sold by CHILDSPLAY. CHILDSPLAY agrees to provide refunds for all tickets sold by CHILDSPLAY and/or its agents.

K. ACCESSIBILITY and ACCESSIBLE SEATING

1. In accordance with the *Americans with Disabilities Act*, TCA shall secure a sign language interpreter and/or provide audio description, upon request. When a sign language-interpreted and/or audio-described EVENT is not scheduled as part of a theatrical run, TCA will hold four (4) seats in the Theater and/or Studio for patrons who request these services. Said seats will be released forty-eight (48) hours prior to EVENT if no requests have been received or when the EVENT sells out. TCA, in cooperation with CHILDSPLAY, shall designate the interpreter's location for the interpreted/audio-described performance. CHILDSPLAY and TCA shall share the cost for the interpreter and or audio describer. CHILDSPLAY shall provide TCA a script or text of the performance for purposes of interpreted/described performance, within forty-eight (48) hours of request.

2. TCA shall provide large print and Braille programs upon request, with a minimum of twenty-one (21) days advance notice by the patron. CHILDSPLAY and TCA shall share the cost for the alternative print program(s).

3. The TCA Box Office will retain, for sale, all accessible seating. Patrons requesting accessible seating should be referred to the TCA Box Office.

L. CONSIGNMENT TICKETS

1. CHILDSPLAY may request a specified number of tickets up to thirty percent (30%) of house capacity for consignment sale purposes. CHILDSPLAY will be charged a return ticket fee equivalent to the per-ticket printing charge for all tickets returned to the TCA Box Office for resale, provided tickets are returned two (2) business days or more prior to the EVENT. Consignment tickets returned less than two (2) business days prior to the EVENT will be considered sold for purposes of final EVENT settlement. Release of additional consignment tickets, in excess of thirty percent (30%) of house capacity, will be by mutual agreement between TCA Box Office and CHILDSPLAY.

2. CHILDSPLAY is required to supply to the TCA Box Office a record of patrons' names and seating locations for all sold consignment tickets to facilitate re-ticketing in the event of loss of tickets.

M. COMPLIMENTARY TICKETS

1. The issuance of press passes and other complimentary tickets shall be the responsibility of CHILDSPLAY.

2. Requests for complimentary tickets to be picked up at the will call window must be submitted, in writing, no less than twenty-four (24) hours prior to the EVENT.

O. The CITY, through the TCA Box Office, shall keep accurate records of information compiled during CHILDSPLAY ticket purchase transactions originated through the TCA Box Office. Additionally, the TCA Box Office will make every attempt to monitor and correct information obtained through web sales and/or sales through means other than direct sales by TCA Box Office staff. Ticket purchaser information shall include complete name, address, telephone and email contact information and any other information as requested by CHILDSPLAY, excluding Social Security numbers, credit/debit card information, and other sensitive personal identification information as determined by the CITY. CHILDSPLAY agrees to supply the CITY with specific requests for information other than standard contact information, in writing, no later than twenty-four (24) hours prior to collection of such information. Upon request, the TCA Box Office shall provide to CHILDSPLAY a listing of ticket purchaser information in a standardized format such as Excel®, Access®, Word® or other such format that is readily retrievable from the computerized ticketing system currently in use by the TCA Box Office. Ticket purchaser information shall be supplied to CHILDSPLAY in coordination with weekly ticket sales settlement reports. CHILDSPLAY agrees that such ticket purchaser information shall be used solely for CHILDSPLAY'S purposes and will not be sold to any third party.

