

SAMPLE JOINT VENTURE AGREEMENT

THIS AGREEMENT made as of the

BETWEEN:

a registered not-for-profit society with Charitable status, having its head office in the City of Vancouver, Province of British Columbia, Canada.

AND:

a registered not-for-profit society with Charitable status, having its head office in the City of Vancouver, Province of British Columbia, Canada.

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BACKGROUND

A. (hereinafter referred to collectively as “the Parties”) wish to establish this joint venture for the purposes of joint procurement, management and operation of a leasehold premises to provide administrative space and rehearsal space.

B. Notwithstanding the sharing of all matters concerning the leasehold premises in accordance with the terms of this Agreement, the Parties will continue to function as separate and distinct entities in all other respects, including artistic, organizational, administrative and financial matters, unless otherwise agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein contained the Parties hereto have agreed and do hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement the following words, phrases and expressions will have the following meanings:

- (a) “**Facility**” refers to the premises at _____, British Columbia, as defined and described in the Lease to be entered into with Greg Miles, Cushman & Wakefield LePage Inc.;
- (b) “**Agreement**” means this Joint Venture Agreement, as amended from time to time;
- (c) “**Joint Venture**” means the joint venture formed between the Parties pursuant to Article 2 of this Agreement;
- (d) “**Facility Committee**” means the committee formed between the Parties pursuant to Article 4.1 of this Agreement;
- (e) “**Party**” means one of the Parties to this Agreement;
- (f) “**Shared Spaces**” means the rehearsal studio, kitchen, green room, board room, secondary rehearsal spaces, storage areas, washrooms, parking lot, rooftop areas and clerical space (where photocopier, postage metre, and shared office equipments are housed);
- (g) “**Review**” means the joint assessment and renegotiation of any or all of the conditions of this Agreement by all Parties to this Agreement.

ARTICLE 2- FORMATION OF THE JOINT VENTURE

- 2.1 The Parties hereby agree to participate together for the sole purpose of procuring, managing and operating the Facility to provide administrative space and shared space (including rehearsal space) (the “**Joint Venture**”).
- 2.2 Except as expressly provided in this Agreement, each Party will have the right to independently engage in and receive full benefits from artistic and business activities whether or not competitive with the Joint Venture without consulting any other Party. The doctrines of “corporate opportunity” or “business opportunity” will not be applied to any other activity, venture or operation of any Party with respect to any opportunity to acquire any assets outside of the Property at any time, or within the Property after the termination of this Agreement.
- 2.3 The Parties expressly disclaim any intention to create a partnership or to carry on business together, and nothing in this Agreement will constitute the Parties as partners.
- 2.4 The Parties will not have, or represent to have, the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of or in the name of any of the others or will be, or represent that it is, the agent or legal representative of any of the others, except as otherwise specifically provided in this Agreement or in any other written agreement executed by the Parties or any of them.

- 2.5 The Parties agree that each party will retain its separate interests in all property dedicated to the purposes of the Joint Venture and any residual interests in such property. *N.B. Any potential conflict between this clause and clauses 7.3 and/or clause 10.4 may be assessed and determined as part of a Flying Squad supported consultancy planned to take place on or before December 31, 2009.*

ARTICLE 3- TERM

- 3.1 The Joint Venture Agreement is effective as of the 1 day of _____, and shall continue for a term of five (5) years or until terminated as herein provided.
- 3.2 This Agreement is subject to review after one (1) year, and then after four (4) subsequent years. After the initial 5 year period is completed, should no signatory request a review, then an automatic year to year renewal takes effect, subject to annual review.

ARTICLE 4 - MANAGEMENT

- 4.1 The Facility will be managed by a committee (the “Facility Committee”), the members of which will consist of one representative, or their delegate, from each of the Parties. The members will be authorized to make decisions, including financial decisions, on behalf of the Party that he or she represents.
- 4.2 Each member of the Facility Committee has one vote at Facility Committee meetings. The following principles will guide Committee Decision Making Process until amended further by the Parties:
- (a) The parties affirm their commitment to the principles of consensus and fairness in all decision making. They recognize that the pursuit of the common good is central to the Parties collective decision to enter into this agreement, and is a core principle for decision making on the Facility Committee.
 - (b) On all questions before it, the Facility Committee will attempt to achieve consensus.
 - (c) The Parties recognize that consensus may not always be achievable. In cases where consensus is not achievable, a majority vote (3-1) on the Facility Committee will guide decision making.
 - (d) In cases where the vote is split (2-2), the Parties agree that the Facility Committee will seek the opinion of a mutually agreed to 5th party. The Parties further agree that the opinion of said 5th Party

will be treated as a one-time tie-breaker, with the resulting decision being binding on all parties. The use of a mutually agreed 5th Party on a single issue does not make that 5th Party the default 5th Party in any other subsequent split vote.

