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MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: HEBER CITY

GROUND LEASE AND PARKING AGREEMENT

By and Between:

HEBER CITY CORPORATION
a political subdivision of the state of Utah
LANDLORD

and

WASATCH COUNTY ARTS COUNCIL, INC.,
DBA WASATCH ARTS COUNCIL
a Utah non-profit corporation and IRC 501(c)(3) charitable organization
TENANT

Effective December 19, 2023

SUMMARY OF BASIC LEASE TERMS

Capitalized terms, first appearing in quotations in this Summary of Basic Lease Terms, elsewhere in the Lease or any Exhibits, are definitions of such terms as used in the Lease and Exhibits and shall have the defined meaning whenever used.

- 1) **“Effective Date”**: December 19, 2023
- 2) **“Commencement Date”**: The Date of Possession.
- 3) **“Date of Possession”**: No later than sixty (60) whole calendar days following transfer of Property from Jordanelle Ridge Development to the City and surveyed property boundaries, access roads, power and water connections for construction purposes, and land ready for construction and free from debris. If the transfer is not accomplished, this Lease shall be null and void.
- 4) **“Expiration Date”**: The last day of the **“Lease Term”**: fifty (50) years beginning on the Date of Possession of the Property, subject to Tenant’s right to renew the Lease one (1) additional twenty-five (25) year term.
- 5) **“PID 2”**: Jordanelle Ridge Public Infrastructure District No. 2 as approved by the City Council on or about March 1, 2022 at its regularly scheduled meeting and pursuant to the Public Infrastructure District Act, Utah Code §§ 17D-4-101 *et seq.*
- 6) **“Lease Term”**: Fifty (50) whole calendar years following the Commencement Date.
- 7) **“Renewal Term”**: One additional successive twenty-five (25) whole calendar year period.
- 8) **“Property”**: Approximately 4.4 acres of vacant real property located in the southwest area of the Arts District, as shown on Exhibit A attached hereto.
- 9) **“Landlord”**: Heber City Corporation
- 10) **“Landlord’s Address”**: 75 North Main Street, Heber City, UT 84032
- 11) **“Tenant”**: Wasatch County Arts Council, Inc., d/b/a Wasatch Arts Council
- 12) **“Tenant’s Address”**: 475 N Main St Heber City, UT 84032
- 13) **“Rent”**: \$1.00 per whole calendar year during the Lease Term and Renewal Term.
- 14) **“Permitted Use”**: For Tenant to design, construct, operate, and maintain a community arts center structure and related improvements (**“Arts Center”**) within the Arts District as a public assembly for arts and culture to serve the citizens of the City and surrounding areas.
- 15) **“Arts District”**:

16) "Abandon":

An area of land within PID 2 that will be dedicated to Landlord for use as an arts district, and which includes the Property.

Tenant ceases operations at the Arts Center for more than one hundred and twenty (120) consecutive calendar days.

GROUND LEASE AND PARKING AGREEMENT

THIS GROUND LEASE AND PARKING AGREEMENT (the “**Lease**”) is dated as of the Effective Date, by and between Landlord and Tenant. Landlord and Tenant are collectively referred to herein as the “**Parties**”, and each a “**Party**”.

RECITALS

WHEREAS, RE Investment Holdings, LLC (“**RIH**”) owns large areas of real property located on the northeast side of the Heber Valley, which was recently annexed into the City and is also known as the Jordanelle Ridge Master Plan area (“**Jordanelle Ridge**”); and

WHEREAS, on or about June 24, 2020, the City and RIH signed a Development Agreement for the Upper Jordanelle Master Plan Community, which RIH later assigned to its affiliate JR, and JR is developing Jordanelle Ridge with assistance from Momentum Development Group, LLC (“**MDG**”) (JR and MDG are collectively referred to herein as “**Jordanelle Ridge Development**” or “**JRD**”); and

WHEREAS, on or about March 1, 2022, at a regularly scheduled meeting of the City Council, Heber City Corporation (“**City**” or “**Landlord**”) approved, pursuant to the Public Infrastructure District Act, Utah Code §§ 17D-4-101 *et seq.*, the creation of, and governing documents for, “Jordanelle Ridge Public Infrastructure Districts Nos. 1-5” (collectively, the “**PIDs**”) as independent units of local government for the purpose of providing for the planning and construction of various public improvements within Jordanelle Ridge; and

WHEREAS, in connection with the approval, the City Council caused the City to execute certain documents governing the PIDs, including the “Governing Document for Jordanelle Ridge Public Infrastructure Districts Nos. 1-5” and the “Cooperation Agreement” (collectively, the “**PID Governing Documents**”); and

WHEREAS, pursuant to the PID Governing Documents and subject to the City’s review and approval and subject to funding through public bonds, JRD is to make certain real property improvements within the PIDs, including, without limitation, the Arts District, and to convey the Arts District to the City; and

WHEREAS, pursuant to the PID Governing Documents and subject to the City’s review and approval and available funding, JRD is responsible to construct certain items, improvements, and infrastructure within the Arts District, which improvements may include park landscaping, parking lot, road improvements, amphitheater, Timpanogos Trail improvements, retaining, grading, power, all common-use infrastructure, such as roads, driveways, parking stalls, sidewalks, water, sewer, landscaping, electric power, and other reasonably necessary common use improvements adjacent to and around the exterior of the Arts Center (collectively, the “**Arts District Improvements**”); and

WHEREAS, the Wasatch County Arts Council, Inc., d/b/a Wasatch Arts Council, a Utah non-profit corporation and IRC 501(c)(3) charitable organization (“**WAC**” or “**Tenant**”), is engaged in managing, supporting, and promoting arts and culture programs, including performing arts, within the City and surrounding areas and desires to design, construct, exclusively operate, and maintain an Arts Center within the Arts District; and

WHEREAS, the City desires to support community arts and culture programs and to provide land on which the Arts Center can be constructed to serve the community; and

WHEREAS, on or about August 2, 2022, the City Council approved a written Term Sheet between the Parties setting out the principal terms of the Parties’ agreement regarding the Property and expressly contemplated the execution of this Lease.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are a material part of and incorporated into the Parties' agreement, and of the mutual benefits contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, Landlord and Tenant for themselves and their successors and assigns, intending to be legally bound, agree as follows:

1. **Premises.** Subject to and upon the terms and conditions set forth herein, in consideration of Tenant's obligation to fund, design, construct, operate, and maintain the Arts Center and the City's obligation to maintain the Arts District Improvements, and subject to the further conditions herein including Tenant's obligations under Paragraph 9, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property more particularly shown on Exhibit A and incorporated herein by reference for all purposes. Landlord also hereby grants to Tenant (i) a license to enter onto the Property and, in substantial conformity with the Plans and Specifications (defined below), construct the Arts Center within an area in the Arts District, depicted on Exhibit B, and (ii) a non-exclusive license and right to use the Arts District Improvements, including parking spaces pursuant to the Parking Agreement as further described herein, during the Term of this Lease. This Lease is a ground lease only and shall constitute a binding agreement between the Parties effective as of the Effective Date.

(a) **Description of the Property.** The Parties acknowledge and agree that Exhibit A depicts an approximate location of the Property because the land within Arts District is not yet subdivided; thus, the Property has not yet been assigned a parcel or tax identification number. Once the Property receives a parcel or tax identification number, the Parties will supplement this Lease and/or Exhibit A with the identifying information and a metes-and-bound legal description.

(b) **Conditions.** Notwithstanding the foregoing anything to the contrary herein, all obligations of the Parties shall be expressly conditional upon JRD's final conveyance and dedication of the Property to the City. The City shall use all reasonable efforts to obtain dedication of the Property. Should JRD fail to convey and dedicate the Property to the City, this Lease and all the Parties' rights and obligations hereunder shall be null and void upon written notice by either Party.

(c) **Condition of Property.** WAC acknowledges that the Property is being conveyed to the City by JRD, and that JRD is responsible for all grading and improvements related to the Property. Accordingly, WAC agrees to accept the Property "as is" with no warranties from the City with respect the grading, soils, or other conditions of the Property.

2. **Term and Commencement.** Unless terminated sooner as provided herein, the term of this Lease shall be for a period of fifty (50) whole calendar years beginning on the Commencement Date (subject to dedication of the Property to the City) and ending at 11:59 p.m. MST on the fiftieth (50th) anniversary of the Commencement Date. So long as Tenant is not in default of this Lease and the Lease Term is not terminated as provided herein, Tenant shall have the right in its sole discretion to renew this Lease for one (1) additional twenty-five (25) whole calendar year term upon the same terms and conditions. To exercise its right to renewal, Tenant must provide Landlord written notice of its intent to renew not less than 180 days prior to the expiration of the initial term. The Parties may mutually agree upon additional renewals. The original term and all renewals shall be collectively referred to herein as the "**Term**".

3. **Possession.**

(a) Landlord shall, subject to dedication of the Property to the City, deliver the Property to Tenant no later than the Possession Date. Possession need not include the completed Arts District Improvements.

(b) Landlord hereby grants to Tenant and its authorized agents, contractors, subcontractors, and employees a license to access and enter upon the Property, at Tenant's sole risk and expense, during ordinary business hours prior to the Possession Date, for the sole purpose of designing and constructing the Arts Center; provided, however, that (i) the provisions of this Lease shall apply during such early entry, and (ii) prior to any such entry, Tenant shall provide evidence that the insurance required under Paragraph 16 of this Lease is in place. This license shall include the right to cross over other real property owned or controlled by the City as may be necessary to access the Property.

4. **Termination.** If and when this Lease terminates or expires for any reason, all rights and interests in the Property conveyed by Landlord to Tenant shall automatically revert back to Landlord, and Tenant shall no longer have any rights or interests whatsoever in the Property. Tenant will at once surrender and deliver up the Property, together with all improvements thereon, to the City.

5. **Quiet Enjoyment.** Landlord represents and covenants that Tenant shall peaceably and quietly have, hold, and enjoy exclusive possession of the Property, all appurtenances belonging thereto, and all rights granted to Tenant by this Lease for the entire duration of the Term without any hindrance or interference by Landlord or any person acting by, through or under Landlord or deriving rights through the Landlord, including other users of the Arts District. Notwithstanding anything to the contrary in this Lease, Landlord hereby represents and covenants that promptly upon receipt of written notice from Tenant of a violation of Tenant's rights to quiet enjoyment of the Property under this Lease, Landlord shall take all reasonable actions necessary to restore Tenant's full rights to quiet enjoyment of the Property, as provided herein. In the event that Tenant's full rights have not been restored within thirty (30) days following Landlord's receipt of such notice, and notwithstanding anything to the contrary in this Lease, Tenant shall be entitled to exercise any and all remedies permitted under this Lease, including those pertaining to Landlord's default. The Parties acknowledge and agree that this covenant is essential to public assemblies, arts functions, and performances at the Arts Center.

6. **Consideration.** In addition to Rent, consideration for this Lease includes a contribution from the City to WAC equal to the fair market value of the lease value in excess of Rent (the "**City Contribution**"). To calculate the City Contribution, the Parties shall jointly obtain and pay for, prior to the execution of the lease, a commercial real estate appraisal of the fair market value of the Lease Term and Renewal Term to reflect on its books and records. Should JRD fail to convey and dedicate the Property to the City, no City Contribution will be deemed to have been made.

7. **Recognition.** WAC will recognize and reflect on its books and records the City Contribution as a contribution to WAC with associated tax benefits, if any. WAC shall provide recognition to the City within the Building (as defined below) in a form commensurate with like donor contributions and proportional to the value of the City Contribution and as reasonably agreed upon by the Parties. The Parties further agree that the City will be recognized at the Arts Center public entrances in a reasonable manner and that the Contribution will be deemed to have been made at the time of the execution of the Lease. Neither Party makes any representation or warranty as to the tax consequences of this transaction.

8. **Construction of the Arts Center Building.** WAC is solely responsible for the design and construction of the Arts Center structure and any ancillary maintenance and operating facilities, fixtures, equipment, and improvements within the envelope of the structure ("**the Building**").

(a) Subject to dedication of the Property to the City, the City agrees that the Property shall be zoned to allow design, construction, operation, and maintenance of the Arts Center.

(b) When they become available, Tenant shall attach to this Lease, as Exhibit B and incorporated herein by reference for all purposes, the approved plans and specifications (the "**Plans and**

Specifications") for the Arts Center, which shall include, without limitation, sketches and/or drawings showing substantially the location of the Arts Center on the Property and the layout of the Building.

(c) The Arts Center, including any future modifications or additions, shall be subject to all land use and zoning regulations and the same approval process as other substantially similar structures within the City's jurisdiction. As part of said approval, the City shall review design packages and the Plans and Specifications for the Building solely to require that they comply with City land use regulations. The City shall use its best efforts to cooperate with WAC in expediting and granting, as reasonably allowed by law, all permits, licenses, and approvals necessary for demolition, construction, occupancy, and operation of the Arts Center.

(d) WAC shall begin construction of the Arts Center on the Property no later than January 1, 2029 (the "**Construction Start Date**") and shall complete construction no later than thirty-six (36) months from the Construction Start Date, subject to dedication of the Property to the City, force majeure events, and the issuance of a necessary permits, licenses, and approvals. Tenant shall, through a contract with a reputable, licensed contractor or contractors, cause the development and construction of the Building to be carried out in substantial conformance with the Plans and Specifications and in a good and workmanlike manner using first class materials. Should WAC fail to commence construction by the Construction Start Date absent written consent by the City, the Property shall revert to the City at no cost to WAC, and this Lease shall be null and void without any further action by either Party.