ATTACHMENT B

LICENSE FEE SCHEDULE

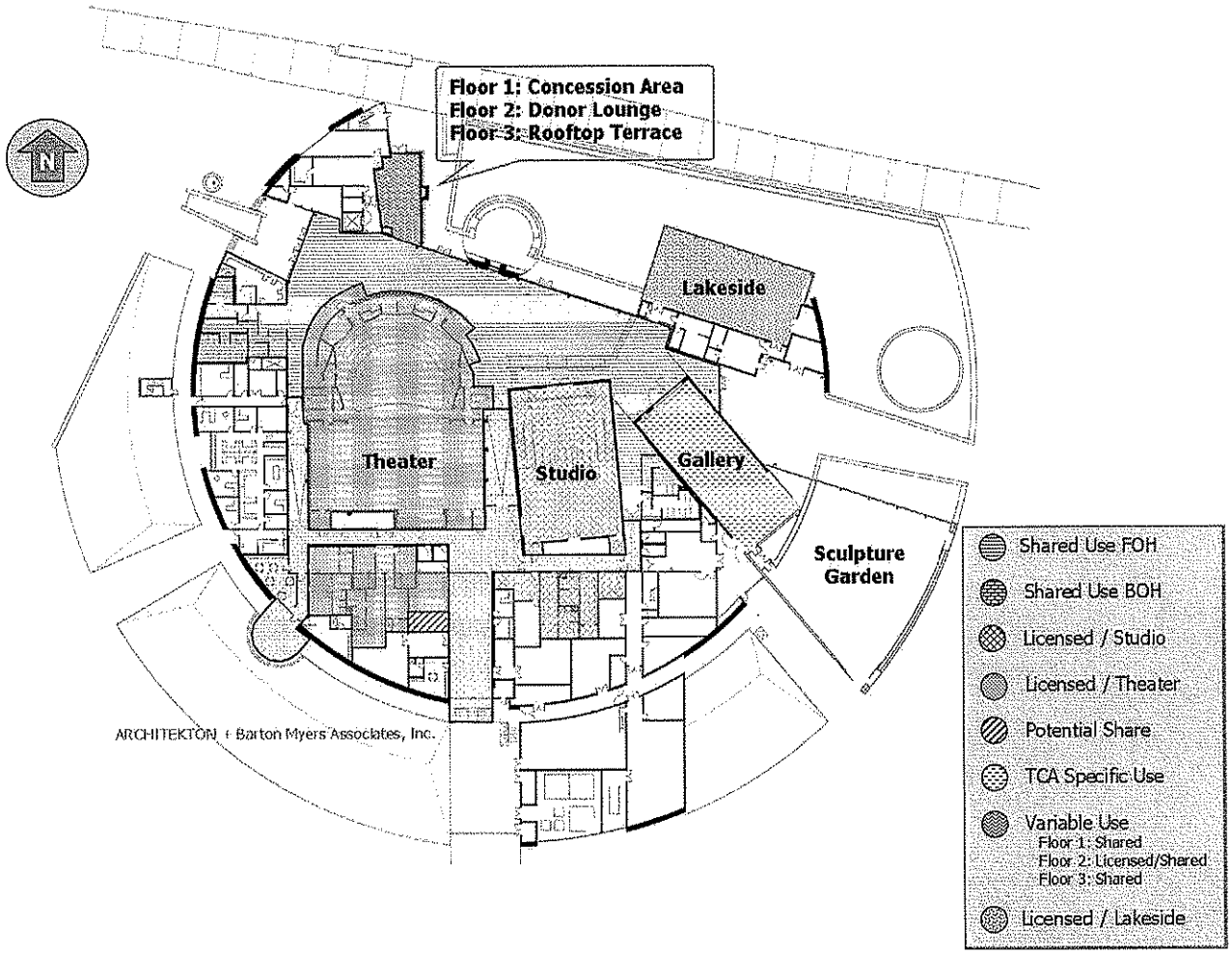
THEATER (600 seat capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Event Day - single performance	$ 1,350	$ 1,080	$ 900
Additional event(s) on Event Day - Per additional event	$ 675	$ 540	$ 450
Non-Event Day	$ 1,012	$ 810	$ 675
Overtime (per hour) – Use prior to 8 a.m. / after midnight	$ 175	$ 140	$ 125
Weekly maximum / 8 performances or less. *	$ 6,750	$ 5,400	$ 4,500
STUDIO (200 seat capacity/257 flat floor)	**Tier 3**	**Tier 2**	**Tier 1**
Event Day - single performance	$ 450	$ 360	$ 300
Additional event(s) on Event Day - Per additional event	$ 225	$ 180	$ 150
Non-Event Day	$ 340	$ 270	$ 225
Overtime (per hour) – Use prior to 8 a.m. / after midnight	$ 175	$ 140	$ 125
Weekly maximum / 8 performances or less. *	$ 2,250	$ 1,800	$ 1,500
LAKESIDE ROOM (219 total capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 500	$ 400	$ 335
Half Day (Up to 6 hours)	$ 3,000	$ 2,400	$ 2,010
Full Day (Over 6 hours)	$ 4,500	$ 3,600	$ 3,015
DONOR ROOM (64 total capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 150	$ 120	$ 100
Half Day (Up to 6 hours)	$ 900	$ 720	$ 600
Full Day (Over 6 hours)	$ 1,350	$ 1,080	$ 900
ROOF TOP TERRACE (64 total capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 150	$ 120	$ 100
Half Day (Up to 6 hours)	$ 900	$ 720	$ 600
Full Day (Over 6 hours)	$ 1,350	$ 1,080	$ 900
GALLERY (235 total capacity) Food restrictions apply	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 350	$ 280	$ 235
Half Day (Up to 6 hours)	$ 2,100	$ 1,680	$ 1,410
Full Day (Over 6 hours)	$ 3,150	$ 2,520	$ 2,115
Exhibition modification to clear entire floor space	$ 2,000	$ 2,000	$ 2,000
SCULPTURE GARDEN (300+ total capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 250	$ 200	$ 165
Half Day (Up to 6 hours)	$ 1,500	$ 1,200	$ 990
Full Day (Over 6 hours)	$ 2,250	$ 1,800	$ 1,485
LOBBY (650 total capacity)	**Tier 3**	**Tier 2**	**Tier 1**
Hourly (2 to 5 hours / per hour charge) minimum 2 hours	$ 500	$ 400	$ 335
Half Day (Up to 6 hours)	$ 3,000	$ 2,400	$ 2,010
Full Day (Over 6 hours)	$ 4,500	$ 3,600	$ 3,015
ENTIRE FACILITY	**Tier 3**	**Tier 2**	**Tier 1**
Up to 6 hours	$ 6,000	$ 4,800	$ 4,000
Per hour after 6 hours	$ 1,250	$ 1,000	$ 835
Additional charge if Gallery floor is cleared.	$ 2,000	$ 2,000	$ 2,000

- A deposit in the amount of 25% of the total License Fee is due upon execution of License Agreement.
- Items and services included with individual facilities are specified in Section 4 of the Operating Policies.
- Fees listed are for facility use only. Unless specified, the above fees do not include labor charges.
- Room use fees may be negotiated if exclusive TCA caterer is contracted for event, pending contract amount.
- Lakeside Room rates may be negotiated for TCA Partners rehearsals and performances during off-peak periods, based on availability.

ATTACHMENT C

AREA USE DESIGNATIONS

TEMPE CENTER FOR THE ARTS

ATTACHMENT C

AREA USE DESIGNATIONS