REDEVELOPMENT AGENCY OF CENTERVILLE CITY AND
DAVIS CENTER FOR THE PERFORMING ARTS
ADMINISTRATIVE CONTROL BOARD MEETING AGENDA

NOTICE IS HEREBY GIVEN THAT THE REDEVELOPMENT AGENCY OF
CENTERVILLE CITY BOARD AND THE ADMINISTRATIVE CONTROL BOARD OF
THE DAVIS CENTER FOR THE PERFORMING ARTS WILL HOLD A COMBINED
PUBLIC MEETING AT 6:45 PM ON MARCH 4, 2020 AT THE CENTERVILLE CITY
HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH.
THE AGENDA IS SHOWN BELOW.

Meetings of the Redevelopment Agency of Centerville City may be conducted via electronic means pursuant to
Utah Code Ann. 52-4-207, as amended. In such circumstances, contact will be established and maintained via
electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the
City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and
auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices.
Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events
should call Jacob Smith, Administrative Services Director, at 801-295-3477, giving at least 24 hours notice prior
to the meeting.

The full packet of backups materials can be found at http://centerville.novusagenda.com/agendapublic.

A.  ROLL CALL

B.  BUSINESS

1.  Centerpoint Theater - Boiler #1 Burner Replacement
    Discuss Centerpoint Theater's request for a burner replacement on boiler #1

C.  ADJOURNMENT

Leah Romero
Centerville City Recorder
Item No. 1.

Short Title: Centerpoint Theater - Boiler #1 Burner Replacement

Initiated By:

Scheduled Time:

SUBJECT

Discuss Centerpoint Theater’s request for a burner replacement on boiler #1

RECOMMENDATION

RDA - Consider approval to replace the burner on boiler #1 associated with Centerpoint Theatre’s HVAC system.

RDA/ACB - Determine and consider approval of the use of RDA Reserve Funds for the replacement of the burner on boiler #1 on Centerpoint Theater's HVAC system.

BACKGROUND

The Lease Agreement provides that the RDA is responsible for replacing the boiler and chiller associated with the Theatre’s HVAC System. CPT is responsible for all other maintenance and repairs regarding the HVAC System. If the boiler is required to be replaced, it is the RDA's responsibility to pay for the repair. If it is just a repair to the boiler, this is an obligation of CPT. However, the Lease Agreement contemplates use of funds from the RDA Reserve Fund for boiler replacement and also allows CPT to request use of funds from the RDA Reserve Fund for CPT repair and replacement obligations. The Lease Agreement requires any repair exceeding $5,000 to obtain prior written approval from the RDA. The Lease Agreement also requires any use of funds from the RDA Reserve Fund to be pre-approved by the ACB. Based on these terms of the Lease Agreement, this matter should go to the RDA and ACB for written approval of the repair and determination and approval of any use of RDA Reserve Fund for the repairs or replacement. A copy of the Lease Agreement is attached.

See, Section 54 (Repairs and Replacements)
See, Section 53 (Maintenance)
See, Section 26 (RDA Reserve Fund)

ATTACHMENTS:

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<th>Description</th>
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<td>Lease Agreement - Centerpoint Theater</td>
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<td>Centerpoint Invoice</td>
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LEASE AND OPERATING AGREEMENT
FOR THE
DAVIS CENTER FOR THE PERFORMING ARTS

THIS LEASE AND OPERATING AGREEMENT FOR THE DAVIS CENTER FOR THE PERFORMING ARTS ("Lease and Operating Agreement") is entered into this 15 day of Utah, 2019, by and between the REDEVELOPMENT AGENCY OF CENTERVILLE CITY ("RDA"), a community reinvestment agency and public body organized and existing under the Limited Purpose Local Government Entities – Community Reinvestment Agency Act of the State of Utah, with principal offices located at 250 North Main, Centerville, Utah 84014, and the DAVIS PERFORMING ARTS ASSOCIATION ("Association"), a Utah nonprofit corporation, DBA CENTERPOINT LEGACY THEATRE, with principal offices located at 525 North 400 West, Centerville, Utah 84014.

RECITALS

WHEREAS, the RDA is the owner of approximately 2.67 acres of real property located at approximately 525 North 400 West, Centerville, Utah, as more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("Site"); and

WHEREAS, the Site is conveniently located just off the I-15 Interchange in Centerville City within the Parrish Lane Gateway Neighborhood Development Project Area established by Centerville City and the RDA in 1989 for the purposes of redevelopment and enhancement to the community through the development of a common gateway to the City ("Redevelopment Project Area"); and

WHEREAS, the RDA, in cooperation with Centerville City and Bountiful City, has constructed and financed a regional state of the art cultural arts center and related facilities and improvement located on the Site ("Theatre"); and

WHEREAS, the RDA has previously leased the Site and Theatre to the Association pursuant to that certain Lease and Operating Agreement for the Davis Center for the Performing Arts dated May 5, 2009, as subsequently amended; and

WHEREAS, the RDA and the Association desire to enter into this new Lease and Operating Agreement for the Davis Performing Arts in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals are hereby incorporated into this Lease and Operating Agreement by this reference.
2. **Purpose.** The purpose of this Lease and Operating Agreement is to grant a lease to the Association to be the tenant and operator of the Theatre, to use the Theatre for the preparation, rehearsal, staging and performance of theatrical productions, and for related purposes and uses as more particularly provided herein, and to operate the Theatre in accordance with the terms and conditions of this Lease and Operating Agreement. It is specifically intended by the parties through this Lease and Operating Agreement that the Theatre provide an opportunity for public participation in and appreciation of the fine arts and family entertainment and expand and enrich the cultural and educational opportunities available to the residents of Davis County and surrounding areas and communities. The parties further agree and acknowledge the purpose of the Theatre and this Lease and Operating Agreement is to promote family values by providing a forum for the presentation of family entertainment.

3. **Lease.** The RDA does hereby lease to the Association, and the Association does hereby accept and lease from the RDA, the Site and the Theatre, upon the terms and conditions and for the purposes set forth herein for the term of this Lease and Operating Agreement, subject to permitted encumbrances as more particularly provided herein, and subject further to all easements, rights and appurtenances in connection therewith or related thereto. Nothing herein shall create or vest in the Association any easement, ownership or property right of any nature in the Theatre or Site, other than the leasehold interest created under this Lease and Operating Agreement.

4. **Exclusivity.** Except as otherwise provided for in this Lease and Operating Agreement, the Association’s primary purpose is to stage theatrical performances solely at the Theatre during the Term of this Lease and Operating Agreement. However, the Association may stage performances at schools, churches, community events, festivals or other charitable venues when deemed to be in furtherance of the Association’s charitable purposes and not in conflict with the Association’s obligations or contrary to the RDA’s interests provided in the Lease and Operating Agreement.