- (e) It is further agreed that the Facility Committee will abide by this decision making process until such a time as it is altered by unanimous agreement of all the Parties.
 - (f) This process may be re-examined by the Consultancy process referred to in Clause 2.5.
 - (g) The Committee may also refer to Article 9 (Dispute Resolution), and the Formal Dispute Resolution Process for further guidance in resolving difficult questions.
- 4.3 The representative of a Party who has a pecuniary or other special interest in a matter to be voted on by the Facility Committee shall declare the circumstances of the conflicting interest and shall not participate in the vote on that matter.
- 4.4 The business of the Facility Committee will be conducted in accordance with the terms of this Agreement and the Operational Terms of Reference appended hereto as Schedule A.
- 4.5 The Facility Committee will appoint committee members to the following positions:
- (a) Chair/Maintenance Director;
 - (b) Secretary;
 - (c) Finance Director; and
 - (d) Scheduling Director
- 4.6 The duties and responsibilities of the representatives filling each of the positions are set out in the Operational Terms of Reference.
- 4.7 The Facility Committee may call Facility Committee Meetings, Annual General Meetings and Extraordinary General Meetings in accordance with Operational Terms of Reference.

ARTICLE 5- SPACE ALLOCATION

- 5.1 Each Party will have a designated Exclusive Use Space, as set out in Schedule 2, forthcoming/to be Appended by _____, which may be used by that Party exclusively.
- 5.2 The Shared Spaces and Rehearsal Space are as designated in Schedule 2, forthcoming/To Be Appended by _____
- 5.3 The Facility Committee may amend, by unanimous resolution, the designations of Exclusive Use, and Shared Space.
- 5.4 The Facility Committee will manage the Facility so that each of the Parties is provided with a fair and equitable opportunity to use the Shared Spaces (in particular the rehearsal spaces and all meeting rooms) with consideration given to the needs of each Party according to their respective production cycles.

ARTICLE 6- FINANCE

- 6.1 Each Party is responsible for paying monthly the proportional share, as determined by the Facility Committee, of the Facility Costs allocated to them.
- 6.2 The proportional share for each Party will be determined by calculating: the Party's Exclusive Use Space plus one quarter of the Common Space and Rehearsal Space divided by the total square footage of the Facility.
 - (a) Any financial issues or conflicts arising from individual companies use of shared space and expenses incurred therein in relationship to the agreed financing formula will be addressed by the Facility Committee on a case by case basis.
- 6.3 Facility Costs include:
 - (a) all payments for which the Joint Venture or a Party hereto is responsible under the Lease
 - (b) expenses determined by the Facility Committee to be common expenses, such as shared phone lines or systems, internet connections, maintenance, security, lighting etc.;
 - (c) the cost of capital or leasehold improvements; and
 - (d) the Joint Venture's Reserve, as established below.
 - (e) any expenses resulting from damage caused or alleged to have been caused by one or more companies and/or renters and/or sub-

tenants. Responsibility for these expenses will be assigned by the Facility Committee on a case by case basis.

- 6.4 Sub-tenant rent contributions, whether for administrative space or rehearsal rental, and whether long or short term, are payable into the general revenue pool of the Joint Venture to reduce the Facility Costs.
- 6.5 The Facility Committee will establish a bank account (the “Account”) for the payment of all Joint Venture expenses relating to this Agreement, including, but not limited to the payment of rent, other leasehold expenses, maintenance, security and jointly leased or financed equipment.
- 6.6 Facility Committee representatives have signing authority for the Account. Three signatures are required on all cheques and transactions for the Account, one of which must be the Finance Director.
- 6.7 The parties to the Joint Venture will contribute to a working reserve fund (the “Reserve”) to be used to ensure positive cash flow, for emergency repairs or maintenance or to insure against default under the Joint Venture Agreement.
- 6.8 The amount of the Reserve will be determined by the Facility Committee.
- 6.9 The Reserve will be held in a separate account or sub-account.
- 6.10 Interest earnings on the Reserve will remain a part of the Reserve subject to dissolution of the Joint Venture.
- 6.11 Monthly Facility Cost payments are due a minimum of 10 days prior to the 1st of each month (or ten days prior to monthly payment to landlord).

