



## **AMENDED AND RESTATED GOOD NEIGHBOR AGREEMENT**

### **YATES THEATER – 4979 W. 44<sup>TH</sup> AVENUE**

THIS AMENDED AND RESTATED AGREEMENT (“Agreement”), made this 10th day of June 2019, by and between Berkeley Regis United Neighbors, a Colorado non-profit and registered neighborhood organization (hereinafter “**BRUN**”) and Yates Tavern, LLC, (d/b/a Yates Theater hereinafter “Yates Theater”).

### **RECITALS**

WHEREAS, BRUN is a registered neighborhood organization in Denver, Colorado, whose neighborhood contains the building commonly known as the Yates Theater, located at 4979 W. 44th Avenue, Denver, Colorado (the “Theater”); and

WHEREAS, Yates Theater wishes to redevelop and operate the Theater; and

WHEREAS, Yates Theater wishes to obtain a liquor license for service of liquor and wishes to obtain a cabaret license for the purpose of limited incidental dancing associated with certain musical performances; and

WHEREAS, BRUN wishes to obtain certain enforceable agreements from Yates Theater prior to agreeing to support, or agreeing not to oppose, as the case may be, Yates Theater’s pending liquor and cabaret license application;

THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy of which are hereby admitted, the undersigned parties hereby agree as follows:

### **DEFINITIONS**

- i. “Live Music Event” shall mean any event which includes a live music or disc jockey performance.
- ii. “Lobby Bar” shall mean the limited portion of the Yates Theater lobby area which shall function as a tavern only.

### **COVENANTS**

#### **1. HOURS OF OPERATION.**

- a. The Yates Theater shall not operate between the hours of closing and 10 a.m.
- b. For all Live Music Events, the following shall apply:

- i. Sunday through Wednesday, the Live Music Event shall end\* by 11:00 p.m.
- ii. Thursday, the Live Music Event shall end\* by 12:00 a.m.
- iii. Friday and Saturday, the Live Music Event shall end\* by 1:30 a.m.

\*It is agreed that an event has “ended” in compliance with the limitations in Section 1 above if the live music has ceased but patrons are still leaving the venue, or janitorial crews are cleaning or band staff is packing up equipment and loading out of the venue.

c. Lobby Bar exception: The Lobby Bar shall close by 2:00 a.m. every night.

2. NOISE. The Theater will be operated with all doors and windows closed at all times during any Live Music Event. Yates Theater agrees that in the event appreciable sound due to Live Music Events within the Theater is audible outside the Theater in violation of the City of Denver noise ordinance, and of sufficient level to disturb nearby residents, it will take immediate steps to mitigate the problem.

3. PARKING. Yates Theater agrees to use best efforts to furnish “off-street” parking for its patrons. BRUN expects and acknowledges that Yates Theater will make use of the on-street parking on 44th Avenue for its customers. Yates Theater agrees that it will initiate and make every reasonable effort and assist in the efforts by BRUN, to prevent the use of the streets in front of surrounding residences by Theater patrons for Theater event parking. Streets designated by the City of Denver as an Arterial Street or Collector Street shall be exempt from any parking restrictions as a result of such efforts.

Yates Theater shall use its best efforts to secure a total of 100 “off-street” parking spaces or accommodations for 100 vehicles. Yates Theater has secured preliminary verbal commitments from neighborhood businesses for use of their property as “off-street” evening Theater event parking and will use its best efforts to memorialize these agreements in writing. If these agreements do not become memorialized or terminate at some point in the future, Yates Theater will use best efforts to secure other “off-street” parking arrangements.

For events that exceed attendance of 300 persons, Yates Theater shall use best efforts to provide “off-street” attended parking of its patrons. If Yates Theater has fewer than 100 “off-street” parking spaces under its control via written agreement, Yates Theater will continue to investigate additional possibilities to acquire other “off-street” parking including reasonable negotiations for leasing parking spaces located on the property of nearby businesses. BRUN agrees to assist and help facilitate a dialog and negotiation with private property owners at the request of Yates Theater.

4. RIDE SHARING. Yates Theater shall work with ride-sharing companies, including but not limited to Lyft and Uber, to designate pick-up and drop-off areas for patrons (“Designated Areas”). Such Designated Areas shall be on 44th Avenue. Yates Theater shall further work with said ride-sharing companies to ensure that patrons are dropped off only in the Designated Areas, to the extent possible.

5. ALTERNATIVE TRANSPORTATION. Yates Theater shall designate areas for parking of scooters, bicycles, and such other alternative forms of transportation as may arise in the future. This designated area shall be pursued for installation in the 44th Avenue right-of-way amenity zone, but it is recognized that city agencies will have final say in the appropriate location for installation. The Yates Theater shall discourage the parking of these forms of transportation on Yates Avenue north of 4416 Yates, and Xavier Avenue.

6. PARKING DISTRICT. In the event requested of Public Works, Yates Theater will support the efforts to create a parking area plan and parking district with the City and County of Denver that restricts non-resident parking during specific limited hours so long as Yates Theater is consulted in the scale, scope and hours of such parking permit rules.