5. **Term.** The term of this Lease and Operating Agreement shall be for a period of ten (10) years ("Initial Term") commencing upon the Effective Date of this Lease and Operating Agreement. If this Lease and Operating Agreement has not been previously terminated, the parties shall have the option to extend the Initial Term of this Lease and Operating Agreement for an additional ten (10) year term ("Optional Term"), on such terms and conditions as may be agreed to by the parties. Any optional extension of this Lease and Operating Agreement shall be entered into by the parties prior to the expiration of the Initial Term. The Association shall notify the RDA at least six (6) months in advance of the expiration of the Initial Term of its intent to terminate or extend this Lease and Operating Agreement. If the parties cannot reach agreement on the terms and conditions of the additional term prior to the expiration of the Initial Term, this Lease and Operating Agreement shall terminate upon the expiration of the Initial Term.

6. **Centerville Corporate Park.** The Site and Theatre are located within the Centerville Corporate Park Subdivision, recorded on June 1, 2000, as Entry No. 1595245, Book No. 2654 and Page 308, in the Davis County Recorder’s Office, State of Utah, as amended by the Centerville Corporate Park (Amended) Subdivision, recorded on March 6, 2013, as Entry No. 2724921, Book No. 5720 and Page 1305 ("Subdivision"). A copy of the Subdivision plats are attached hereto as Exhibit "B," and incorporated herein by reference. The Subdivision contains four lots known and referred to as Lot 1, Lot 201, Lot 202, and Lot 3, as more particularly designated on the recorded plats for the Subdivision (collectively referred to as the “Lots”). The
Theatre is located on the Site and consists of all of Lot 3 of the Subdivision as more particularly set forth in Exhibit “B.”

7. **Easements and Restrictions.** In connection with the original creation of the Subdivision, as amended, all of the Lots within the Subdivision are encumbered by and subject to that certain Grant of Easements and Restrictions for the Centerville Corporate Park Subdivision dated June 23, 2000, as more particularly recorded at the Davis County Recorder’s Office on June 26, 2000, as Entry No. 1599782, Book No. 2662, and Pages 898-919, as amended by various amendments recorded at the Davis County Recorder’s Office (collectively referred to as “Easements and Restrictions”). The Easements and Restrictions are incorporated herein by reference. The Easements and Restrictions define certain Easement Areas within the Subdivision consisting of parking lots, drive aisles, landscaped areas, and common walkways located on the lots within the Subdivision. The Easements and Restrictions provide for an owners association to maintain and pay for the cost of maintaining the improvements and facilities within the Easement Areas (“Subdivision Owners Association”). Notwithstanding anything to the contrary set forth herein, this Lease and Operating Agreement and any use, operation and maintenance of the Site and Theatre shall be subject to and shall comply in all respects to applicable provisions of the Easement and Restrictions, and any amendments thereto. The Association shall comply with and shall be responsible for performing all obligations and duties of the owner of Lot 3 under the Easements and Restrictions, including, but limited to, paying any and all assessments, fees and fines due and owing under the terms of the Easements and Restrictions as they related to the Theatre and Site. The Association shall also be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers, employees, agents, and assigns, including reasonable attorneys’ fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability or such breach. As the Owner of Lot 3, the RDA shall retain the authority to appoint a voting member to the Subdivision Owners Association as provided under the terms of the Easements and Restrictions.

8. **Development Agreement.** The Site and Theatre are further encumbered by the provisions of that certain Development Agreement dated May 24, 2000, as more particularly recorded at the Davis County Recorder’s Office on June 26, 2000, as Entry 1599779, Book No. 2662, and Pages 754-774, as amended by various amendments recorded at the Davis County Recorder’s Office (“Development Agreement”). The terms and conditions of the Development Agreement are incorporated herein by this reference. Notwithstanding anything to the contrary set forth herein, this Lease and Operating Agreement and any use, operation and maintenance of the Site and Theatre shall be subject to and shall comply in all respects to applicable provisions of the Development Agreement, and any amendments thereto. The Association shall be responsible and liable for any breach of the Development Agreement by the Association, its officers, employees, agents and assigns, including reasonable attorneys’ fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach.

9. **Conditional Use Permit and Site Plan Approval.** The Site and Theatre are subject to the terms and conditions of those certain Conditional Use Permits, and any amendments thereto (“Conditional Use Permits”) for the Centerville Corporate Park Subdivision and Lot 3 within said Subdivision, including a conditional use permit for a planned center, auditorium use, and increased building height, as approved by the Centerville City Planning Commission on April 8, 2009. The Site and Theatre are also subject to the terms and conditions of a Parking Modification, and any amendments thereto (“Parking Modification”) for the Centerville Corporate Park Subdivision, and Final Site Plan, and any amendments thereto (“Final...
Site Plan") for Lot 3 of the Centerville Corporate Park Subdivision, as approved by the Centerville City Planning Commission on April 8, 2009. The Conditional Use Permits, Parking Modification and Final Site Plan are incorporated herein by this reference. Notwithstanding anything contrary set forth herein, this Lease and Operating Agreement and any use, operation and maintenance of the Site and Theatre shall be subject to and shall comply in all respects to applicable provisions of the Conditional Use Permits, Parking Modification and Final Site Plan, and any amendments thereto. The Association shall be responsible and liable for any breach or violation of the terms and conditions of Conditional Use Permits, Parking Modification and/or Final Site Plan by the Association, its officers, employees, agents and assigns, including reasonable attorneys' fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach or violations.

10. Interlocal Agreement. The parties expressly acknowledge and incorporate into the terms and conditions of this Lease and Operating Agreement that certain Interlocal Cooperation Agreement between Centerville City, Bountiful City and the Redevelopment Agency of Centerville City for the Construction and Operation of a Performing Arts Center dated February 26, 2008, and any amendments thereto ("Interlocal Agreement"). The purpose of the Interlocal Agreement is to provide for the construction, design, financing and operation of the Theatre. The Interlocal Agreement is administered by a joint board with representation from the parties to the Interlocal Agreement known as the Administrative Control Board ("ACB"). By the terms and conditions of the Interlocal Agreement, the ACB is to provide review, approval and/or recommendations regarding various matters with regards to the Theatre. Specifically, the Interlocal Agreement provides the ACB shall participate and be directly involved in the process of preparing and implementing the lease or use agreement documents for the Theatre and shall review and approve any and all lease or use agreement documents entered into by the RDA, and any amendments thereto. As such, this Agreement shall be subject to approval by the ACB and after such approval shall be executed by the ACB "approved as to form." In addition, as a specific term and condition of this Lease and Operating Agreement, the ACB shall have express review and oversight authority as contemplated by the Interlocal Agreement and as more particularly provided herein.