(e) WAC shall be required to obtain standard payment and performance bonds to guarantee completion, and bonds shall be provided for each contractor before WAC begins construction work.

(f) The Parties shall cooperate in obtaining bonding by WAC to insure financing and completion of the Arts Center.

(g) WAC shall report to the City Council quarterly as to the general status of the construction of the Arts Center and shall, upon request of the City, make copies of construction management reports available to the City for review until construction is complete. As a courtesy, WAC shall allow the City to review and provide input on general design features of the Arts Center.

(h) The City may, at its option, void this Lease by written notice to WAC if WAC does not, within a reasonable time after a request from the City, provide written evidence that WAC has or, within a time certain, will have reasonably sufficient funds to substantially complete the Building as of the Construction Start Date. The City may, at its option, extend the Construction Start Date.

(i) From and after the conveyance and dedication of the Property from JRD to the City, the City hereby authorizes WAC to enter the Property for the purposes of performing investigations, inspections, tests, and studies of the Property.

9. **Construction of the Arts District Improvements.** The Parties acknowledge that the funding and construction of the Arts District Improvements is within the control of JRD, which is not a party to this Lease. Subject to dedication of the Property to the City, the City shall use commercially reasonable efforts to ensure the Arts District Improvements are designed and constructed consistent with the following standards:

(a) JRD's obligations under the PID Governing Documents, including delivery of the completed Arts District Improvements.

(b) All work on the Arts District Improvements to be performed through a contract with a reputable, licensed, and bonded contractor or contractors in conformance with the PID Governing Documents and in a good and workmanlike manner using first class materials supported by an industry-standard warranty.

(c) The City shall, upon request, provide status reports of the construction of the Arts District Improvements to WAC and shall make copies of construction management reports available to WAC for review until completion.

(d) Completion of the Arts District Improvements no later than the date when the Arts Center opens to the public for business.

(e) Consistent with applicable codes and regulations, the City shall permit WAC to install and maintain reasonable signage in or about the Arts District, including, where applicable, freestanding pole or monument signs, obtained by and at the expense of Tenant, or such as Tenant shall deem satisfactory.

(f) Tenant and its customers and employees shall have full access of ingress and egress to, from and through the common drives and roads of the Arts District, and across adjoining properties owned or controlled by Landlord and/or its affiliates, subsidiaries, and entities with common control.

(g) If for any reason the Arts District Improvements cannot be or are not constructed in accordance with the above standards, this Lease shall not terminate unless funding, construction, or operation of the Arts Center is made impracticable thereby, in the reasonable judgment of WAC. If WAC does not terminate, the Parties shall negotiate in good faith changes, if any, to this Lease to accommodate unforeseen circumstances.

10. Use of the Property.

(a) Subject to securing and maintaining all state, local, and City required permits and licenses for the intended uses of the Property, including but not limited to alcohol and beverage licensing, and subject to force majeure events, WAC shall continually use the Property for the Permitted Use and for no other purpose without the prior written consent of Landlord, in its sole discretion. Should WAC fail to use the Property for the Permitted Use or Abandon the Property, the Property shall revert to the City at no cost to WAC, and this Lease shall be null and void without any further action by either Party. Notwithstanding the foregoing, WAC shall remain obligated for liabilities, costs, and expenses incurred or arising before the date of reversion. Except as expressly provided herein, no other act, omission, or event of any kind shall result in a forfeiture of the Property or this Lease.

(b) Tenant shall act in accordance with and not violate any restrictions or covenants of record affecting the Property or the Building except that non-compliance with any such restrictions or covenants shall in no event result in a forfeiture of the Property or this Lease. Tenant shall not use or occupy the Property in violation of any applicable law, code, regulation, or ordinance, and shall immediately discontinue any use of the Premises that is declared by either any governmental authority having jurisdiction to be a violation of any such law, code, regulation, or ordinance. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Property, impose any duty upon Tenant or Landlord with respect to the Property or with respect to the use or occupancy thereof.

(c) Tenant shall not allow the Property to be used for any immoral, unlawful, or objectionable purpose, nor shall Tenant maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Building.

(d) The Parties shall each comply, in all material respects, with all applicable laws, ordinances, rules, regulations, orders, writs, judgments, injunctions or decrees of any court, arbitrator or governmental authority and duly observed, in all material respects, all other requirements of government authorities including, without limitation, all statutes, rules, regulations and orders relating to environmental pollution, public and employee health and safety, and employee benefits, and comply with all material zoning ordinances and all regulations, and not initiate or acquiesce in any change in any such ordinances and regulations that is material to the construction, maintenance, and operation of the Arts Center.

(e) WAC shall have sole and exclusive responsibility for and discretion over all performance and service agreements with third parties relating to the Building and its operations including, but not limited to, concerts, events, ticket sales, marketing, concessions, alcoholic beverage service, cleaning, and maintenance.

11. **Scheduling of the Arts Center.** WAC shall have and maintain sole and exclusive control over and management of operations and scheduling of the Arts Center. In consideration of this Lease and the City Contribution, the Arts Center shall be available to the City for public use twenty (20) total days per calendar year across one of the assembly space(s) or room(s), as determined by the City, within the Arts Center. Each assembly space or room shall count separately as one "use" per day under the terms of this Paragraph 11, provided that use of the full Arts Center shall not count as more than two days. The City shall pay no rent for its public use of the Arts Center. The City shall pay actual costs for its use, including standard ticketing fees, labor, cleaning, equipment rental, security, and administrative services. The Parties will mutually agree upon an annual scheduling policy and procedure for public use of the Arts Center as provided in this Paragraph 11.

12. **Taxes.**

(a) During the Lease Term and Renewal Term, Tenant shall be solely responsible for and shall pay, as and when the same become due, any tax, assessment, license, fee, levy, penalty, or real property or other tax (collectively, "**Taxes**") with respect to the Building and its operation as contemplated herein.

(b) Tenant's ability to pay the Taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fractional portion of a fiscal tax year included in the commencement or expiration of the Lease Term and Renewal Term. With respect to any assessments that may be levied against or upon the Building or that under the law then enforced may be evidenced by improvement bonds or other bonds or may be paid in annual installments, only the amount of such annual installment (with the appropriate proration for any partial year) and interest due thereon shall be included within the computation of the annual taxes levied against the Building.

(c) Landlord shall be solely responsible for and shall pay, as and when the same become due, any Tax with respect to areas of the Property and its improvements on which the Building is not located.

13. **Utilities and Services.**

(a) As part of JRD's obligations with respect to Arts District Improvements, the City shall make commercially reasonable efforts to ensure that JRD installs utilities and services, including, without limitation, water, gas, electricity, internet access, sewer, and power, are brought to the Property as soon as reasonably practicable so as to not delay construction of the Arts Center.

(b) From and after the commencement of the Lease Term, WAC shall be solely responsible for and shall pay promptly all charges for water, gas, electricity, internet access, sewer, heat, light, power, telephone, refuse pickup, janitorial services, and other utilities, materials, and services (collectively, "**Utilities**") furnished directly to, or used by, Tenant within the Building during the Lease Term and Renewal Term, together with any Taxes thereon.

(c) WAC shall be responsible to pay all impact fees, connection fees, inspection fees and other required fees and charges related to the construction of the Building unless the City Council agrees to waive any fees or charges as part of a future contribution to WAC.

14. **Maintenance and Repairs.**

(a) From and after the Construction Start Date, except as expressly provided herein, WAC, at its own cost and expense, shall maintain, preserve, and protect the Building for the continued operation of the Arts Center and to keep the Building in good repair, working order, and condition and, from time to time, make all needful and proper repairs, renewals, replacements, additions, and improvements thereto, so that the Arts Center business may be able to be properly and advantageously conducted at all times in accordance with prudent business management practices. Except as expressly provided herein, the City shall not be required to make any improvements, repairs, or alterations in or to the Building. WAC shall be permitted to make improvements to the Arts Center at its sole discretion.

(b) Subject to the conveyance and dedication of the Property to the City, the City shall, at its own cost and expense, maintain, preserve, and protect the Arts District Improvements beginning at point of the exterior envelope of the Building for the continued operation of the Arts Center and to keep the Arts District Improvements in good repair, working order, and condition and, from time to time, make all needful and proper repairs, renewals, replacements, additions, and improvements thereto, so that the Arts Center business may be able to be properly and advantageously conducted at all times in accordance with prudent business management practices. Except as expressly provided herein, WAC shall not be required to make any improvements, repairs, or alterations in or to the Arts District Improvements.

(c) Notwithstanding the foregoing, the use of parking spaces within the Arts District shall be governed by the Parking Agreement identified in Paragraph 15 below.

(d) Subject to the conveyance and dedication of the Property to the City, the City shall be solely responsible at its sole cost and expense for security for those areas in the Arts District outside the Property, which shall include reasonable measures (such as lighting, monitoring, and access control) to prevent violence, theft, vandalism, and other crimes against the person and property. WAC shall be solely responsible at its sole cost and expense for security within the Property, which shall include reasonable measures (such as lighting, monitoring, and access control) to prevent violence, theft, vandalism, and other crimes against the person and property.

(e) WAC may make such alterations or additions to the Building at any time as WAC may desire. Such alterations or additions will be made in accordance with all applicable building codes and in a good workmanlike manner without cost to the City.

15. **Parking Agreement.**

(a) Subject to the conveyance and dedication of the Property to the City, the City and Tenant hereby agree to enter into a parking agreement addressing Tenant's use of the parking areas within the Arts District (the "**Parking Agreement**"). The Parking Agreement is attached hereto as Exhibit C and is incorporated herein by reference for all purposes.

(b) The covenants, conditions, restrictions, and other provisions relating to the Parking Agreement shall run with and be appurtenant to the Arts District, the Property, and areas defined in the Parking Agreement, and shall be binding upon the Parties' respective successors and assigns in title to all or any portion of the Arts District, the Property, and areas defined in the Parking Agreement during the Lease Term and Renewal Term.

16. **Insurance.**

(a) Prior to occupying any portion of the Building or performing work that creates a liability exposure for Tenant, Tenant will obtain, maintain, and keep in force the following policies of insurance:

(i) Commercial general liability insurance that insures against claims for bodily injury, personal injury, advertising injury, and property damage based upon, involving, or arising out of the use, occupancy, or maintenance of the Building and the Property. Such insurance shall afford, at a minimum, the following limits:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Personal and Advertising Injury Liability	\$1,000,000
Fire Damage Legal Liability	\$100,000
Medical Payments	\$5,000

This coverage shall be written on the most current ISO CGL form (or its equivalent), shall include contractual liability, premises-operations and products-completed operations and shall contain an exception to any pollution exclusion that insures damage or injury arising out of heat, smoke, or fumes from a hostile fire. Such insurance shall be written on an occurrence basis and contain a standard separation of insureds provision.

(ii) Business automobile liability insurance covering owned, hired and non-owned vehicles with minimum limits of \$1,000,000 combined single limit per occurrence.

(iii) Employer's liability insurance in an amount not less than \$1,000,000.

(iv) Workers' compensation insurance in accordance with Utah law.

(v) Umbrella/excess liability insurance, on an occurrence basis, that applies excess of the required commercial general liability, business automobile liability, and employer's liability policies with the following minimum limits:

Each Occurrence	\$3,000,000
Annual Aggregate	\$3,000,000

(vi) Property insurance "the equivalent of causes of loss – special form" including flood, earthquake, windstorm, theft, sprinkler leakage, and boiler and machinery coverage on all of Tenant's trade fixtures, furniture, inventory, and other personal property in the Building, and on any alterations, additions, or improvements made by Tenant upon the Building.

(b) From and after the Commencement Date, Landlord shall, at all times, provide, maintain, and keep in force the following policies of insurance:

(i) Insurance against loss or damage to the Arts District Improvements by fire and/or other risks of loss covered by insurance of a type known as "All Risk Replacement Cost Insurance with Agreed Amount Endorsement" in an amount not less than \$1,000,000.00, including costs of debris removal of not more than \$100,000.00, deductible from the loss payable for any casualty. Landlord shall not be obligated to insure any furniture, equipment, trade fixtures, machinery, goods, or supplies that Tenant may keep or maintain in the Building or any alteration, addition, or improvement that Tenant may make to the Building.

(ii) Comprehensive public liability insurance on a "recurrent basis" against claims for "personal injury" including, without limitation, bodily injury, death or property damage occurring on, in or about covering all areas of the Property and improvements thereto other than the Building, all such insurance to afford immediate minimum protection to the limit of \$1,000,000.00 in a combined single limit coverage with a \$1,000,000.00 liability umbrella with respect to personal injury or death to any one or more persons or damage to

property. Tenant shall be included as an additional insured on this commercial general liability insurance policy maintained by Landlord.