ARTICLE 7- CAPITAL

- 7.1 With the Facility Committee’s approval, any of the Parties may apply for capital grant funds on behalf of the Joint Venture.
- 7.2 Parties may also apply for capital grant funds in their own name, and expend the funds on the Facility with the approval of the Facility Committee.
- 7.3 Capital funds expended on the Facility and resulting assets or improvements become the property of the Joint Venture unless the Lease provides otherwise, or unless otherwise agreed in writing between the Party and the Facility Committee.
- 7.4 No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

ARTICLE 8- USE OF THE FACILITY BY NON-PARTIES

- 8.1 Subject to any restrictions placed on sub-tenancy by condition of the primary lease arrangements, the sub-tenant will pay to the joint venture a rent not less than the actual gross rental rate for the space leased plus at least a 20% share of the gross rent of the total area for common use areas excluding rehearsal hall(s). Use of the rehearsal hall(s) is charged at a separately negotiated rate.
- 8.2 With the sole approval of the Facility Committee, non-parties may rent the rehearsal hall. The Parties of this Agreement empower the Facility Committee to negotiate rental rates and space use with non-parties at their discretion on a case by case basis.

ARTICLE 9- DISPUTE RESOLUTION

- 9.1 Any controversy or dispute arising between Parties will be resolved through discussion at monthly meetings and/or through an informal discussion process.
- 9.2 Should a dispute between Parties arise that cannot be resolved through an informal discussion process then a formal dispute resolution will take place at the request of any Party.
- 9.3 The Formal Dispute Resolution Process requires that the Parties strike a Dispute Resolution Committee. It will be composed of the Artistic Directors of each Party, and in the event of a dispute involving the Artistic Directors personally, then the General Managers or Administrator of the Party will act in her/his place.
- 9.4 Disputes that cannot be resolved by way of Article 9.3 will be submitted to mediation.
- 9.5 If the Parties cannot agree on a mediator, or cannot resolve the dispute by mediation, the Parties will resolve the dispute by way of arbitration pursuant to the *Commercial Arbitration Act*, RSBC 1996, c. 55.

ARTICLE 10- RESIGNATION OF ONE PARTY

- 10.1 Should one Party wish resign from the Joint Venture, they will provide the other Parties with either six months notice or the equivalent of six months of rent in lieu of notice.
- 10.2 Notice of resignation must be delivered in writing to the Chair of the Facility Committee and must be delivered on or before the first day of the month failing which the period commences on the first day of the month following delivery of notice.
- 10.3 Remaining Parties will proceed by re-adjusting the proportional Facility Costs and responsibilities unless a new Party is brought into the Joint Venture.
- 10.4 Unless otherwise agreed in writing, capital investments made by a Party in the Facility are the property of the Joint Venture and cannot be claimed by the resigning party. *N.B. Further clarification of this clause, and the definition of capital investments (fixtures/moveables?) may be explored as part of the Consultancy process referred to in Articles 2.5 and 4.2.*

ARTICLE 11- DISSOLUTION

- 11.1 The Joint Venture may be dissolved at any time by agreement of all Parties. The assets of the Joint Venture shall be used and distributed in the following order:
 - (a) to pay or provide for the payment of all Joint Venture liabilities and liquidating expenses and obligations;
 - (b) to equalize the income accounts of the Parties;
 - (c) to discharge the balance of the income accounts of the Parties;
 - (d) to equalize the capital accounts of the Parties; and
 - (e) to discharge the balance of the capital accounts of the Parties.
- 11.2 The process for Distribution after dissolution may be further defined as part of the Consultancy process referred to in Articles 2.5, 4.2 and 10.4.

Executed this ____ day of _____, 20____ in Vancouver, British Columbia.

SIGNED:

For

_____	_____	_____
signature	signature	signature
_____	_____	_____
title	title	Board Member
_____	_____	_____
print name	print name	print name
_____	_____	_____
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For

_____	_____	_____
signature	signature	signature
_____	_____	_____
title	title	Board Member
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signature	signature	signature
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