11. Theatre Board Representation. In accordance with the terms and conditions of the Interlocal Agreement, the Association hereby consents to the right of Centerville City and Bountiful City to each appoint a representative to sit on the Association's Board of Directors or applicable governing body.

12. Public Funds. The parties expressly acknowledge that the Theatre has been constructed and financed almost entirely with public funds. It is further expressly acknowledged that the intended purpose of the Theatre is to provide a regional center for the use and enjoyment of the public providing an opportunity for public participation in and appreciation of the fine arts and family entertainment and expanding and enriching the cultural and educational opportunities available to the residents of Davis County and surrounding areas and communities. It is not the intent of the RDA or the public entities providing for the construction of the Theatre that the Association, any individual, director, officer or entity profit from the use or operation of the Theatre. It is also not the intent of the RDA or the public entities providing for the construction of the Theatre that any public entity profit from the use of operation of the Theatre. Rather, it is the intent of the RDA and the public entities financing and/or providing for the construction of the Theatre that all profits generated by the Theatre be invested back into the Theatre and the Site to provide for the long-term sustainability and viability of the project. It is further the intent of the parties to provide for the proper maintenance and repair of the Theatre to ensure long-term
preservation of the building asset, including all related improvements and equipment, and to allocate funds in a manner that provides for an aggressive preventative maintenance program for the Theatre. For these reasons, the lease and operation of the Theatre by the Association is expressly conditioned upon any profits made by, through or in connection with the use and operation of the Theatre by the Association be funneled back into the Theatre in accordance with the Rent and Maintenance provisions more particularly provided herein. It is further the intent of the RDA that all rent proceeds received by the RDA from the Association be funneled back into the Theatre and the Site, including, but not limited to, the use of such funds for investment, financing, debt retirement, maintenance, repair, replacement, expansion, alteration, enhancement, betterment or operation of any buildings, grounds, facilities, programs, fixtures and related equipment and accessories associated with the Theatre, in accordance with the provisions of this Lease and Operating Agreement. The RDA hereby covenants that no Rent proceeds can be used for debt retirement or service in order to maintain the tax-exempt status of interest on the tax-exempt bonds.

13. Rent. For purposes of this Lease and Operating Agreement, the parties intend the rental payment charged for use and operation of the Theatre be fair, reasonable and flexible and set at an amount that will provide for the long-term viable lease and operation and maintenance of the Theatre. For the reasons set forth in Section 12 regarding the public funding and purpose of the Theatre, the rental payment due and owing for the use and operation of the Theatre under this Lease and Operating Agreement, shall be based on a minimum monthly rent as more particularly set forth in Section 14 ("Rent"). Rent shall be paid to the RDA when due without prior notice, demand, deduction, setoff or counterclaim. Interest on unpaid delinquent Rent shall accrue at the rate of ten (10%) per annum from the date due to the date of payment. Interest on delinquent Rent shall be in addition to any other rights and remedies available to the RDA for failure to pay Rent as a breach of this Lease and Operating Agreement. All Rent and other payments due under this Lease and Operating Agreement shall be paid by the Association to the RDA at the RDA’s office at 250 North Main, Centerville, Utah, 84014, or at such other place as may from time to time be designated in writing by the RDA.

14. Monthly Rent Payment. The Association shall pay to the RDA a minimum monthly rent and use fee ("Rent") in the amount of $6,837 per month. Rent shall be paid monthly in advance due on the 20th day of the month for the next month's rent. The Rent shall be adjusted annually each January using the Consumer Price Index for all Urban Consumers ("CPI-U") for the West Urban Area (Index Base Period 1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics. The increase in the amount of each monthly Rent payment shall be directly proportional to the percentage change in the CPI-U index between the specified time periods; provided that under no circumstances shall the monthly Rent be less than the previous year's monthly Rent ("Adjusted Rent"). The Adjusted Rent shall be calculated using the average of the CPI-U for the current twelve (12) month period from October to September as compared to the previous twelve (12) month period from October to September. Each year, the RDA shall calculate the Adjusted Rent for the coming year and provide the Association with thirty (30) days’ notice of the Adjusted Rent for the coming year. Such notice is provided as a courtesy only. If the RDA does not send the notice of Adjusted Rent or the Association does not receive such notice, the Association is still bound and obligated to pay the Adjusted Rent when due and owing. If the United States Department of Labor revises the CPI-U or the index base period, the parties shall accept the method of revision or conversion recommended by said Department. If the CPI-U is discontinued or revised, such government indices or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the indices had not been discontinued or revised.
15. No Additional Rent. Rather than charge any type of additional or variable rent to the Association, the parties agree that any additional annual revenues or profits from the operation of the Theatre should be retained by the Association for purposes of funding the Association’s significant maintenance and operations obligations under the terms of this Lease and Operating Agreement.

16. Reserve Funds. In order to provide for proper operations reserves and sufficient funds for maintenance obligations, the Association shall create and fund certain reserve funds as more particularly set forth herein. Such reserve funds shall be maintained and funded in accordance with the applicable provisions of this Lease and Operating Agreement.

17. Priority Allocation to Reserve Funds. Except as otherwise expressly approved by the RDA for exceptional circumstances, any excess annual revenues or profits shall be allocated to the reserve funds as provided herein, and in accordance with Section 28 regarding flow of funds. Any excess annual revenues or profits shall first be allocated to the Total Target Annual Contribution to the Maintenance Reserve Fund as more particularly described in Section 23. Once the Total Target Annual Contribution to the Maintenance Reserve Fund is made, the Association can allocate any additional excess revenues and profits to the Operations Reserve Fund, as set forth in Section 20, the Capital Reserve Fund, as set forth in Section 24, or any other fund or authorized purpose.

18. Replacement Value. The calculation of Rent and the required reservation of funds to the Association’s reserve funds is based upon industry standard recommendations for funding long-term facility maintenance obligations. Industry standard calculations for repair and replacement costs for a building the size and quality of the Theatre suggest an annual funding contribution equal to one and one-half percent (1.5%) of the replacement value of the facility (“Annual Replacement Value Funding”). Replacement value is defined as the amount in current dollars it would cost to replace the asset or facility (“Replacement Value”). The current Replacement Value for the Theatre is estimated to be $15,000,000. The Replacement Value of the Theatre and the corresponding Annual Replacement Value Funding shall be evaluated and adjusted every five (5) years based on industry standards or other method agreed to by the parties. The Annual Replacement Value Funding obligation for the Theatre shall be distributed between the parties according to the maintenance obligations set forth in this Lease and Operating Agreement and based on the various types of facility maintenance and repair obligations as described in Section 19. The Replacement Value assumptions set forth in this Section, and the Maintenance and Repair descriptions set forth in Section 19, are based on the Whitestone Facility Maintenance and Repair Cost Reference Guide, published annually and copyrighted by Whitestone Research.