(c) All policies of insurance required by this Lease shall contain an endorsement or agreement by the insured that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Tenant or Landlord which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deduction against Tenant or Landlord. All policies of insurance shall be on forms and shall contain endorsements acceptable to Tenant and Landlord. All policies of insurance shall be issued by companies satisfactory to Tenant and Landlord. Each Party shall furnish to the other a certificate and, upon request, an original copy of all policies of required insurance. At least twenty (20) days prior to the expiration of each policy, each Party shall furnish to the other Party evidence of payment of the premium and the re-issuance of the policy thereby continuing insurance in force as required by this Lease. All policies shall contain the provision that such policies will not be cancelled or materially amended, which term shall include any reduction in scope or limit of coverage, without at least thirty (30) days' prior written notice to both Landlord and Tenant. In the event either Party fails to provide, maintain, keep in force or deliver and furnish to the other Party the policies of insurance required by this Paragraph, the first Party, after thirty (30) days' prior written notice to the other Party, may procure such insurance and the other Party shall immediately repay the first Party for all premiums.

(d) Landlord, except to the extent Tenant's insurance covers loss to Landlord, and Tenant each hereby waive all rights of recovery against the other and the other's agents on account of loss or damage occasioned to such waiving Party to the extent that such loss or damage is insured or is required to be insured against under an insurance policy required by this Paragraph. Tenant shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Lease.

17. **Bonding.** The Parties shall cooperate with one another and with JRD in obtaining bonding to insure financing and completion of the Arts Center consistent with the terms of the PID Governing Documents.

18. **Indemnification.** The City is a governmental entity under the Utah Governmental Immunity Act, Utah Code §§ 63G-7-101, *et seq.*, as amended (the "Immunity Act"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts or omissions that are committed by it or by its agents, officials, or employees. Neither Party waives any claims or defenses otherwise available under the Act.

19. **Damage or Destruction.** In the event the Building is destroyed or damaged by fire or other insured casualty, and the insurance proceeds have been made available therefor by the holder or holders of any mortgages or deeds of trust covering the Building, Tenant may repair the Building, if Tenant determines, in its sole discretion, that it is reasonable to do so. If Tenant determines not to repair the Building, either Party may, by written notice to the other, terminate this Lease as of the date of the occurrence of such damage.

20. **Eminent Domain.**

(a) **Total Taking.** If title to all of the Building or Property, or so much thereof, is taken for any public or quasi-public use under any statute or right of eminent domain, Tenant shall not be obligated to construct a similar Building; however, Tenant shall be entitled to its portion of the proceeds from such taking equal to the value of the Building and any other improvements funded by Tenant. Upon such an occurrence, this Lease shall automatically terminate.

(b) **Partial Taking.** If any part of the Building, including the parking area, is taken and, in Tenant's discretion, the remaining part is reasonably suitable for Tenant's continued occupancy Tenant may, in its sole discretion, and at its own cost and expense, redesign, redevelop, and reconstruct the Building so as to make

that portion of the Building not taken suitable for Tenant's continued operation and use; however, Tenant shall be entitled to its portion of the proceeds from such taking equal to the value of the Building and any other improvements funded by Tenant. If Tenant determines not to reconstruct the Building, either Party may, by written notice to the other, terminate this Lease as of the date of the occurrence of such taking.

(c) Stipulation. Landlord may without any obligation or liability to Tenant stipulate with any condemning authority for a judgment of condemnation without the necessity of a formal suit or judgment of condemnation, and the date of taking under this clause shall then be deemed the date agreed to under the terms of such agreement or stipulation.

21. **Assignment and Subletting.**

(a) Tenant may not transfer or sell its license or tenancy in the Property or change its use of the Property without prior written consent of Landlord, which consent shall not be unreasonably, withheld, conditioned, or delayed.

(b) Either Party may transfer management of, maintenance, and operational control to a third party at any time with written consent of the other Party, which shall not be unreasonably withheld or delayed.

(c) Tenant shall not be entitled to assign or sublet all or a portion of its interest in the Property at any time without the consent of Landlord, provided that Landlord shall not unreasonably withhold, condition, or delay any assignment or sublease if the proposed assignment or sublease is consistent with the permitted use of the Property, which is to provide art or art related opportunities to the community.. No Landlord consent shall be required to rent or lease any internal portions of the Building, including, but not limited to, renting space for concessionaires or other vendors.

(d) Tenant shall be entitled to pledge its interest in the Building and Property with written consent of Landlord, which shall not be unreasonably withheld or delayed.

(e) Upon any assignment, sublease, or pledge, the assignor shall not be relieved of its obligations under this Lease and shall remain liable, jointly and severally and as a principal, and not as a guarantor or surety, under this Lease, to the same extent as though no assignment or sublease had been made. An assignment, sublease, or pledge shall not interfere with Tenant's right to renew this Lease.

22. **Default.**

(a) Tenant's Default. At the option of Landlord, a default under this Lease by Tenant shall exist if any of the following events shall occur ("**Event of Default**"):

(i) The making by Tenant or any guarantor of this Lease of any general assignment for the benefit of creditors; the filing by or against Tenant or such guarantor of a petition to have Tenant or such guarantor adjudged a bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant or such guarantor, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

(ii) Tenant fails to observe, keep, perform, or cure within sixty (60) days after written notice by Landlord, any of the other material terms, covenants, agreements, or conditions contained in this Lease or those set forth in any other agreements or rules or regulations Tenant is obligated to observe or perform. In the

event such default reasonably could not be cured or corrected within such sixty (60)-day period, but is reasonably susceptible to cure or correction within one hundred twenty (120) days, then Tenant shall not be in default hereunder if Tenant commences the cure or correction of such default within fourteen (14) days after receiving such written notice from Landlord and diligently prosecutes the same to completion within one hundred twenty (120) days after commencing such cure or correction. Notice given under this Paragraph shall specify the alleged default and shall demand Tenant perform the provisions of this Lease within the applicable period of time or quit the Building. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in writing.

(b) Landlord's Default. Landlord shall not be deemed to be in default of the performance of any covenant, agreement or obligation required to be performed by Landlord hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of notice by Tenant to Landlord specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

(c) Because of the substantial investment by Tenant in the Building, these default provisions shall be interpreted liberally in favor of Tenant to avoid a forfeiture of the Lease.

(d) Notwithstanding anything in this Lease to the contrary, if Tenant defaults, before terminating this Lease for Tenant's default, Landlord shall use commercially reasonable efforts to mail or deliver a copy of any such notice to the holder of any first mortgage on the Tenant's interest in this Lease, by certified mail, return receipt requested or by national overnight courier with receipted delivery (i.e., FedEx, UPS), notified Landlord of the holder's mortgage and the address to which notices are to be sent ("**Tenant's Mortgagee**"). If Landlord has received a notice from a Tenant's Mortgagee pursuant to the preceding sentence, Landlord may presume that mortgagee is Tenant's Mortgagee until Landlord is furnished a certified copy of a recorded satisfaction of that mortgage. No notice of termination of this Lease by Landlord shall be effective until Tenant's Mortgagee shall have been furnished a copy of such notice by Landlord. In the event Tenant fails to cure any default by it under this Lease, Tenant's Mortgagee shall have, at its option, a period of thirty (30) days within which to remedy such default of Tenant or to cause such default to be remedied. In the event that Tenant's Mortgagee elects to cure any such default by Tenant, then Landlord shall accept such performance on the part of such Tenant's Mortgagee as though the same had been performed by Tenant, and for such purpose Landlord hereby authorizes any Tenant's Mortgagee to enter upon the Premises to the extent necessary to exercise any of Tenant's rights, powers and duties under this Lease. If, in the event of any default by Tenant which is reasonably capable of being cured by Tenant's Mortgagee, and Tenant's Mortgagee promptly commences and diligently pursues to cure the default, then Landlord will not terminate this Lease or cease to perform any of its obligations under this Lease so long as Tenant's Mortgagee is, with due diligence, actively engaged in the curing of such default. Further, if Tenant defaults, Landlord shall allow, without unreasonably withholding its consent, Tenant's Mortgagee to assign this Lease to a third party.

23. Remedies.

(a) Landlord's Remedies. Upon the occurrence of an Event of Default, then Landlord may exercise any remedy available in law or in equity.

(b) Tenant's Remedies. In the event of a default by Landlord in the performance of any covenant, agreement, or obligation to be performed by Landlord hereunder, which default is not cured as and when required, Tenant shall have the right, but not the obligation, to perform such covenant, agreement or obligation on Landlord's behalf and seek reimbursement from Landlord for the actual costs of performing any such covenant, agreement, or obligation.

24. **Landlord's Covenants.** Subject to the conveyance and dedication of the Property to the City, Landlord covenants that (i) it has, or will have at the time of conveyance, good and marketable fee simple title to the Property free of all leases, tenancies, agreements, encumbrances, liens, restrictions, and defects in title affecting the rights granted Tenant in this Lease, (ii) to the best of Landlord's actual knowledge, there are no restrictive covenants, zoning or other ordinances or regulations applicable to the Premises which will prevent the Premises from being used as permitted herein, (iii) Landlord has provided Tenant with any environmental reports or studies in its control or possession relative to the Premises, (iv) Landlord has not received any notices of violation of any environmental laws or ordinances with respect to the Premises and to the best of Landlord's knowledge, with no duty to investigate, the Premises are in full compliance with all applicable environmental laws and ordinances, and (v) to the best of Landlord's actual knowledge, there are no underground storage tanks or facilities, or Hazardous Materials currently or previously located on or under the Premises at the time of execution of this Lease; however, if there are any, Landlord, at Landlord's sole expense will ensure they will be properly removed and disposed of and that any contamination related thereto has been or will be assessed and remedied according to applicable laws, rules, regulations and ordinances to the satisfaction of the appropriate governmental authorities ("**Landlord's Remedial Obligations**"). Notwithstanding the above, Tenant shall be obligated to operate in accordance with any existing recorded agreements and environmental reports and acknowledges receipt of any such agreements.

25. **Environmental Obligations.** If Landlord shall, at any time after the execution of this Lease and subject to the conveyance and dedication of the Property to the City, be required to perform Landlord's Remedial Obligations, Landlord and Tenant shall enter into an agreement reasonably satisfactory to Tenant containing the following terms and conditions and such other terms and conditions as the parties shall mutually agree:

- (a) Tenant shall provide Landlord reasonable access to the Property for the purpose of conducting Landlord's Remedial Obligations; provided that Landlord's Remedial Obligations shall be conducted by Landlord in a manner designed to cause the least possible interference with any ongoing construction by Tenant and the operation of its business;
- (b) Landlord shall undertake Landlord's Remedial Obligations, including, without limitation, any and all investigations, remediation, and disposal of contaminated soil and/or groundwater (including any revealed as part of the Tenant's construction) at Landlord's sole cost and expense and in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances;
- (c) Landlord shall properly repair and/or restore any damage to the Property as a result of Landlord's Remedial Obligations;
- (d) Landlord shall indemnify Tenant in connection with Landlord's Remedial Obligations;
- (e) Landlord and its agents and contractors shall maintain insurance coverage(s) reasonably acceptable to Tenant; and
- (f) All reports and studies issued in connection with the performance of Landlord's Remedial Obligations shall be addressed to, and may be relied upon by, both Landlord and Tenant.

If Landlord shall fail to perform or pay for its obligations in accordance with this Section (collectively, the "Obligations"), Tenant may, at its option, perform or pay for the Obligations. If Tenant shall so elect, Tenant may withhold rent to the extent of expense incurred by Tenant in performing or paying for the Obligations.

26. **Liens.** Tenant shall at all times have the right to encumber, by mortgage or deed of trust, or other proper instrument in the nature thereof, as security for any actual bona fide debt, its leasehold estate as Tenant hereby created, or any portion thereof, together with its right and interest in and to all Buildings and Improvements constructed by Tenant and its interest in any equipment located on the Property. Tenant shall not have the right to encumber the Landlord's fee ownership interest in the Property nor in the existing buildings located on the Property. If a mortgagee or trustee under a deed of trust shall notify the Landlord in writing that such mortgage or deed of trust has been executed and delivered by Tenant and shall furnish Landlord with the address to which said mortgagee or trustee desires copies of notices to be mailed, then the Landlord hereby agrees that it will thereafter mail to such mortgagee or trustee at the address so given a duplicate copy of any and all notices in writing which Landlord may

from time to time give or serve upon the Tenant under and pursuant to the terms and provisions of this Lease. Such mortgagee or trustee may, at its option, at any time before the rights of Tenant shall have been forfeited to the Landlord as herein provided, pay any of the rents due hereunder, or do any other act or thing required of or permitted to the Tenant by the terms of this Lease, to prevent the forfeiture or termination of this Lease, and all payments so made and all things so done and performed by or for any such mortgagee or trustee shall be as effective to prevent a forfeiture of the rights of the Tenant hereunder as the same would have been if done and performed by Tenant. No such mortgagee or trustee of the rights and interest of the Tenant hereunder shall be or become liable to the Landlord as an assignee of this Lease or otherwise unless it expressly assumes the liability of the Tenant and no assumption shall be inferred from or shall be the result of foreclosure or other appropriate proceedings in the nature thereof or shall be the result of any other action or remedy provided for by such mortgage or deed of trust.