7. SECURITY. Yates Theater agrees to furnish adequate security for each Live Music Event to which the general public is invited, with the exception of the meetings of private, civic, business, educational, or religious groups. This security will be present no later than one (1) hour before show times and one (1) hour after a Live Music Event or until the patrons are fully dispersed, whichever is later. Yates Theater will utilize a private bonded security company.

Security services will be provided both inside the Theater and around the exterior as well. Once patrons enter the Theater for a performance, they will not be permitted to leave and reenter the Theater. For up to one (1) hour following the end of a Live Music Event, security services shall post security personnel at the intersections of Yates Street and 44th Avenue, and at Xavier Street and 44th Avenue, to direct foot traffic away from the north-south corridors and to remind patrons to quietly proceed to their vehicles.

8. TRASH. Yates Theater agrees to clear the immediately surrounding area of trash after each event. Yates Theater will also provide adequate trash and recycling receptacles for use by its patrons when departing the Theater.

Yates Theater agrees to refrain from emptying trash and recycling from the Theater to dumpsters between the hours of 9 p.m. and 8 a.m., and will engage a commercial trash service for pickup of all trash, recycling, and composting from the Theater between the hours of 8 a.m. and 9 p.m. After operating for 3 months, if Yates Theater cannot physically accommodate the build up of trash and recycling inside the building from 9:00 p.m. to 8:00 a.m., Yates Theater shall notify BRUN of this hardship in writing and shall be granted an extension until 10:00 p.m. BRUN may request whatever reasonable evidence it needs to verify Yates Theater cannot comply with the 9:00 p.m. restriction.

Immediately following all Live Music Events, Yates Theater will conduct a sweep of the area in a one block radius of the Theater for trash and debris left by patrons.

9. EQUIPMENT LOADING AND UNLOADING. Tour buses shall not be permitted to park on 44th Avenue, but shall be permitted to stand on 44th Avenue for the purposes of loading and unloading for up to ninety (90) minutes each. All other equipment loading and unloading shall occur in the Theater's private parking area on the north side of the Theater. All tour buses and commercial vehicles shall be required to turn off their engines while loading and unloading. Tour buses and other commercial vehicles will be instructed to refrain from driving on the north-south residential streets other than to access the parking lot immediately north of the Yates Theater.

10. SMOKING. Yates Theater shall designate a fenced-in smoking area for patrons along 44th Avenue. Yates Theater shall ensure that persons do not enter or exit the Theater via the smoking area. The Yates Theater shall ensure that there are sufficient cigarette disposal receptacles for use by patrons.

11. TICKET SALES. Ticket sales will be handled on an advance ticket sale basis, as well as walk-up sales. Yates Theater will encourage advance ticket sales. If issues arise related to Live Music Events and BRUN needs to confirm ticket sales for specified dates, BRUN may request this information in writing and Yates Theater shall have ten (10) business days to provide a report including the event date, the event name and the number of tickets sold.

12. LIGHTING. Yates Theater will maintain all signage in accordance with City ordinance or with City permission in case of any applicable grandfather clause related to the historic theater marquee. Any lighted signs or other lighting shall be directed so as to avoid light trespass onto neighboring properties to the extent possible.

13. OCCUPANT LOAD. Regardless of final Fire Department approved occupant load, Yates Theater shall cap ticket sales of all Live Music Events at 718 attendees. Yates Tavern shall cap entry of patrons to the Lobby Bar at 150.

14. LICENSES. BRUN agrees that in the event of the execution of this Agreement by Yates Theater, it will support the granting or the renewal of a liquor license and/or cabaret license, now or hereafter applied for, with respect to the Theater and the use approved herein, unless there is a breach of this Agreement by Yates Theater.

Yates Theater agrees that in the event of a future sale of the business, Yates Theater will not transfer the liquor license or cabaret license it hopes to be granted, or any renewals or extensions or such licenses, to any third party who is not of good moral character. That would include a person with a criminal record or one who would not be willing to honor the provisions set forth in this Agreement, or a reasonable substitute agreed to by BRUN not to be unreasonably withheld, conditioned, or delayed. Yates Theater will give thirty (30) days advance notice to BRUN of any proposed transfer and BRUN shall grant its approval of the transfer within thirty (30) days so long as the conditions listed above are met.

15. COMMUNITY CONCERNS. Yates Theater will designate a single point of contact that can be called any time during regular business hours to address issues and concerns from the community. BRUN will similarly designate a neighborhood liaison who will relay communications between the community and Yates Theater. The points of contact will respond to community concerns within two (2) business days.

Yates Theater: (operations): Jerri Theil, 720-364-1588, [jerriline9@gmail.com](mailto:jerriline9@gmail.com)

BRUN: President, [brunrno@gmail.com](mailto:brunrno@gmail.com).

16. BRUN MEMBERSHIP. Yates Theater shall join and maintain membership with BRUN, effective June 1 of every year, at an annual membership fee consistent with what it charges other commercial business members, currently \$50, which amount may be increased from time to time.