19. Types of Maintenance and Repair. The recommended Annual Replacement Value Funding is based on various types of facility maintenance and repair costs as described by Whitestone Research. Maintenance and repair is defined as the collection of activities necessary for keeping an asset in good working order (“Maintenance and Repair”). Included in this definition are regularly scheduled adjustments and inspections, preventative maintenance tasks, emergency response and service calls for minor repairs, and the periodic major repair or replacement of asset components. Maintenance and Repair does not include other tasks associated with facility operations such as custodial services, landscaping, waste disposal, and utilities. Maintenance and Repair does not include capital expenditures for new construction or
improvements or modernization costs intended to restore or improve the productive capability of the facility. Maintenance and Repair activities are divided into the following three categories:

a. Preventative Maintenance and Minor Repair. Preventative maintenance and minor repair consists of scheduled tasks that sustain a component’s level of service during a prescribed lifetime ("Preventative Maintenance and Minor Repairs"). These tasks are usually done frequently and require a relatively constant amount of labor and materials. For purposes of this Lease and Operating Agreement, it is intended that the Association will take care of all Preventative Maintenance and Minor Repairs in accordance with the maintenance obligations set forth in this Lease and Operating Agreement. The cost of Preventative Maintenance and Minor Repair should be paid for and funded out of the Association's annual operations budget in accordance with Section 32. For purposes of this Lease and Operating Agreement, the parties estimate that the portion of the Annual Replacement Value Funding (1.5%) allocated to Preventative Maintenance and Minor Repair is approximately 0.5%.

b. Unscheduled Maintenance. Unscheduled maintenance consists of service calls, emergency response, and other tasks that cannot be individually anticipated ("Unscheduled Maintenance"). While Unscheduled Maintenance cannot be predicted, these tasks tend to consume a steady level of annual facility resources and should be expected. For purposes of this Lease and Operating Agreement, it is intended that the Association will take care of all Unscheduled Maintenance in accordance with the maintenance obligations set forth in this Agreement. The cost of Unscheduled Maintenance may be paid for and funded out of the Association’s annual operations budget or out of the Maintenance Reserve Fund, as more particularly described in Section 22. For purposes of this Lease and Operating Agreement, the parties estimate that the portion of the Annual Replacement Value Funding (1.5%) allocated to Unscheduled Maintenance is approximately 0.5%.

c. Renewal and Replacement. Renewal and replacement consists of component overhaul or replacement tasks ("Renewal and Replacement"). These tasks extend a component’s lifetime and generally reset the schedule for Preventative Maintenance and Minor Repair obligation. These tasks tend to be expensive, infrequent, and require specialized expertise and equipment. For purposes of this Lease and Operating Agreement, it is intended that the Association and the RDA will share the obligation of taking care of Renewal and Replacements obligations in accordance with the allocation of maintenance obligations set forth in this Agreement. The cost of Renewal and Replacement may be paid for and funded by the Association’s Maintenance Reserve Fund as described in Section 22, or the RDA’s Reserve Fund, as described in Section 26. For purposes of this Lease and Operating Agreement, the parties estimate that the portion of the Annual Replacement Value Funding (1.5%) allocated to Renewal and Replacement is approximately 0.5%.

20. Association's Operations Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future operations obligations set forth in this Lease and Operating Agreement ("Operations Reserve Fund"). The intent of the Operations Reserve Fund is to provide liquidity and appropriate cash reserves for Theatre operations. The Association shall retain the Operations Reserve Fund in a specially created fund to be maintained by the Association and used solely for operations and production costs as more particularly provided herein. The Association shall use its best efforts to allocate funds to the
Operations Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its operations obligations under this Lease and Operating Agreement. There is a minimum target balance for Operations Reserve Fund, as more particularly described in Section 21. The Operations Reserve Fund shall only be used to fund the Association's operations obligations set forth in this Lease and Operating Agreement. Allocations to the Operations Reserve Fund shall be subject to review and approval by the RDA in accordance with the provisions of Section 30 regarding the budget process. The Association may be required by the RDA as part of the budget process to utilize funds in the Operations Reserve Fund to pay for current or future operations obligations.

21. Operations Reserve Fund Minimum Target Balance. In order to ensure the Association has appropriate cash reserves for operations, the Association shall be required to maintain a minimum amount of funds in the Operations Reserve Fund as more particularly set forth herein. For purposes of this Lease and Operating Agreement, annual revenues shall be defined as the prior year's total gross revenues for the Association, including donations other than earmarked donations as more particularly described in Section 29 ("Annual Revenues"). The Association shall retain an amount equal to at least 10% of the total Annual Revenues in the Operations Reserve Fund ("Minimum Target Balance"). The Association shall provide the RDA with written notice of any withdrawal and/or use of funds within the Operations Reserve Fund below the Minimum Target Balance. In the event funds within the Operations Reserve Fund fall below the Minimum Target Balance, the Association shall be required to present a funding plan to the RDA addressing how the Minimum Target Balance will be met within a reasonable time. There is no maximum amount that can be contributed to the Operations Reserve Fund. The Total Target Annual Contribution to the Maintenance Reserve Fund shall be made prior to any contribution to the Operations Reserve Fund, as more particularly described in Section 23. Funds in the Operations Reserve Fund shall be verified annually through the audit.

22. Association's Maintenance Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future maintenance and repair obligations set forth in this Lease and Operating Agreement ("Maintenance Reserve Fund"). The Association shall retain the Maintenance Reserve Fund in a specially created fund to be maintained by the Association and used solely for maintenance and repair obligations as more particularly provided herein. The Association shall use its best efforts to allocate funds to the Maintenance Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its maintenance and repair obligations under this Lease and Operating Agreement. There is a minimum target balance and a required minimum annual contribution to the Maintenance Reserve Fund, as more particularly described in Section 23. The Maintenance Reserve Fund shall only be used to fund the Association's maintenance and repair obligations set forth in this Lease and Operating Agreement, including, but not limited to, the maintenance, repair or replacement of any buildings, grounds, landscaping, facilities and improvements associated with the Theatre and the Site. The primary purpose and intent of the Maintenance Reserve Fund is to create a substantial and sufficient reserve fund to be used for major, non-routine or unexpected maintenance, repairs and replacement obligations of the Association, including Unscheduled Maintenance and Renewal and Replacement costs as defined in Section 19. Routine and preventative maintenance and recurring repair and replacement projects should be budgeted for and funded out of the Annual Operating Budget, including Preventative Maintenance and Minor Repair costs as defined in Section 19. Allocations to the Maintenance Reserve Fund shall be subject to review and approval by the RDA in accordance with the provisions of Section 30 regarding budget review. The Association may be required by the RDA as part of the budget process to utilize funds in the Maintenance Reserve Fund to pay for current
or future maintenance and repair obligations. The Association shall provide the RDA with at least thirty (30) days’ prior written notice of any proposed withdrawal and/or use of funds within the Maintenance Reserve Fund.