27. **Force Majeure.** In the event that Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of unanticipated acts of God (such as, but not limited to, fires, explosions, pandemics, earthquakes, drought, and floods); war and hostilities; rebellion, revolution, insurrection, or military or usurped power; and other unforeseeable circumstances beyond the control of either Party (such as, but not limited to, harsh weather conditions), or the act, failure to act, or default of the other Party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

28. **End of Term.** Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Property to Landlord. If Tenant remains in possession of all or any part of the Property after the expiration of the Term without the prior written consent of Landlord, such possession shall constitute a month-to-month tenancy only and subject to every term, condition, and covenant contained in this Lease.

29. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by: (1) hand delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) overnight delivery by a nationally recognized courier service and shall be deemed given the following day. All notices shall be addressed as follows:

TENANT:

Wasatch County Arts Council, Inc., d/b/a Wasatch Arts Council
Attn: Phillip Jordan
475 N Main St.
Heber City, UT 84032

With a copy to (which shall not constitute notice):

Joshua D. Jewkes, Esq.
Gordon Law Group, P.C.
322 East Gateway Drive, Suite 201
Heber City, UT 84032

LANDLORD:

Heber City Corporation
Attn: City Manager
75 North Main Street
Heber City, UT 84032

Either party may change its address by notice given in accordance with this Paragraph.

30. **Amphitheater.** JRD is responsible for construction of a proposed amphitheater within the Arts District (the "Amphitheater"), which the Parties agree is an essential and conditional component of the Arts District. The City shall use commercially reasonable efforts to ensure the Amphitheater is constructed in close proximity to the Arts Center for ease and efficiencies of operations. Within sixty (60) days following execution of this Lease, WAC shall submit a written proposal to the City for operations and event programming / booking of the Amphitheater in a role as its exclusive service contractor. WAC has agreed to provide consulting services to JRD for reasonable compensation as the Amphitheater's operator advising in the design and construction of the Amphitheater to ensure that maximum efficiencies and harmony with the Arts Center are achieved.

31. **Recording.** This Lease shall not be filed for public record. However, upon request by either Party, Landlord and Tenant shall execute and acknowledge a memorandum or short form lease that may be filed for record by either Party at any time after the execution of this Lease, setting forth the parties, description of the Property, Term, and any other provisions mutually agreed upon.

32. **Miscellaneous Provisions.**

(a) This Lease shall be governed by and construed in accordance with the laws of the state of Utah. Landlord and Tenant agree to submit any dispute arising hereunder to the exclusive jurisdiction of the Fourth Judicial District Court, Wasatch County, Utah. If any dispute arises between the Parties concerning enforcement or interpretation of this Lease or to seek damages for breach thereof or arising out of or relating to the Building or the Property, the prevailing party shall be entitled to reasonable attorney's fees and costs, through appeal. LANDLORD AND TENANT EACH AGREE TO, AND THEY HEREBY DO WAIVE, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE BUILDING AND THE PROPERTY AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

(b) Time is of the essence with respect to the performance of every provision of this Lease.

(c) The captions contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

(d) This Lease and Exhibits attached hereto and incorporated herein contain all the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, representation, or understanding, oral or written pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by an authorized representative of each of the Parties or their respective successors in interest.

(e) No waiver by a party of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by a party of the same or any other provision. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved. No act or thing done by Landlord or Landlord's agents during the Lease Term or Renewal Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

(f) This Lease shall be binding upon, and inure to the benefit of the Parties, their heirs, successors, assigns, executors, and administrators.

(g) Tenant shall not operate on the Property, and shall not permit any other person to operate on the Property, any trade or business consisting (1) the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (2) farming, as that term is defined in Section 2032A(e)(5)(A) or (B) and Section 45D of the IRS Code, nor shall it enter into any sublease with a tenant that intends to operate any such trade or business on the Property. Tenant shall comply with the terms of any financing documents related to the Property and applicable to a lessee of the Property, including without limitation, all requirements relating to the operation of a "qualified business" under Section 45D of the IRS Code and the Treasury Regulations thereunder. Further, no recreational or medical marijuana may be grown or consumed on the Property or in the Building by Tenant or its employees, guests, or invitees.

(h) Should any mortgagee or beneficiary under a deed of trust require a modification of this Lease, which modification will not bring about any increased cost or expense to either Party or will not in any other way substantially change the rights and obligations of either Party hereunder, then and in such event, the Parties each agree that this Lease may be so modified.

(i) Each individual executing this Lease on behalf of an entity represents and warrants that (1) he/she is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its bylaws or operating agreements; (2) this Lease is binding upon said corporation or entity; and (3) a resolution to that effect in a form reasonably acceptable to the other Party shall be provided immediately upon request.

(j) Both Parties agree they have been advised to obtain, and given the opportunity to obtain, the advice of their own independent legal counsel with respect to this Lease, any related agreements, and the transactions contemplated hereunder. This Lease shall not be construed in favor of either Party.

(k) It is not the intention of Landlord or Tenant to create hereby an interlocal entity or a relationship of master-servant, principal-agent, partner, joint venture, or member of a joint enterprise, it being the sole purpose and intent of the Parties hereto to create only a relationship of Landlord and Tenant.

(l) This Lease may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original. Electronic signatures shall be deemed originals.

33. **Brokerage.** No party has acted as, by or through a broker in the effectuation of this Lease, except as set out hereinafter. THE PARTIES AGREE TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM ALL DAMAGES, LIABILITY, AND EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS) ARISING FROM ANY CLAIMS OR DEMANDS OF ANY OTHER BROKER OR BROKERS OR FINDERS FOR ANY COMMISSION ALLEGED TO BE DUE SUCH BROKER OR BROKERS OR FINDERS IN CONNECTION WITH THIS LEASE.

34. **Patriot Act Certification.** Tenant certifies that neither Tenant, nor any of its constituent partners, managers, members or shareholders, nor any beneficial owner of Tenant or any such partner, manager, member or shareholder, nor any other representative or affiliate of Tenant is a "Prohibited Person," defined as (a) a person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), including, but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"); (b) a person, entity or nation owned or controlled by, or acting on behalf of, any person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by OFAC, including, but not

limited to, the Executive Order and the Patriot Act; (c) a person, entity or nation engaged directly or indirectly in any activity prohibited by any law, order, rule or regulation that is enforced or administered by OFAC, including, but not limited to, the Executive Order and the Patriot Act; (d) a person, entity or nation with whom the Landlord is prohibited from dealing or otherwise engaging in any transaction pursuant to any terrorism or money laundering law, including, but not limited to, the Executive Order and the Patriot Act; (e) a person, entity or nation that has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering; or (f) a person, entity or nation who is affiliated with any person, entity or nation who is described above in subparagraphs (a) through (e) above. Tenant agrees to indemnify and save Landlord, Landlord's representatives and Landlord's managing agent and mortgagee harmless against and from any and all claims, damages, losses, risks, liabilities and expenses, including attorneys' fees and costs, arising from or related to any breach of the foregoing certification.

35. **Approval by City Council.** The Parties agree that this Lease is subject to the express approval of the City Council. Should the City Council not approve, this Lease shall become null and void without further action by the Parties.

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*[remainder of page intentionally left blank
signatures on following page]*

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

LANDLORD:

HEBER CITY CORPORATION,
a political subdivision of the state of Utah



By: Heidi Franco
Name: HEIDI FRANCO
Title: MAYOR

TENANT:

WASATCH COUNTY ARTS COUNCIL, INC.,
DBA WASATCH ARTS COUNCIL
a Utah non-profit corporation

By: Patricia Sweeney
Name: PATRICIA SWEENEY
Title: WASATCH COUNTY ARTS COUNCIL - PRESIDENT

[signature page to the Ground Lease and Parking Agreement - 1 of 1]

EXHIBIT A

Property Location and Legal Description

Attached.

ADDENDUM B

LEGAL DESCRIPTION

LEGAL DESCRIPTION

Wednesday, October 11, 2023

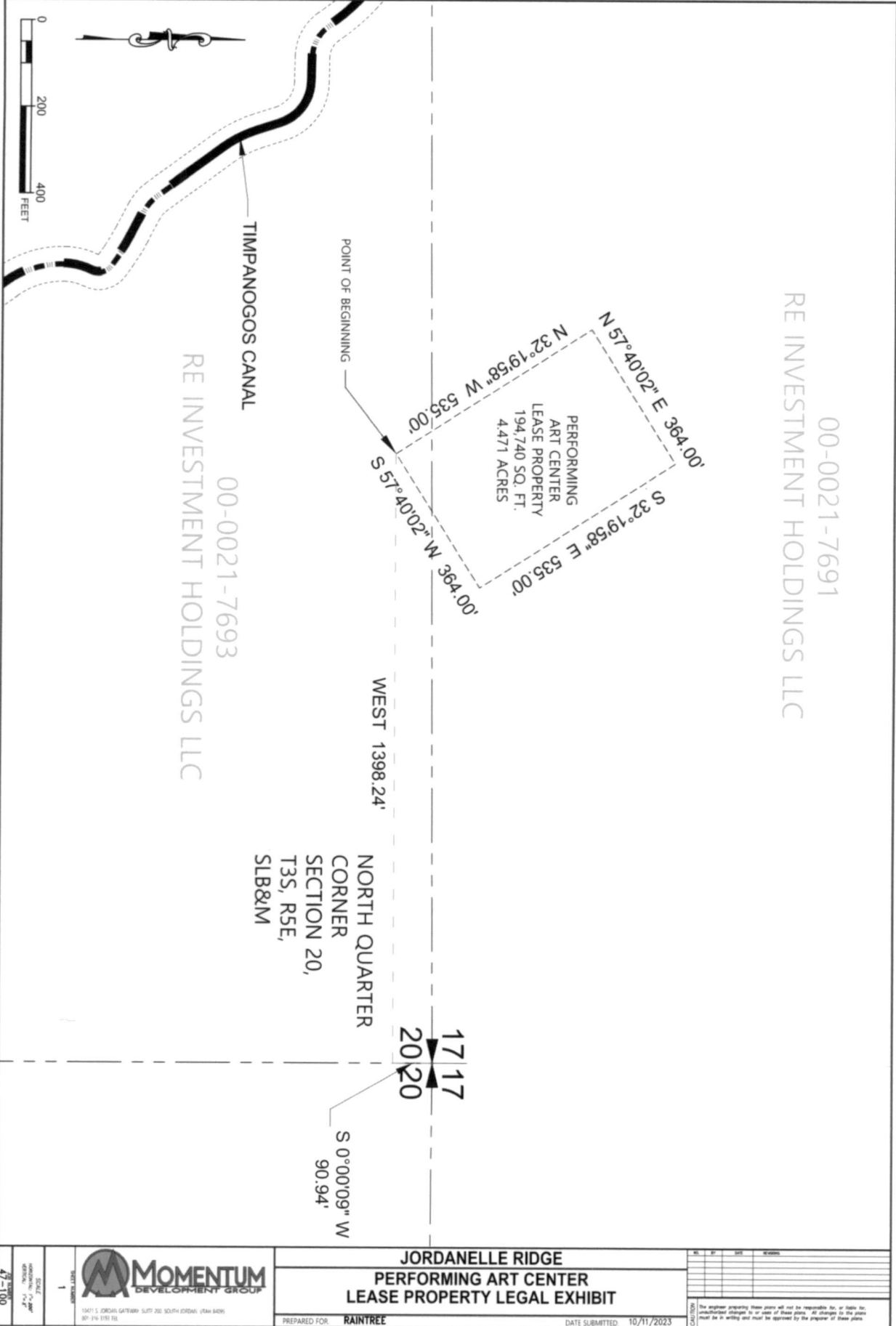
Heber City Performing Arts Center
FOR LEASE AGREEMENT

A DESCRIPTION OF A PARCEL OF LAND FOR THE PURPOSE OF A LEASE AGREEMENT. SAID PARCEL OF LAND COMPRISES WASATCH COUNTY PARCEL NUMBERS 00-0021-7691 AND 00-0021-7693 AND IS SITUATED IN SECTIONS 17 AND 20 OF TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN. SAID PARCEL IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING SOUTH 0°00'09 WEST 90.94 FEET ALONG THE QUARTER SECTION LINE AND WEST 1398.24 FEET FROM THE NORTH QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING
THENCE NORTH 32°19'58" WEST 535.00 FEET ;
THENCE NORTH 57°40'02" EAST 364.00 FEET ;
THENCE SOUTH 32°19'58" EAST 535.00 FEET ;
THENCE SOUTH 57°40'02" WEST 364.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 194,740 SQ. FT. OR 4.471 ACRES

PROJ. MGR. BW DESIGNER: MBW
 \\Mac\Home\Momentum-M2 Civil Dropbox\--Momentum-M2 Civil Team Folder\Iron\Raintree\Jordanelle\Village 2\Art District\Drawings\Exhibits\2023-10-11 PAC Legal.dwg - Oct 11, 2023-2:27pm



MOMENTUM DEVELOPMENT GROUP

13071 S. JORDAN GATEWAY SUITE 200 SOUTH JORDAN, UTAH 84095
 801-716-1193 FAX

DATE: 10/11/2023
 DRAWN BY: MBW
 CHECKED BY: MBW

JORDANELLE RIDGE
PERFORMING ART CENTER
LEASE PROPERTY LEGAL EXHIBIT

PREPARED FOR: **RAINTREE** DATE SUBMITTED: 10/11/2023

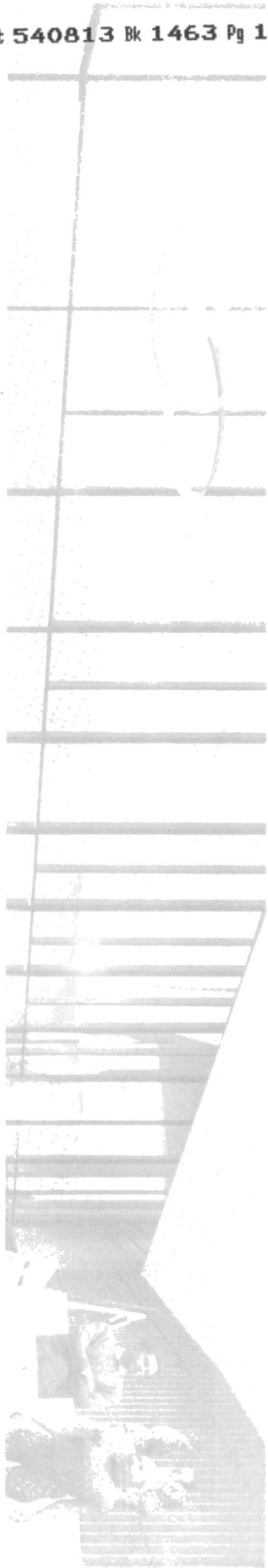
NO.	BY	DATE	REVISION

NOTED: The engineer certifies these plans will not be responsible for, or liable for, construction changes to or on any of these plans. All changes to the plans must be in writing and must be approved by the engineer of these plans.