17. COMMUNITY BENEFIT. Yates Theater agrees to host one fundraising event each year for North High School and one fundraising event each year for Skinner Middle School. Each respective school shall organize such event and coordinate with Yates Theater for available time. All proceeds above direct costs incurred and accrued in hosting each event shall be donated to the respective school.

18. ENVIRONMENTAL STEWARDSHIP. Yates Theater shall employ, to the extent it is commercially reasonable, environmental best practices in its operations. This may include, but is not limited to, refraining from the use of plastic straws, use of biodegradable cups and utensils, composting of food waste, and installation of energy efficient appliances and water-free urinals in the restrooms.

## MISCELLANEOUS

### 19. ENFORCEMENT.

a. With respect to any breach of this Agreement, the party not in breach may notify the other of a breach. Upon the receipt of such notice, the party receiving the notice shall have fifteen (15) calendar days within which to effect a cure of the alleged breach, or such longer time as may be reasonable under the circumstances, provided that the party having received notice of the breach shall make all reasonable continuous efforts to cure such alleged breach. These covenants shall be binding with respect to any event produced at the Theater. Copies of the applicable provisions of this Agreement shall be provided to any independent producers.

b. Any disputes which the parties to this Agreement have herein agreed to submit to arbitration, or disputes subsequently agreed, in writing, to be resolved through arbitration shall be arbitrated by a panel of three arbitrators chosen from among the membership, or owners of residences or businesses encompassed within the boundaries of BRUN. One arbitrator shall be chosen by BRUN on behalf of the resident, residential property owner, business, or on its own behalf, that has a dispute with Yates Theater. A second arbitrator shall be chosen by Yates Theater. The third arbitrator shall be chosen by the mutual agreement of the two previously chosen arbitrators. Yates Theater and BRUN agree that the decision of the arbitrators shall be binding, except for any right of appeal as provided by Colorado law. This Agreement shall not be subject to "blue-penciling."

20. LIMITATIONS INCLUDED ON LIQUOR LICENSE. The undersigned parties to this Agreement agree to request that Denver Department of Excise and Licenses attach the following four (4) conditions upon any Tavern Liquor License and Cabaret License to be issued to Yates Theater at 4979 44th Avenue:

- a. All live music performance events shall end by 11:00 p.m. on any day Sunday through Wednesday; 12:00 a.m. on Thursdays; and 1:30 a.m. on Fridays and Saturdays;
- b. Applicant shall utilize only private bonded security companies for security services during all musical performance events, and such security services shall be present at the Theater at least one (1) hour prior to the start of any musical performance event and for one (1) hour after the end of any musical performance event;
- c. An outdoor smoking area shall be designated and entry or exit to the premises of patrons from such designated area shall be prohibited; and
- d. All doors, windows, and other sound mitigating barriers (including, but not limited to, curtains) shall be kept closed during all musical performance events.

21. ENTIRE AGREEMENT. This Agreement incorporates any and all previous agreements, understandings, and discussions between the parties pertaining to the subject matter hereof and is the entire agreement between the parties.

22. AMENDMENTS AND WAIVERS. No provision of this Agreement may be altered, amended, or modified without the written consent of the parties, nor shall any waiver of any of the provisions of this Agreement be valid or enforceable unless in writing and signed by all parties. The failure of any party to this Agreement to insist upon the Performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be

construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. If after six (6) months of operation, Yates Theater finds that the enforcement of any provision in this Agreement has created an undue burden on its operations, the parties agree to work in good faith to reasonably modify said provision.

23. BINDING AGREEMENT. This Agreement shall be binding upon the assignees, heirs, successors, and personal representatives of the parties hereto.

24. APPLICABLE LAW. This Agreement shall be construed according to the laws of the State of Colorado and the laws of the City and County of Denver. This Agreement may only be enforced in a court of jurisdiction in the City and County of Denver, Colorado.

25. NOTICES. Except for any notice required by law to be given in another manner, all notices provided for in this Agreement, unless otherwise specified, shall be served via electronic mail, and shall be deemed immediately given upon sending of such electronic mail.

Addresses for notice shall be:

A. BRUN – [brunrno@gmail.com](mailto:brunrno@gmail.com)

B. Yates Theater – c/o Yates Tavern, LLC 2660 Walnut Street, Denver, CO 80205 Attn: Ari Stutz  
[ari@dpsdenver.com](mailto:ari@dpsdenver.com)

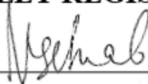
26. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each part shall be equally binding as though all signatures appeared on the same page and each part shall be deemed an original, but all of the parts together shall constitute one and the same document.

27. HEADINGS. The captions are for the convenience of the parties, only, and shall not be considered in construing the meaning of this Agreement.

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

**[SIGNATURE PAGE TO FOLLOW]**

**BERKELEY REGIS UNITED NEIGHBORS**

By: 

Name: Niki V. Schwab

Its: President

Date: June 10, 2019

**YATES TAVERN, LLC**

By: 

Name: Ari Stutz

Its: Manager

Date: June 10, 2019