23. **Maintenance Reserve Fund Total Target and Minimum Contribution.** In order to ensure that maintenance spending is addressed on a continuous basis, rather than waiting until a problem occurs, the Association shall be required to maintain a minimum amount of funds in the Maintenance Reserve Fund and shall be required to make a minimum annual contribution to the Maintenance Reserve Fund as more particularly set forth herein. For purposes of this Section, Annual Revenues is defined in Section 21 and Replacement Value of the facility is more particularly defined in Section 18. The total target funding balance ("Total Target Balance") for the Maintenance Reserve Fund is an amount equal to 2.5% of the Replacement Value of the facility, although it is acknowledged that this amount will fluctuate with various expenditures throughout the Term of this Lease. At a minimum, the Association shall retain an amount equal to 1% of the Replacement Value in the Maintenance Reserve Fund ("Minimum Target Balance"). If the Minimum Target Balance is not met, the Association shall be required to present a funding plan to the RDA addressing how the Minimum Target Balance will be met within a reasonable time. The Association shall be required to contribute to the Maintenance Reserve Fund on an annual basis an amount equal to 1% of the prior year’s Annual Revenues ("Minimum Annual Contribution"). In order to keep pace with the recommended industry standard maintenance allocation, the total target annual contribution for the Maintenance Reserve Fund is an amount equal to 0.5% of the Replacement Value of the facility ("Total Target Annual Contribution"). Except as otherwise expressly authorized by the RDA for extenuating circumstances, the Association must contribute the Total Target Annual Contribution to the Maintenance Reserve Fund before the Association can contribute funds to the Operations Reserve Fund, the Capital Reserve Fund, or funds expended for any other purpose. There is no maximum amount that can be contributed to the Maintenance Reserve Fund. The Minimum Annual Contribution to the Maintenance Reserve Fund shall be addressed in the budget and shall be paid annually on or by June 30th. The Association shall be responsible for determining and calculating its Annual Revenues in order to make timely payment of the Minimum Annual Contribution to the Maintenance Reserve Fund.

24. **Association’s Capital Projects Reserve Fund.** The Association may create a reserve fund for purposes of funding special capital projects or improvements ("Capital Reserve Fund"). If created, the Association shall retain the Capital Reserve Fund in a specially created fund to be maintained by the Association and used solely for special capital projects or improvements as more particularly provided herein. Except as otherwise expressly authorized by the RDA for extenuating circumstances, the Association may only allocate funds to the Capital Reserve Fund after the Total Target Annual Contribution has been made to the Maintenance Reserve Fund and the Minimum Target Balance has been met in the Operations Reserve Fund. Any allocation of funds to the Capital Reserve Fund must be approved by the RDA and must be tied to a list of specific approved capital projects or improvements. The Association shall provide the RDA with an annual accounting of the use of funds from the Capital Reserve Fund and evidence of appropriate use of funds for specific approved capital projects or improvements. If the Theatre’s Operations Reserve Fund or the Maintenance Reserve Fund are determined by the RDA to be drained or underfunded, the Association may be required by the RDA to transfer funds from the Capital Reserve Fund (other than specifically earmarked donations) to the Operations Reserve Fund and/or Maintenance Reserve Fund.
25. **RDA Rent Proceeds.** Monthly Rent shall be paid to the RDA. Rent proceeds shall first be used to reimburse the RDA for any actual expenditures or expenses incurred by the RDA for the construction, financing, maintenance, repair, alteration, or operation of the Theatre or the Site. Such reimbursement amounts may be retained by the RDA from the Rent without prior approval of the ACB. Any remaining Rent proceeds shall be used to fund the RDA Reserve Fund as more particularly provided in Section 26. Use of funds within the RDA Reserve Fund shall be subject to the specific conditions and limitations set forth in this Lease and Operating Agreement regarding the RDA Reserve Fund as set forth in Section 26.

26. **RDA Reserve Fund.** The RDA shall create a reserve fund to be used solely for the Theatre and Site as more particularly provided herein ("RDA Reserve Fund"). The RDA shall retain the RDA Reserve Fund in a specially created fund to be maintained by the RDA and used solely for the purposes set forth herein. There is a total target and minimum target balance requirement for the RDA Reserve Fund, as more particularly described in Section 27. The RDA Reserve Fund shall be funded with remaining Rent proceeds as set forth in Section 25. Nothing herein is intended to or shall obligate the RDA to separately fund the RDA Reserve Fund. The parties expressly acknowledge that the funding of the RDA Reserve Fund is solely dependent upon the payment of Rent under the terms of this Lease and Operating Agreement. It is the intent of the parties to fund not only the Association’s Operations Reserve Fund and Maintenance Reserve Fund, but also the RDA Reserve Fund, in order to provide an equitable distribution of funds for the long-term success and viability of the Theatre operations and the long-term maintenance, repair and replacement of the Theatre and the Site. As such, the Association agrees to pay Rent to the RDA in accordance with the stated intent of the parties as more particularly discussed herein and Section 12 regarding the use of public funds for the project. The RDA Reserve Fund shall only be used for investment, financing, maintenance, repair, replacement, expansion, alteration, enhancement, betterment or operation of any buildings, grounds, facilities, improvements, programs, fixtures and related equipment and accessories associated with the Theatre and the Site. It is expressly acknowledged that the primary purpose of the RDA Reserve Fund is to fund the RDA’s maintenance and repair obligations set forth in this Lease and Operating Agreement, including the RDA’s proportionate share of the Renewal and Replacement cost obligations as more particularly described in Section 19. Use of any portion of the RDA Reserve Fund shall be pre-approved by the ACB, which approval shall not be unreasonably withheld. The parties, together with the ACB, may adopt policies for prioritizing projects, repairs, replacements, betterments, capital improvements, etc., with respect to the use and expenditures of the RDA Reserve Fund. For purposes of prioritizing the use of the RDA Reserve Fund it is the parties’ intent to create a substantial and sufficient RDA Reserve Fund for the primary purpose of providing for future repair, replacement and capital improvements associated with the Theatre and the Site. It is not the parties’ intent that the RDA Reserve Fund be used for Preventative Maintenance and Minor Repairs, Unscheduled Maintenance, or any maintenance obligations of the Association, as set forth in this Lease and Operating Agreement, unless expressly authorized by the RDA for extenuating circumstances as deemed necessary and appropriate under the circumstances. It is not the intent, and the RDA shall not use any Rent proceeds or the RDA Reserve Fund for debt retirement or service with respect to the tax-exempt bonds.