EXHIBIT B

Plans and Specifications

Attached.



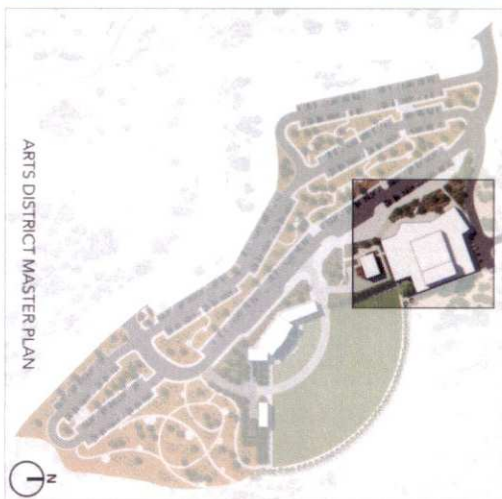
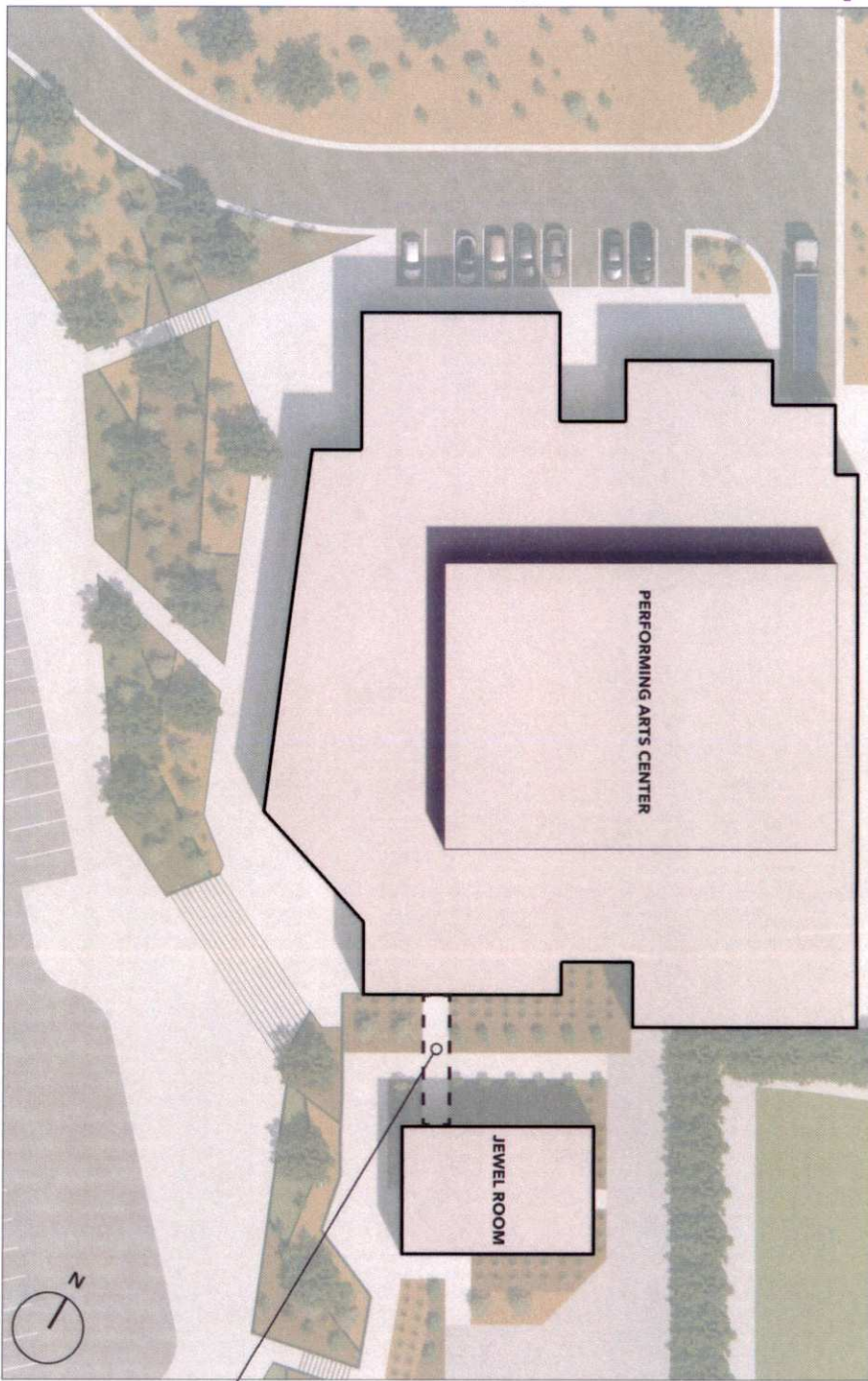
**HEBER VALLEY ARTS CENTER @ JORDANELLE RIDGE
ARTS CENTER**

PROGRAMMING CONCEPT - 11.02.2023



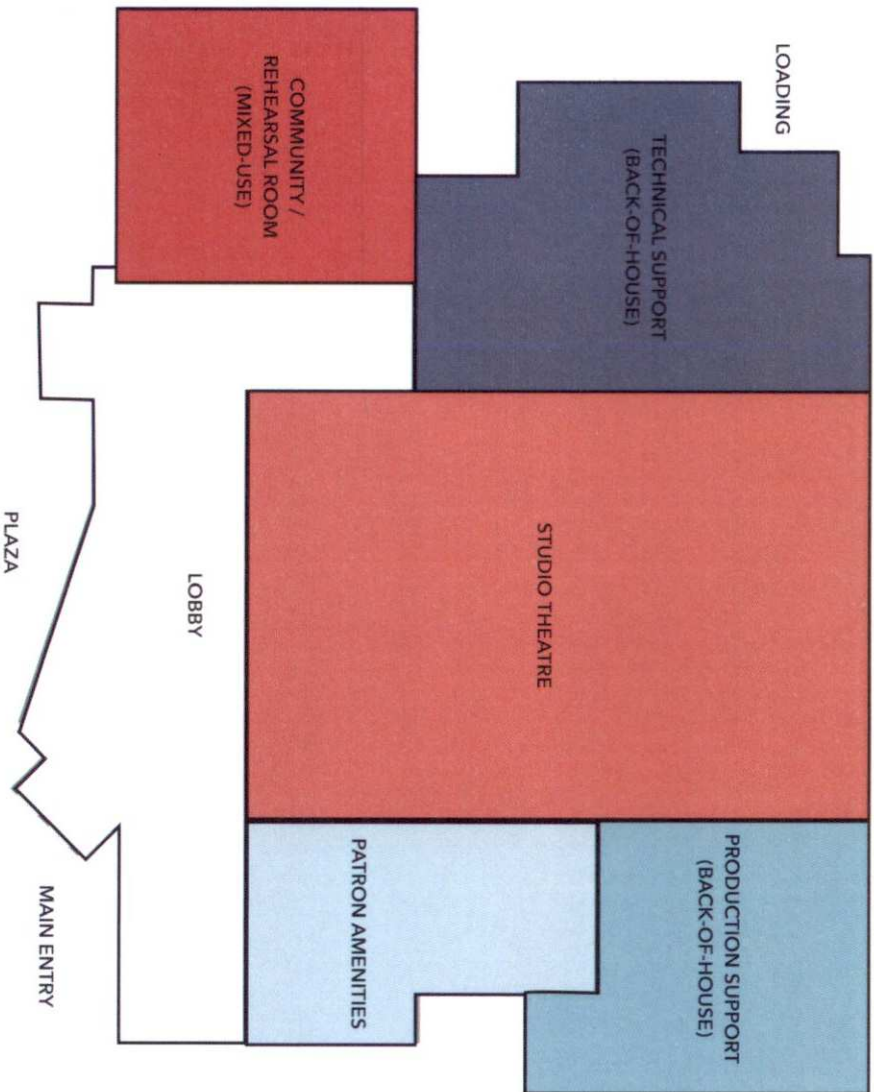
method studio

ENLARGED SITE PLAN



CONNECTOR PATH?