27. **RDA Reserve Fund Total Target and Minimum Target.** The total target funding balance ("Total Target Balance") for RDA Reserve Fund is an amount equal to 5% of the Replacement Value of the facility, although it is acknowledged that this amount will fluctuate with various expenditures throughout the Term of this Lease. At a minimum, the RDA should
retain an amount equal to 2% of the Replacement Value in the RDA Reserve Fund ("Minimum Target Balance").

28. **Flow of Funds.** Consistent with the provisions set forth in Sections 12-27, the allocation of revenues from the operation of the Theatre shall be distributed and allocated in the following order of intended priority: (1) payment of Rent; (2) payment of current operations, production and maintenance costs and expenses; (3) allocation of funds to the Maintenance Reserve Fund; (4) allocation of funds to the Operations Reserve Fund; and (5) allocation of funds to the Capital Reserve Fund or other authorized purposes.

29. **Exception for Earmarked Donations.** It is the intent of the parties to encourage the donation of private funds to the Theatre to the broadest extent possible. In order to encourage such donations, the parties desire to provide an exception to Annual Revenues calculations for earmarked donations and the ability to use such donations for the intended purpose. The parties hereby agree that any legitimate private donation specifically earmarked for a particular specified purpose, such as donations for a specified capital improvement, specialized accessory or particular performance, may be used for the designated purpose without such donation being required to be designated as revenue for purposes of calculating the Annual Revenues. Any reservation of such earmarked donated funds shall be placed in a restricted account earmarked for the specified purpose in accordance with standard and acceptable accounting practices regarding the same. Any donations that are not earmarked for a particular specified purpose shall be deemed revenue for purposes of calculating Annual Revenues in the calendar year they are received.

30. **Budget Review and/or Approval.** The Association shall prepare and abide by an annual budget or budgets, as more particularly required herein, setting forth a plan of financial operations for the fiscal period, including an estimate of proposed expenditures for given purposes and the proposed means of financing them. All budgets shall be prepared in accordance with standard and generally accepted accounting principles. The Association shall prepare for each budget period, an annual overall operating budget ("Annual Operating Budget") and a budget for the following budgetary funds: (1) the Operations Reserve Fund; (2) the Maintenance Reserve Fund; and (3) the Capital Reserve Fund (collectively referred to as "Annual Budgets"). The Annual Budgets of the Association and any amendments thereto shall be submitted to and reviewed by the RDA and the ACB prior to becoming final. The Association shall prepare budgets for the coming year and submit the same to the RDA and ACB by November 25th. Prior to November 25th, the Association's staff will meet with RDA staff to review those portions of the Annual Budget relating to facilities maintenance. The RDA and ACB shall have until December 10th to review the budgets and to submit any recommended changes to the Association. The final Annual Budgets, as reviewed by the RDA and ACB, shall be adopted by the Association by December 20th of each year. Notwithstanding the foregoing, for the reasons set forth herein, the final budget for the Maintenance Reserve Fund and any portion of the Annual Operating Budget dealing with or relating to the current, future and on-going maintenance, repair or replacement of any portion of the Theatre or the Site, or any improvements, fixtures, equipment or accessories related thereto, shall be subject to approval by the RDA prior to final adoption by the Association. Such approval shall be provided in accordance with the above-described budget review process and time periods. The required budgetary review and/or approval by the RDA and the ACB as provided herein is not intended to micro-manage operations of the Theatre or to prioritize programs, but is intended to provide the RDA and the ACB with meaningful oversight in order to accomplish the goals and intent for the Theatre, and to provide for timely, appropriate and sufficient maintenance and repair of the

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*March 19, 2019*
Theatre and its facilities. Any amendments to the Annual Budgets shall be subject to review and approval by the RDA prior to final adoption by the Association.

31. **No Excessive Salaries.** The Association shall not pay any excessive salaries or wages, including benefits, to its executives or staff. In order to determine what is deemed excessive under the provisions of this Section, the salaries or wages paid by the Association to its officers and employees shall not exceed 110% of the average salary and/or wage paid to similarly situated and experienced officers or employees of public community theatres and nonprofit theatre associations or entities in Utah of like size, budget and experience to the Association and the Theatre. By allowing wages at slightly above comparative averages, the Association may negotiate for a stable and effective management staff.

32. **Preventative Maintenance Obligations.** The RDA has a long-term interest in preserving its building asset and desires to ensure through the provisions of this Lease and Operating Agreement that proper maintenance practices are used for the inspection and upkeep of the Theatre. Preventative maintenance is widely recognized to extend the life of buildings and equipment, prevent premature breakdown of systems and ensure efficient operation of systems and equipment. In consideration of the minimal Rent and for the purposes set forth in Section 12 regarding public funds used for the construction of the building, the Association's maintenance obligations set forth herein shall be a priority and shall be subject to the oversight and direction of the RDA. Specifically, the Association shall be required to pursue all of its repair and maintenance obligations under this Lease and Operating Agreement with due diligence and on a pro-active and preventative maintenance basis in order to ensure the long-term sustainability and maintenance of the Theatre. All maintenance and repairs shall be conducted in accordance with the approved Maintenance Plan as set forth in Section 33. All maintenance and repairs shall be performed by manufacturer authorized technicians and in accordance with the manufacturer's recommended maintenance schedule and warranty requirements for the particular equipment, improvement or system. Annual service contracts regarding maintenance and repair services shall be subject to review and approval of the RDA. The Association shall allocate funds equal to roughly 0.5% of the Replacement Value of the facility in the annual budget to be used for Preventative Maintenance and Minor Repairs. Such amounts and funding for Preventative Maintenance and Minor Repairs shall be reviewed by the RDA as part of the annual budget process set forth in Section 30.

33. **Comprehensive Maintenance Plan.** As part of the budget process each year, the Association shall be required to prepare a long-range comprehensive maintenance plan ("Maintenance Plan"), which plan shall include at least a five (5) year projection and plan for dealing with and paying for all current, future and on-going maintenance and repair obligations and issues with respect to the Theatre and the Site. The Maintenance Plan shall include, but is not limited to, addressing the Association's maintenance and repair obligations regarding parking facilities, drive aisles, landscaping, plumbing, electrical, mechanical, HVAC Systems, carpeting, painting, stage facilities, lighting, telecommunications, seating, etc. The Maintenance Plan shall include scheduled maintenance and inspection programs and documentation of maintenance work performed. The Maintenance Plan shall be based on manufacturer's recommended maintenance schedules, warranty requirements, industry standards, benchmarks and best practices for asset management and shall include maintenance modeling that considers the size, design, life expectancy, age and replacement cost of the Theatre. The Association is encouraged to invest in computer software program(s) that will assist in establishing and implementing the Maintenance Plan. The Maintenance Plan shall also address and provide recommendations regarding how to best estimate and use the reserve funds for known and unknown repairs and
maintenance obligations which may arise. The Association shall implement and comply with the maintenance schedules and requirements set forth in the approved Maintenance Plan. The Maintenance Plan shall be reviewed and is subject to approval by the RDA as part of the annual budget approval process. Drafts of the Maintenance Plan shall be prepared by the Association and submitted annually to the RDA with the tentative budget and reviewed in accordance with the review and approval schedule for the budgets as set forth in Section 30. Any amendments to the Maintenance Plan shall be subject to the review and approval of the RDA.

34. **Maintenance Budgeting and Funding Priorities.** The Association shall be required to provide for current maintenance and repair obligations in its Annual Operating Budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 30. The Association shall also be required to provide for known and unknown future and on-going maintenance and repair obligations in its annual Maintenance Reserve Fund budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 30. The Association shall be required to actually transfer funds to the Maintenance Reserve Fund, including required minimum contributions set forth in Section 23, in accordance with the approved budget, on an annual basis. The purpose of the annual funding of the Maintenance Reserve Fund is to ensure that sufficient funds are reserved to pay for known and unknown current, future and on-going maintenance and repair obligations as provided herein. All budgeting and allocations for maintenance and repairs shall be sufficient to meet the Association's obligations set forth in this Lease and Operating Agreement and shall be provided in accordance with the Maintenance Plan as approved by the RDA. As indicated in Section 28 regarding flow of funds, the funding of current maintenance obligations and the reservation of funds for future maintenance obligations is a priority of the parties and an express requirement of this Lease and Operating Agreement.

35. **Financial Transparency.** It is the intent of the parties that in order to accomplish the long-term viability of and the goals for the Theatre, financial information, budgets, salaries and expenditures of the Association relating to the operation of the Theatre must be transparent. The Association shall be required to hire and retain a professional accountant and/or financial advisor to assist the Association in fulfilling its obligations under this Lease and Operating Agreement. The RDA and ACB shall have the right and authority to review and obtain copies of the Association's financial records and documents at any time during regular business hours upon twenty-four (24) hours' notice to the Association in accordance with the provisions of Section 36.

36. **Record Keeping.** The Association shall keep true, separate, accurate, complete, and auditable records of all financial records, purchases, expenditures, revenues, donations, ticket sales, wages, etc. The form of all records shall be subject to the reasonable approval of the RDA and shall be the type retained in the ordinary course of business in accordance with standard and acceptable accounting practices. Such records shall be retained in Davis County, Utah, for at least five (5) years after the close of the calendar year in which they were generated or received. The Association shall permit the RDA and the ACB, from time to time as the RDA or ACB deems necessary, upon twenty-four (24) hours' notice, to inspect and audit, in Davis County, Utah, during regular working hours, all books and records of the Association. The Association shall supply the RDA and ACB with, or shall permit the RDA and ACB to make, copies of any such books and records. The Association shall provide the RDA and ACB with annual, audited financial statements of the Association's operations at the Theatre. The statements shall be provided to the RDA within one hundred fifty (150) days following the close of the Association's fiscal year. If the annual, audited financial statements indicate any error in
the calculations for Annual Revenues for the previous year, the minimum required contributions to the Maintenance Reserve Fund and Operations Reserve Fund payment shall be adjusted accordingly within thirty (30) days from the date of receipt of such annual audited statement.

37. **Responsibility for Operations.** The Association is solely responsible for all operations of and activities and uses conducted within the Theatre, including, but not limited to, staging productions and operating all venues within the facility. All such operations of and activities and uses within the Theatre shall comply with the provisions of this Lease and Operating Agreement. Rental of venues or facilities within the Theatre or on the Site shall be subject to and in compliance with the Facilities Rental Policy to be approved by the parties ("Facilities Rental Policy"). No venues or facilities within the Theatre or on the Site shall be rented to third parties until and unless a Facilities Rental Policy has been approved by the parties. Any rental of venues or facilities within the Theatre or Site shall be subject and subordinate to the terms and conditions of this Lease and Operating Agreement, including, specifically, the family values provisions of Section 48. Any rental agreement entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days’ notice should this Lease and Operating Agreement be terminated prior to its expiration. The Association shall be solely responsible, at its cost and expense, for any and all operating losses resulting from operations of and activities and uses conducted within the Theatre, and nothing in this Lease and Operating Agreement shall be construed to obligate the RDA to pay or reimburse the Association for any operating losses incurred by the Association hereunder. The Association shall ensure that no liens, rights or claims by third parties are registered, recorded or made against the Theatre or Site as a result of or attributed to the Association’s use or operation of the Theatre and Site.

38. **Utilities.** Electricity, natural gas, sewer, water, telecommunications, and other utilities necessary for use of the Theatre, including, but not limited to, regular house lighting, Theatre lighting, air conditioning, ventilation, heating, irrigation and culinary water, and other operations, shall be provided and paid for by the Association. All utility connections must be approved in advance by the RDA and shall be made by a representative of the RDA or a contractor approved in advance by the RDA. Following completion of the construction of the Theatre, any special or additional connections or wiring requested by the Association shall be provided for in accordance with this Section. Unless otherwise agreed to by the RDA, any such additional connections or wiring shall be installed at the sole expense of the Association. Connections, equipment, and services provided by the Association must comply with all applicable codes, regulations, and federal, state, and local statutes and ordinances. The RDA shall not be liable or responsible for any injury, loss or damage resulting from any interruption or failure of utilities or services provided. The Association shall not be entitled to any offset, reduction or return of any Rent as a result of any interruption or failure of utilities or services.

39. **Parking Facilities.** Parking facilities have been constructed on the Site and other lots within the Centerville Corporate Park (Amended) Subdivision ("Parking Facilities") in accordance with the approved Plans and Specifications. The design, use, maintenance and operation of the Parking Facilities shall comply with all the provisions and conditions of the Easements and Restrictions for the Centerville Corporate Park, as more particularly defined in Section 7 and set forth in the Easement and Restrictions, including, but not limited to, cross-access easements, maintenance, and assessment obligations. The Parking Facilities shall be managed and operated by the Subdivision Owners Association in accordance with the Easements and Restrictions as more particularly provided in Section 7. The Association shall be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers,
employees, agents and assigns, including reasonable attorneys’ fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach. The RDA reserves the right to regulate all traffic entering or exiting the Site or Parking Facilities, and to change, alter or modify any driveways, entry and exit points, parking stalls, and traffic circulation within or adjacent to the Site or Parking Facilities.