DIAGRAM - LEVEL 3



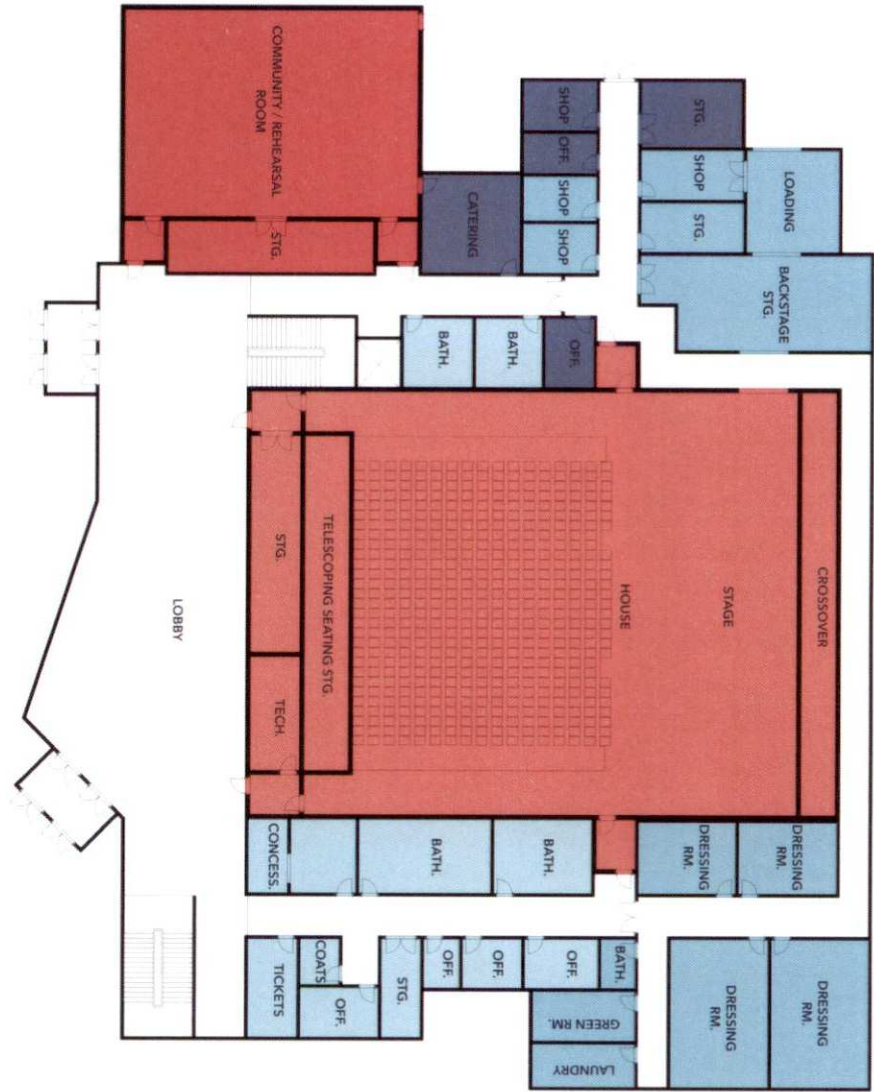
HEBER VALLEY ARTS CENTER - PROGRAMMING

11.02.2023



methodstudio

PLAN LEVEL 1

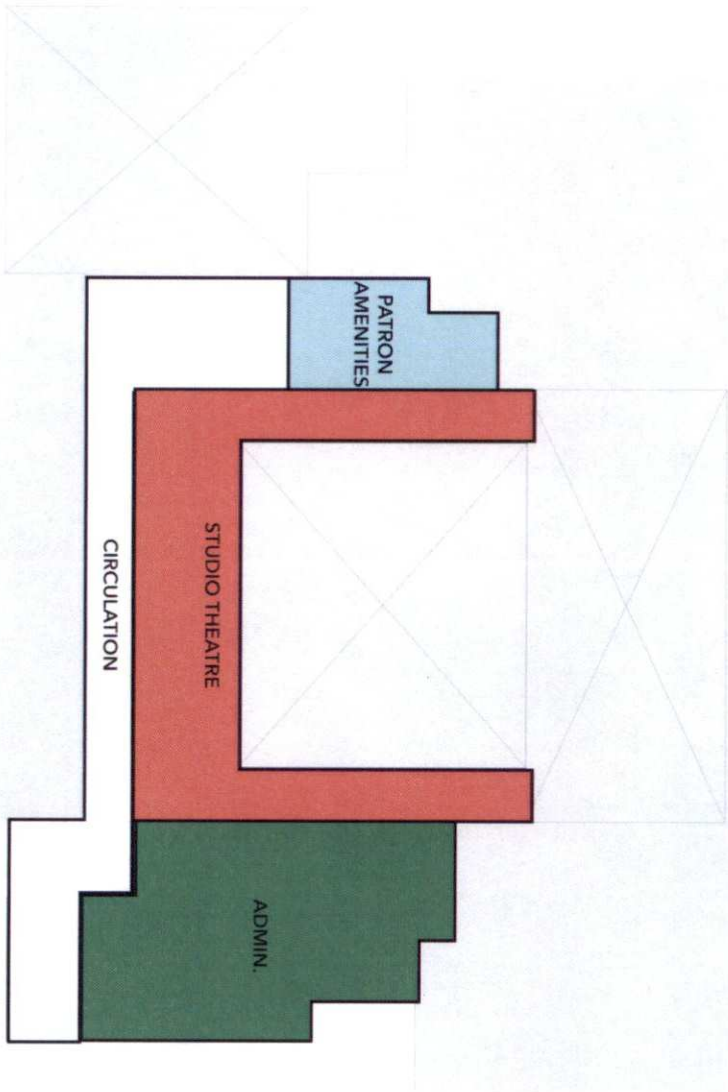


HEBER VALLEY ARTS CENTER - PROGRAMMING
11.02.2023



method studio

DIAGRAM - LEVEL 2

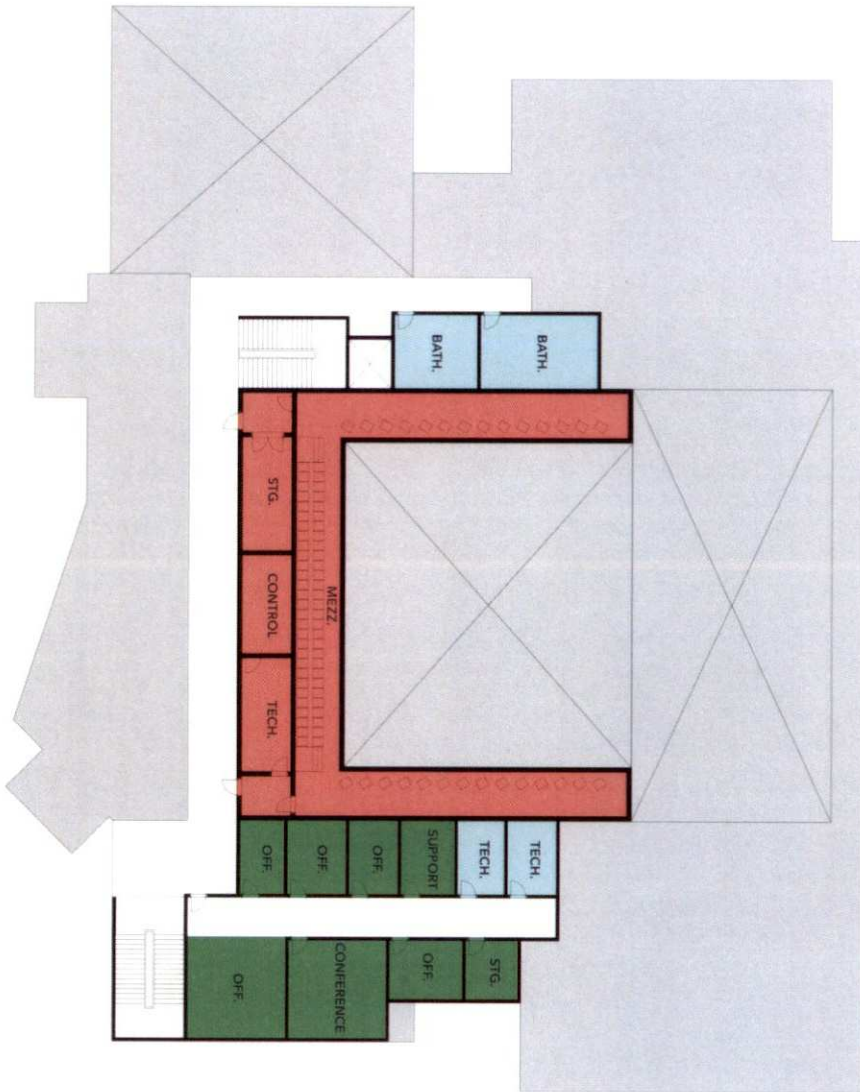


HEBER VALLEY ARTS CENTER - PROGRAMMING
11.02.2023



method studio

PLAN - LEVEL 2

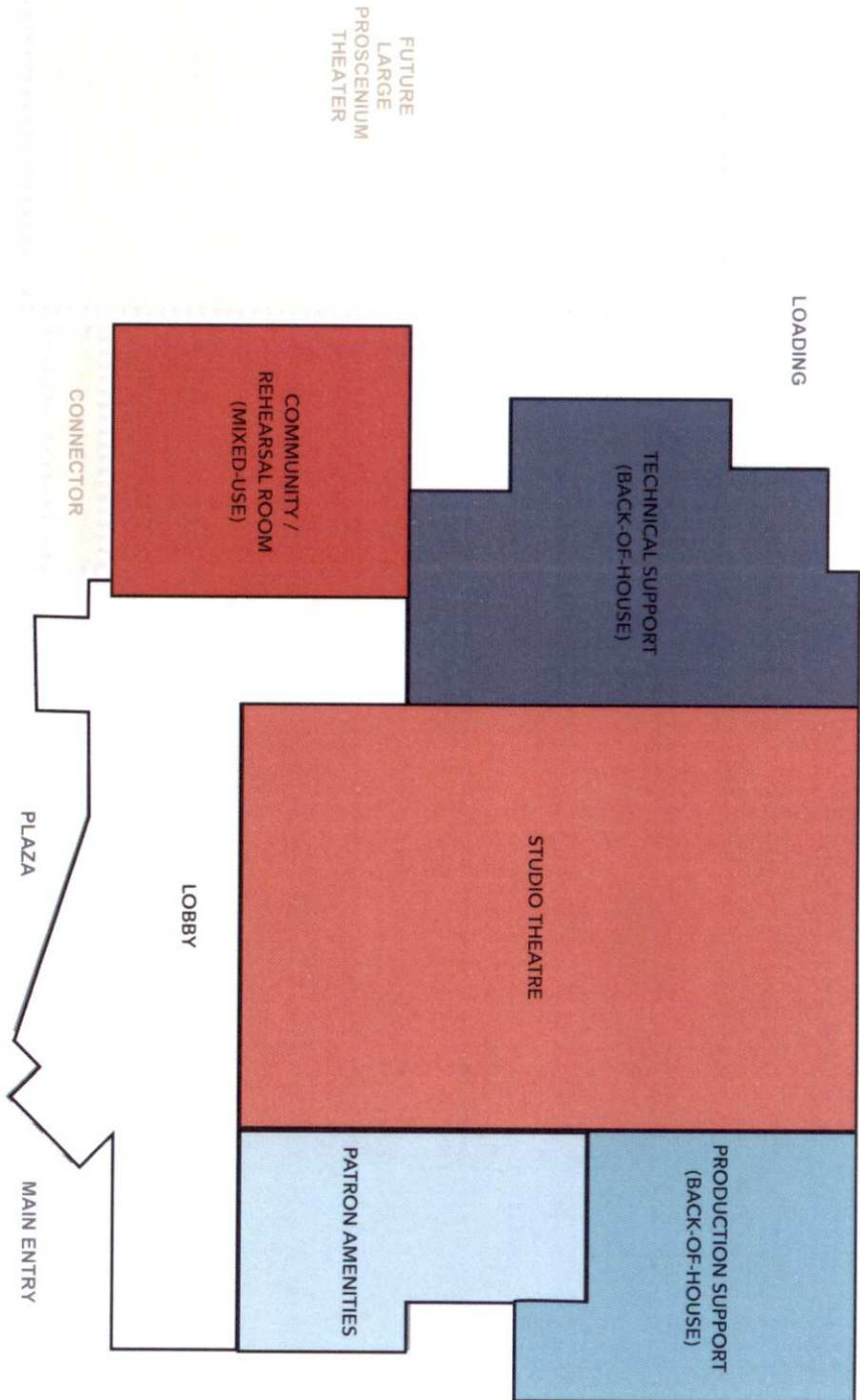


HEBER VALLEY ARTS CENTER - PROGRAMMING
11.02.2023



method studio

DIAGRAM - LEVEL 1

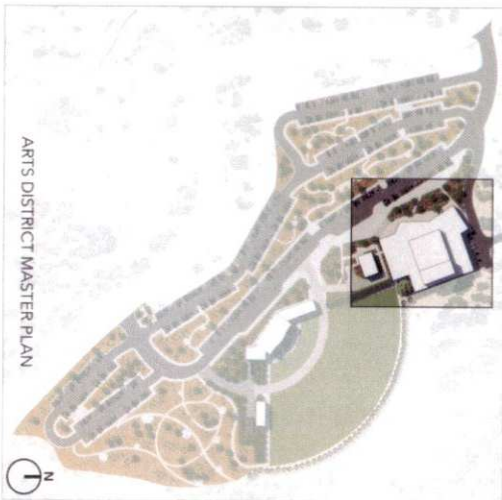
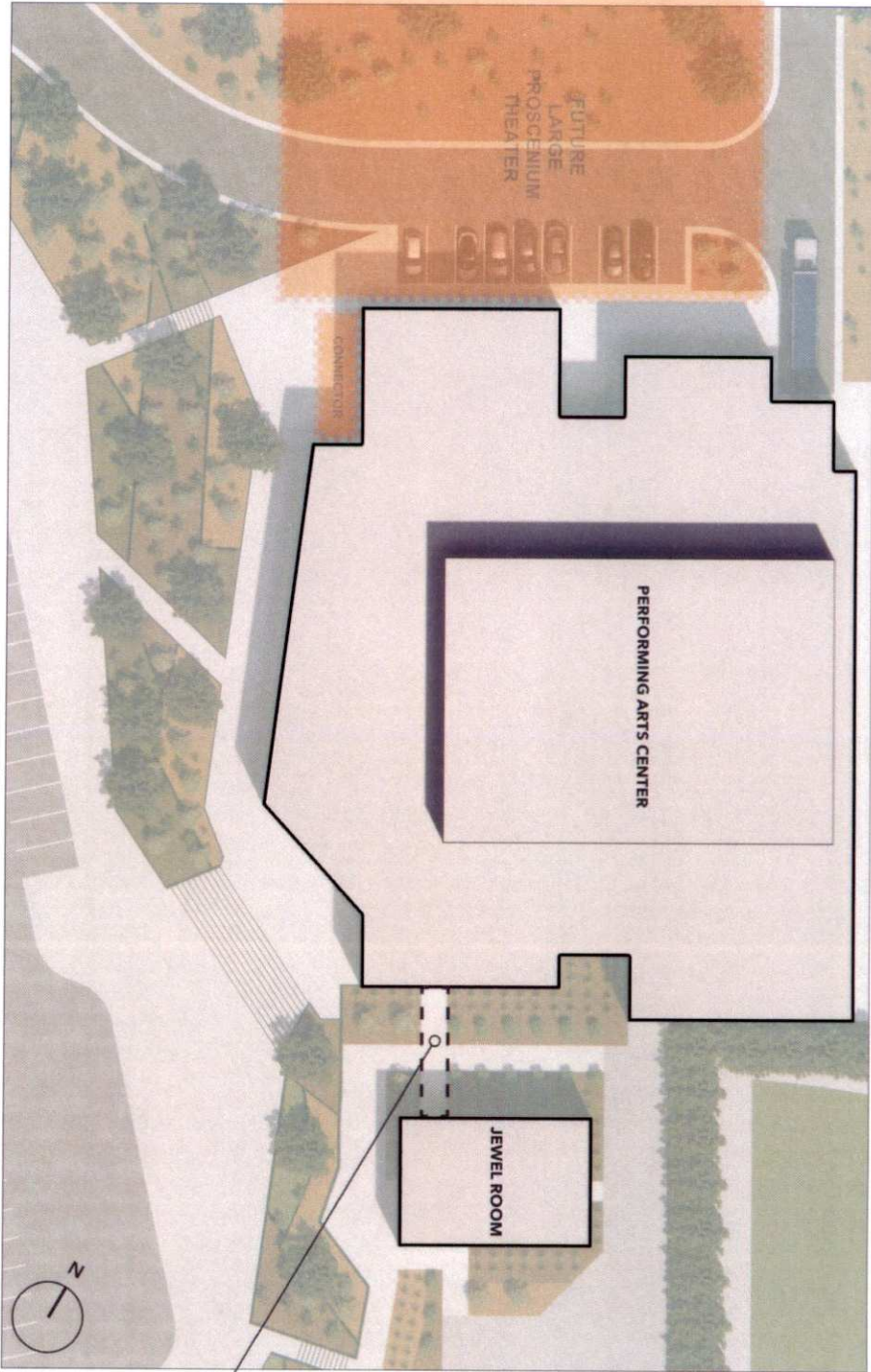


HEBER VALLEY ARTS CENTER - PROGRAMMING
11.02.2023



method studio

ENLARGED SITE PLAN



CONNECTOR PATH?

HEBER VALLEY ARTS CENTER - PROGRAMMING
11.02.2023



method studio

CONCEPT DESIGN ONLY

Subject To Change

Heber Valley Arts Center - Space Program Worksheet CONCEPT DESIGN ONLY

11/09/2023 V5 The SC

Room ID	SPACE	HVAC	GROSS SQ. FT./COMMENTS	NOTES
A Art Center Program List				
PATRON AMENITIES & PRODUCTION SUPPORT		11698		19,887 GSF
A.1	Lobby	4500	7.5 sf/person	
A.2	Concierge Area/Tickets	200		
A.3	Concessions Serving	120		
A.4	Concessions Support	200		
A.5	Food Cart Storage	0		
A.6	Front of House Storage	160		
A.7	Coats	75		
A.8	Women's Restrooms	700	provide 1:25; 41 sf/fixture	
A.9	Men's Restrooms	500	provide 1:35; 38 sf/fixture	
A.10	Ushers Room	0	5' lockers for (24) shared with coat storage	
A.11	House Manager's Office	160	(2) stations + 60 sf EMT space	
A.12	Backstage Storage	800	Overall: Instrument, dance floor, risers, music furn., person. lift, attic stock -	
A.13	Loading	600	(2) truck bays, (1) bus parked nearby, garbage and passing space for	
A.14	Stage Door Area	115	Entry, waiting, call board	
A.15	Security Office	68	at front near Ticket Office, desktop, video, fire controls	
A.16	Dimmer Room	150	2nd floor	
A.17	Amplifier Room	140	2nd floor, separated from dimmer room	
A.18	Crew Lockers/Vending/Lounge	180	5' lockers for (20); microwave, sink, more lockers elsewhere	
A.19	Backstage Restrooms	140	2 offstage restrooms	
A.20	(2) Principals' Room, 4 persons (8 total)	580	290 ea. incl. WC/showers	
A.21	(2) 12-person Chorus rooms (24 total)	1200	600 ea. incl. WC/showers	
A.22	Green Room	210		
A.23	Laundry/Wardrobe	180	Wash/dry/steam/racks	
A.24	Prop Room	180		
A.25	Tool Area/Shop	150		
A.26	Electrics Shop	120		
A.27	Technical Offices	150	2.5 people + internal storage	
A.28	Visiting User Offices	120	One for three people	
A.29	Janitor's Closet		in gross	
B STUDIO THEATRE				
STAGE & TECHNICAL AREAS		14600		24,820 GSF
B.1	Studio Theatre Main & Mezz.	10,000	600+	
B.2	Sound and Light Locks	150		
B.3	Stage	2700	flexible, no proscenium	
B.4	Crossover	600	7x85'	
B.5	Telescoping Seating Storage	450		
B.6	Studio Theatre Storage	500	seating risers/chairs, tables, plus above	
B.7	Control Room	200		
C OTHER FACILITIES				
		1060		1,802 GSF
C.1	Catering	400	Warming Kitchen- beverage program	
C.2	Janitorial/Maintenance Storage	250		
C.3	Janitorial Office/Lockers	120	Shared with office	
C.4	Building Operations	140	(2) occupants, near or in operations storage; building wash/dry	
C.5	Maintenance Shop	150		
C.6	Orchestra Instrument Storage	0	see above	
D (NOT USED) - SEE ABOVE				
		0		0 GSF
	Coats	0		
	Ticket Office - 2 Windows	0		
	Ticket Office - Windows + Work Room	0		
	Ticket Office - Ticket Manager	0		
E ADMIN. OFFICES				
		1670		2,839 GSF
E.1	Executive Offices	360	175 sf avg. (2)	
E.2	Reception/Open Office	130	(3) desks for staff	
E.3	Work/Copy/Storage/Mail/Storage	120		
E.4	Admin. Storage	100		
E.5	Open Office	400	One space for (2) people; files	
E.6	Staff Lounge	160		
E.7	Conference Room	400	for (12-15) people; used by staff and clients	
F OTHER				
		3300		5,610 GSF
F.1	Janitor's Closets		in gross	
F.2	Mixed Community Use Room	2500	to accommodate a full orchestra; tall space, full stage size, divisible, multi-purpose, green room, event, rehearsal	
F.3	Rehearsal Room Storage	400		
F.4	Secondary Restrooms	400	Supports Admin., Visual Arts and Rehearsal	
G VISUAL ARTS CLASSROOMS				
		0		0 GSF
G.1	Drawing/Painting Studios	0	Multi-use, rehearsal, visual arts, keep separate from wet visual arts spaces	
G.2	Instructors Office	0		
G.3	General Visual Arts - Wet Use/Storage	0	Storage and wet use, ceramics, sinks, etc.	
G.4	Gallery	0		Not a dedicated space, located in lobby and circulation zones
AREA TOTALS				
Total NET Area, Sq. Ft.		32,328		
Total GROSS Area, Sq. Ft.		54,958		
Difference to Target				
Grossing Factor		1.70		

note: catwalks and technical galleries are not included in net or gross sf

EXHIBIT C

Parking Agreement

Attached.

When Recorded, Mail To:
Joshua D. Jewkes, Esq.
GORDON LAW GROUP, P.C.
322 East Gateway Drive, Suite 201
Heber City, UT 84032

Parcel Nos.

PARKING AND EASEMENT AGREEMENT

THIS PARKING AND EASEMENT AGREEMENT (the "**Agreement**") is executed effective as of December __, 2023 ("**Effective Date**") by and between HEBER CITY CORPORATION, a political subdivision of the state of Utah (the "**City**" or "**Grantor**") and WASATCH COUNTY ARTS COUNCIL, INC., DBA WASATCH ARTS COUNCIL, a Utah non-profit corporation ("**WAC**") in connection with that certain Ground Lease between the Parties of even date herewith. Landlord and Tenant are collectively referred to herein as the "**Parties**", and each a "**Party**".

RECITALS

WHEREAS, pursuant to its creation of "Jordanelle Ridge Public Infrastructure Districts Nos. 1-5" pursuant to the Public Infrastructure District Act, Utah Code §§ 17D-4-101 *et seq.*, the City anticipates it will receive fee title to approximately 4.4 acres of vacant real property located in the southwest area of the Arts District, as shown on Exhibit 1 attached hereto (the "**Property**"), which is located within PID 2, also known as the Arts District; and

WHEREAS, the City anticipates it will receive fee title to other adjoining and surrounding parcels within the Arts District (collectively, the "**Burdened Properties**") on which various improvements, including an amphitheater, are to be built; and

WHEREAS, WAC, as Tenant, has entered into a written Ground Lease for the Property of even date herewith (the "**Lease**"), to lease the Property from the City, as Landlord, for an initial term of fifty (50) years for the construction, operation, and maintenance of an Arts Center, conditional upon conveyance and dedication of the Property to the City; and

WHEREAS, the City is to use commercially reasonable efforts to ensure construction of certain Arts District Improvements outside of and surrounding the Arts Center for common use by the City and WAC, including, without limitation, roads, driveways, parking stalls, sidewalks, and landscaping; and

WHEREAS, in conjunction with the Lease and its operation of the Arts Center, WAC needs at least four hundred (400) well-maintained parking stalls available for first-priority use by the Art Center's patrons and additional parking stalls on a shared basis as a critical component of the Art Center's ability operate and succeed; and

WHEREAS, the Parties wish to allow the City and WAC patrons to jointly benefit from the parking that is currently or will (through construction of the Arts District Improvements) become available in the Arts District; and

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are a material part of and incorporated into the Parties' agreement, and of the mutual benefits contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, Landlord and Tenant for themselves and their successors and assigns, intending to be legally bound, agree as follows:

1. **Incorporation of Lease Terms.** The terms of the Lease are incorporated herein by reference for all purposes. Any capitalized term not defined herein shall have the same meaning as in the Lease. In the event of a conflict between the Lease and this Agreement, the terms of this Agreement shall control for purposes of interpreting this Agreement only.

2. **Conditions.** Notwithstanding the foregoing anything to the contrary herein, all obligations of the Parties shall be expressly conditional upon the final conveyance and dedication of the Property to the City. The City shall use all reasonable efforts to obtain dedication of the Property. Should the Property or the Burdened Properties not be conveyed and dedicated to the City, this Agreement and all the Parties' rights and obligations hereunder shall be null and void upon written notice by either Party. This Agreement shall be not recorded unless and until the final conveyance and dedication of the Burdened Properties to the City.

3. **Identification of the Burdened Properties.** The Parties acknowledge and agree because the land within Arts District is not yet subdivided, the Burdened Properties have not been assigned a parcel or tax identification number and are not capable of being described legally. Once the Burdened Properties receive parcel or tax identification numbers and legal descriptions, and prior to recording this indenture, the Parties will attach a map and legal descriptions of the Burdened Properties as Exhibit 1 hereto and supply the corresponding parcel or tax identification numbers and a metes-and-bound legal description.

4. **Provision of Arts Center Parking Improvements.** The Parties acknowledge and agree that adequate parking and access to parking for the Arts Center and the surrounding facilities within the Arts District, including the amphitheater, are essential and conditional to the success of the Arts Center. The Parties further acknowledge that funding for the Arts District Improvements is contingent upon the issuance of public bonds and outside the direct control of the Parties. Therefore, as soon as reasonably practicable after receiving title to the Burdened Properties, and subject to the availability of funding, the City shall, consistent with its obligations under the PID Governing Documents, use commercially reasonable efforts to ensure the development and construction of the following preferred improvements adjacent to the Arts Center on the Burdened Properties: (a) no less than four hundred (400) parking stalls; (b) an adequate number of electric vehicle charging stations to be mutually agreed upon by the Parties; (c) bus drop-off areas for up to four (4) buses simultaneously; (d) twenty (20) stalls for "back-of-house" parking located immediately adjacent to the Building; and (e) associated improvements such as parking lots, curb cuts, access drives, sidewalks, and walkways consistent with prevailing industry standards for similar projects. The foregoing described improvements are collectively referred to herein as the "**Arts Center Parking Improvements**" and shall be for the first-priority use of WAC and its successors, assigns, sublessees, employees, vendors, guests, invitees, licensees, and customers when and as required by WAC (collectively, "**WAC Permittees**" or "**Grantee**") and shall be marked with clear signage. The Parties shall actively coordinate parking for competing events requiring the use of the Arts Center Parking Improvements so that the maximum public access to all events (including the Amphitheater) is reasonably achieved.

The City shall use commercially reasonable efforts to ensure the Arts Center Parking Improvements are constructed in substantial conformance with the PID Governing Documents and in a good and workmanlike manner using first class materials with adequate lighting, striping, and signage. Prior to construction, the City shall share with WAC the design, plans, and specifications for the Arts Center Parking Improvements, and the Parties shall reasonably cooperate with one another in designing and planning the WAC Parking Improvements to harmonize the Arts Center with the Arts Center Parking Improvements and surrounding facilities within the Arts District. The Arts Center Parking Improvements shall be complete no later than opening day of the Arts Center. The foregoing shall be constructed in substantial conformance with the PID Governing Documents and in a good and workmanlike manner using first class materials.

If for any reason the Arts Center Parking Improvements cannot be or are not constructed as described above, this Lease shall not terminate unless funding, construction, or operation of the Arts Center is made impracticable thereby, in the reasonable judgment of WAC. If WAC does not terminate, the Parties shall negotiate in good faith changes, if any, to this Lease to accommodate unforeseen circumstances.

5. **Construction of Other Parking Improvements.** In addition to the Arts Center Parking Improvements, the City shall use commercially reasonable efforts to ensure construction of other parking stalls and associated improvements in the Arts District to be located within reasonable walking distance, and no greater than 1/8 of a mile, from the Arts Center, which stalls shall be available for use by the WAC Permittees on a shared basis ("**Other Parking Improvements**"). The City shall use commercially reasonable efforts to ensure the Other Parking Improvements are constructed in substantial conformance with the PID Governing Documents and in a good and workmanlike manner using first class materials. Should the Other Parking Improvements not be constructed as preferred above, this Lease shall not terminate unless funding, construction, or operation of the Arts Center is made impracticable thereby, in the reasonable judgment of WAC. If WAC does not terminate, the Parties shall negotiate in good faith changes, if any, to this Lease to accommodate unforeseen circumstances.

6. **Maintenance of Improvements.** Subject to their completion and dedication to the City, the City shall have sole responsibility for operation, maintenance, repairing, improvement, and replacement of the Arts Center Parking Improvements and Other Parking Improvements, including, without limitation, maintenance, improvement or repair of the driveway surface, striping, signage, landscaping, lighting, and snow and ice removal. The City shall maintain said improvements at its expense in a safe, neat, and orderly condition, in good repair, free of noxious weeds, trash, rubbish, and other unsightly materials, neatly landscaped and trimmed, and the City shall undertake periodic inspections to ensure that the improvements are maintained in a safe, neat, and orderly manner and that the terms and conditions of this Agreement and the Easements are met.

7. **Grant of Nonexclusive Use and Access Easements.** The City, as Grantor, hereby conveys, declares, and establishes during the Term of the Lease (and any extension or renewal thereof) for the benefit of the WAC and the WAC Permittees, as Grantee, the following non-exclusive, non-revocable easements in gross (collectively, the "**Easements**"):

(a) To use the parking stalls, parking lots, driveways, roads, sidewalks, and similar improvements within the Arts District for purposes of parking and as a right of way for reasonable access, ingress, and egress to, from, upon, over, and across the Arts District.

(b) The further right of access, ingress, and egress to and from the Arts District over and across reasonable routes (driveways, roads, sidewalks) approved by the City on other parcels owned or controlled by the City in proximity to the Arts District in order that Grantee might exercise the rights granted by this indenture.

8. **Easement In Gross.** The Easements granted herein is a commercial easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easements by any person or entity other than to

the WAC Permittees, nor shall Grantee assign any of the rights, privileges, duties, or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.

9. **Term.** The Easements, covenants, conditions, and restrictions contained in this Agreement shall be effective commencing recording of this Agreement and shall terminate concurrent with the termination or expiration of the Lease so long as used for the above-described purposes, unless this Agreement is modified, amended, cancelled, or terminated by an instrument in writing signed by Grantor and Grantee. The Easements shall terminate concurrent with the termination or expiration of the Lease.

10. **Recording.** Subject to the terms of Paragraph 2 above, the Parties shall cause this indenture to be recorded in the Office of the Wasatch County Recorder, state of Utah as soon as reasonably practicable after the Burdened Properties are conveyed and dedicated to the City.

11. **Declaration.** Grantor and Grantee hereby declare that the Easements shall inure to the benefit of Grantee and their legal representatives. Grantor hereby declares that the Burdened Properties shall be owned, sold, conveyed, encumbered, leased, used, occupied, and developed subject to the Easements and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Properties or any portion thereof.

12. **Due Regard.** Grantee shall use the rights granted above with due regard to the rights of others and their use thereof and shall not use the Easements in any way that would impair the rights of Grantor or others to the use of the same.

13. **No Interference.** Grantor covenants and agrees to not at any time undertake any act, directly or indirectly or through a third party, to obstruct, make more difficult, or otherwise interfere with the reasonable use or intended use of the Easements described herein, including without limitation, ingress and egress.

14. **No Merger.** This Agreement and the Easements and rights declared and established herein are intended to remain separate from Grantor's fee simple interest in the Burdened Properties and shall not merge therewith.

15. **Reserved Rights.** Notwithstanding any of the foregoing covenants to the contrary, Grantor specifically reserves for itself, its officers, employees, tenants, invitees, licensees, successors, assigns, and any other person or party claiming under it the following reserved rights:

(a) The right to enter, pass, and repossess the Burdened Properties at any time, including the superior right to use any prior easement affecting the property described herein.

(b) All rights as owner of the Burdened Properties, including the right to use the Burdened Properties for all purposes not inconsistent with this Easement and Agreement.

(c) The right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the terms and conditions of this indenture.

(d) Unless expressly stated herein, the Easements granted herein are non-exclusive, and Grantor specifically reserves the right to grant additional easements in, over, under, and across the Easements for any purpose as Grantor deems necessary, in Grantor's sole discretion not inconsistent with this grant.

(e) Nothing herein shall be deemed to affect any mortgage, lien, or other interest in the lands described herein.

16. **Indemnification.** The City is a governmental entity under the Utah Governmental Immunity Act, Utah Code §§ 63G-7-101, *et seq.*, as amended (the "**Immunity Act**"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts or omissions that are committed by it or by its agents, officials, or employees. Neither Party waives any claims or defenses otherwise available under the Act.

17. **Force Majeure.** In the event that either Party shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of riots, insurrection, war, acts of God, or the act, failure to act, or default of the other Party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay..

18. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by: (1) hand delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) overnight delivery by a nationally recognized courier service and shall be deemed given the following day. All notices shall be addressed as follows:

GRANTEE:

Wasatch County Arts Council, Inc., d/b/a Wasatch Arts Council
Attn: Phillip Jordan
475 N Main St.
Heber City, UT 84032

With a copy to (which shall not constitute notice):

Joshua D. Jewkes, Esq.
Gordon Law Group, P.C.
322 East Gateway Drive, Suite 201
Heber City, UT 84032

GRANTOR:

Heber City Corporation
Attn: City Manager
75 North Main Street
Heber City, UT 84032

Either party may change its address by notice given in accordance with this Paragraph.

19. **Miscellaneous Provisions.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the state of Utah. The City and WAC agree to submit any dispute arising hereunder to the exclusive jurisdiction of the Fourth Judicial District Court, Wasatch County, Utah. If any dispute arises between the Parties concerning enforcement or interpretation of this Agreement or to seek damages for breach thereof or arising out of or relating to the Building or Property, the prevailing party shall be entitled to reasonable attorney's fees and costs, through appeal. THE CITY AND WAC EACH AGREE TO, AND THEY HEREBY DO WAIVE, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE EASEMENTS, THE IMPROVEMENTS, THE BURDENED PROPERTIES AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

(b) This Agreement and any Exhibits attached hereto and incorporated herein contain all the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreement, representation, or understanding, oral or written pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by an authorized representative of each of the Parties or their respective successors in interest.

(c) No waiver by a party of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by a party of the same or any other provision.

(d) This Agreement shall be binding upon, and inure to the benefit of the Parties, their heirs, successors, assigns, executors, and administrators.

(e) Each individual executing this Agreement on behalf of an entity represents and warrants that (1) he/she is duly authorized to execute and deliver this Agreement on behalf of said entity in accordance with its bylaws or operating agreements; (2) this Agreement is binding upon said corporation or entity; and (3) a resolution to that effect in a form reasonably acceptable to the other Party shall be provided immediately upon request.

(f) Both Parties agree they have been advised to obtain, and given the opportunity to obtain, the advice of their own independent legal counsel with respect to this Agreement, any related agreements, and the transactions contemplated hereunder. This Agreement shall not be construed in favor of either Party.

(g) It is not the intention of either Party to create hereby an interlocal entity or a relationship of master-servant, principal-agent, partner, joint venture, or member of a joint enterprise, it being the sole purpose and intent of the Parties hereto to create only a relationship of Grantor and Grantee.

(h) This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original. Electronic signatures shall be deemed originals.

20. **Approval by City Council.** The Parties agree that this Agreement is subject to the express approval of the City Council. Should the City Council not approve, this Agreement shall become null and void without further action by the Parties.

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*[remainder of page intentionally left blank
Signatures and acknowledgements on following page]*

IN WITNESS WHEREOF, the parties have duly executed this Parking Agreement effective as of the Effective Date first above written.

GRANTOR:

HEBER CITY CORPORATION,
a political subdivision of the state of Utah

By: Heidi Franco
Name: HEIDI FRANCO
Title: MAYOR



Acknowledgement:

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

On December 26, 2023 personally appeared before me, Heidi Franco who duly acknowledged to me that he/she had executed this Parking Agreement in his/her capacity as Mayor of Heber City Corporation.

Trina N Cooke
NOTARY

SEAL:



[signature page to the Parking Agreement - 1 of 2]

GRANTEE:

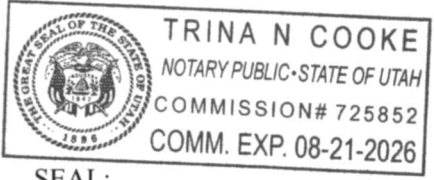
WASATCH COUNTY ARTS COUNCIL, INC.,
DBA WASATCH ARTS COUNCIL
a Utah non-profit corporation

By: Patricia Sweeney
Name: PATRICIA SWEENEY
Title: WASATCH COUNTY ARTS COUNCIL, PRESIDENT

Acknowledgement:

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

On December 20, 2023 personally appeared before me, Patricia Sweeney, who duly acknowledged to me that he/she had executed this Parking Agreement in his/her capacity as President of Heber City Corporation.
the Wasatch County Arts Council.



SEAL:

Trina N Cooke
NOTARY

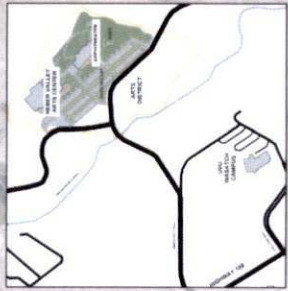
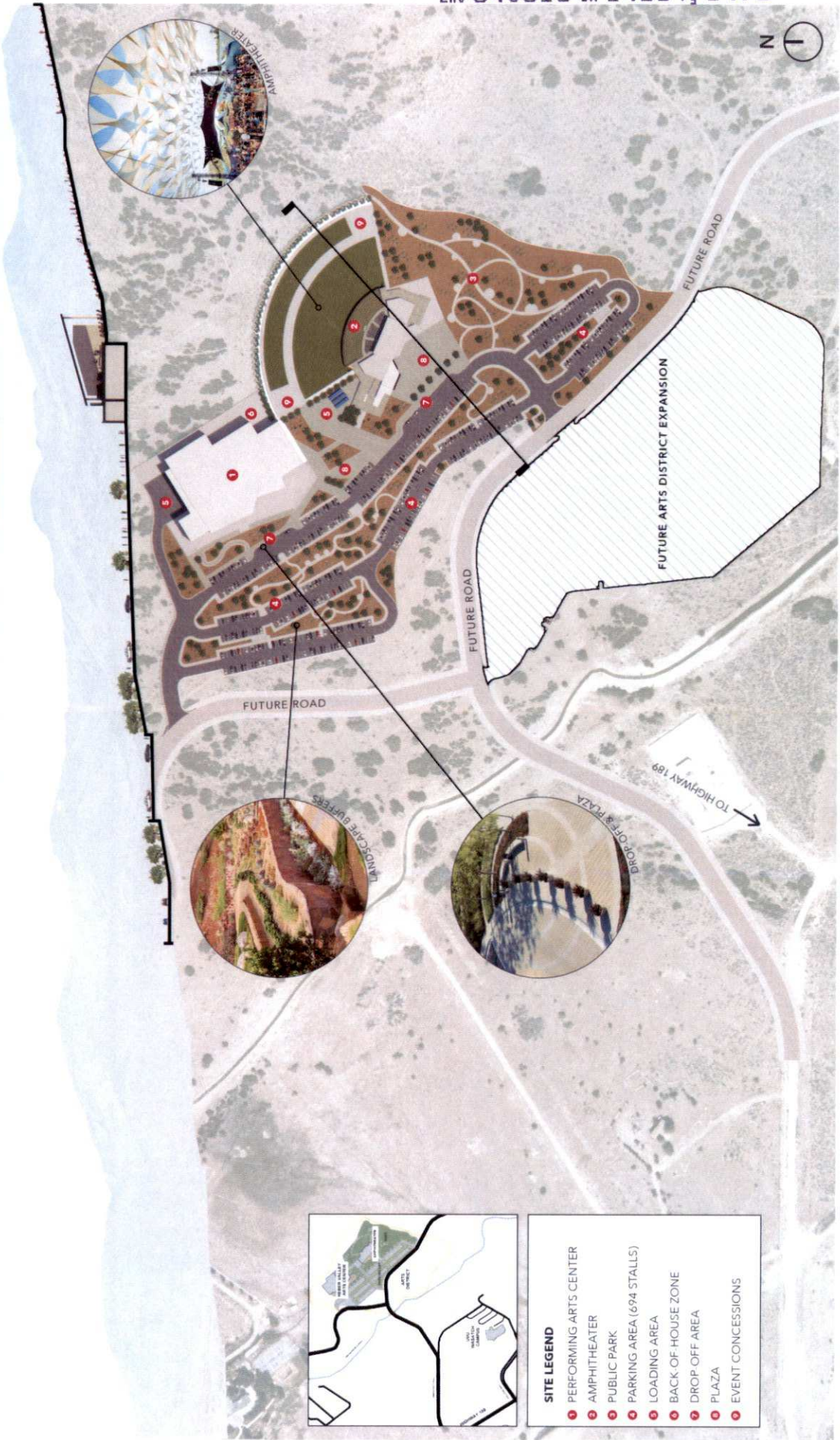
[signature page to the Parking Agreement – 2 of 2]

EXHIBIT 1

Map and Description of the Burden Properties

Attached.

HEBER VALLEY ARTS DISTRICT - MASTER PLAN



SITE LEGEND

- 1 PERFORMING ARTS CENTER
- 2 AMPHITHEATER
- 3 PUBLIC PARK
- 4 PARKING AREA (694 STALLS)
- 5 LOADING AREA
- 6 BACK-OF HOUSE ZONE
- 7 DROP OFF AREA
- 8 PLAZA
- 9 EVENT CONCESSIONS