40. Parking Restrictions. In conjunction with the development of the Theatre and as required by the Centerville City Planning Commission as a condition of Final Site Plan approval for the Theatre, the RDA has entered into that certain Amendment No. 1 to the Grant of Easements and Restrictions for Centerville Corporate Park Subdivision, as more particularly described in Section 7, wherein the RDA has agreed to install and provide additional parking, driveway, landscaping, and pedestrian pathway facilities and improvements on a portion of Lot 2 of the Centerville Corporate Park Subdivision (now Lot 201 and Lot 202 of the Centerville Corporate Park (Amended) Subdivision). Pursuant to Section 16.8 of the amended Easement and Restrictions, the Owner, tenant, lessee or assign of Lot 3 of the Centerville Corporate Park Subdivision must require its employees and performers to park on Lot 3 between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday, exclusive of State and federally recognized holidays ("Daytime"). In addition, any tenant, lessee and assign of the Theatre is required to provide the Owners of Lot 1, Lot 201, and Lot 202 of the Centerville Corporate Park (Amended) Subdivision with at least seven (7) days’ prior written notice of any Daytime performances or activities anticipated to generate parking demand in excess of the on-site parking provided on Lot 3 and to receive prior approval of the same from the Owners of Lot 1, Lot 201, and Lot 202 ("Notice and Request"). The Association, its employees, invitees and guests, shall comply with all applicable provisions of the Easements and Restrictions, including, but not limited to, the Daytime employee parking restrictions and the Notice and Request provisions summarized herein and the ‘reasonable use provisions of Section 4.4(D)(2) of the Easements and Restrictions. The Association shall be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers, employees, agents and assigns, including reasonable attorneys’ fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach.

41. Landscaping. The Association shall be responsible for maintaining all landscaping and improvements on the Site. Any landscaping that is not maintained by the Subdivision Association in accordance with the Easements and Restrictions shall be independently maintained by the Association. All landscaping and associated improvements shall be maintained by the Association in compliance with applicable zoning regulations of the City of Centerville and shall be maintained in a clean, safe and aesthetically pleasing manner. Landscaping maintenance shall be addressed in the annual budgets and shall be performed in accordance with the approved Maintenance Plan as set forth in Section 33.

42. Support Personnel. The Association shall provide sufficient support personnel in the Theatre as required for the efficient and safe operation of the Theatre. "Support Personnel" shall include, without limitation, ticket takers, ushers, security personnel, first aid personnel, engineers, operators, custodial and maintenance personnel, audio/visual technician, and any other support personnel that are deemed necessary by the Association to operate the Theatre and to assure the safety of the patrons.

43. Service Contracts. The Association may, subject to the terms and conditions of this Lease and Operating Agreement, negotiate and enter into service contracts or agreements in the name, and at the sole cost and expense, of the Association, which are reasonably necessary or
appropriate in the ordinary course of business in operating the Theatre, including, but not limited to, contracts for utilities, ticketing, engineering services, staffing personnel, janitorial services, accounting or legal services and other services. Any ticketing service contracts shall be subject to and comply with the provisions of Section 49. Any contracts or agreements entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days’ notice should this Lease and Operating Agreement be terminated prior to its expiration.

44. **Concessions and Sales.** The Association may, subject to the terms and conditions of this Lease and Operating Agreement, negotiate and enter into contracts, agreements or licenses in the name, and at the sole cost and expense, of the Association, with third parties to operate concessions for the sale of novelties, food and beverages, retail merchandise, and other similar articles, and/or the rental of costumes, or for the advertising and promotion of products and services from or in the Theatre. Any such contracts, agreements or licenses entered into hereunder for the sale, operation, advertising, and/or promotion of products and services for the Theatre shall comply with the family values provisions of Section 48 of this Lease and Operating Agreement and shall comply in all respects to the advertising and signage restrictions set forth in Section 52. Any such contracts, agreements or licenses entered into hereunder shall be subordinate and subject to the terms and conditions of this Lease and Operating Agreement and shall be subject to the Facilities Rental Policy adopted by the parties, as applicable. Any such contracts, agreements or licenses entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days’ notice should this Lease and Operating Agreement be terminated prior to its expiration.

45. **Association Performances.** The Association shall provide professional community theatre productions and performances in the Theatre. The Association shall use its best efforts to provide such theatre productions and performances on a continuing basis, without interruption, in accordance with theatre industry standards. In no event shall the Theatre go without a performance provided by the Association for more than sixty (60) days in succession. In addition, the Association shall provide a minimum of two hundred (200) stage performances in the Theatre to the public per calendar year.

46. **Community Use.** It is also intended by the RDA and the public entities providing for the financing and construction of the Theatre, and agreed to by the RDA and the Association, that the Theatre and Site be available for community uses for presentation of entertainment, lectures, classes, and performances to the public and as a community center for area residents, high schools, senior citizens, youth or other segments of the community as a facility for carrying out charitable activities or other activities which serve the public-at-large ("Community Events"). The Association shall offer the Theatre for rent for Community Events, with appropriate staff, electricians and stage services, at rates no greater than those charged by similar private commercial facilities for comparable facilities and services, unless such rent would be incurred at a loss for the Association, in which case the Association may charge a reasonable rent to cover its costs associated with the rental of the Theatre or Site. The RDA, the City of Centerville, and the City of Bountiful shall be entitled to use the Theatre for their own Community Events in accordance with the scheduling provisions set forth herein; provided, such entities shall not be subject to any rental charge associated with such use of the Theatre. The Theatre shall be available for rent for Community Events on a first-come basis when the Association is not presenting its own performances or making necessary preparation for such productions or performances. Any rental of the Theatre for Community Events shall be subordinate and subject
to the terms and conditions of this Lease and Operating Agreement. Any rental of the Theatre for Community Events shall be subject to compliance with the stated purpose and intent of the Theatre regarding the type of entertainment to be presented in accordance with Section 48 and in accordance with the Facilities Rental Policy adopted by the parties.

47. **Contractor and Rental Insurance.** Prior to making or entering into any contract or rental agreement for services, concessionaires, sales, Community Events or other rental of the Theatre or Site, the Association shall require such contractors or lessees to furnish and maintain, at no cost to the RDA, insurance coverage in such amounts and coverage as determined by the RDA. The policies shall contain, or shall be endorsed to contain, provisions required by the RDA, including, but not limited to, the provisions set forth in Exhibit "C," attached hereto and incorporated herein by this reference ("Insurance Policy Requirements").

48. **Family Entertainment.** In accordance with the stated purpose and intent of this Lease and Operating Agreement, the parties hereby agree as follows regarding the type of entertainment to be presented in the Theatre. The entertainment to be presented and all other permitted activities and uses provided herein for the Theatre shall:

   a. Promote strong family values, strong moral values, close family ties, and the integrity of the family unit, and portray family life in a positive manner.

   b. Portray community involvement in a positive manner.

   c. Be priced in an affordable manner such that the performances in the Theatre may be attended by family groups of all economic levels in the community, including free or discounted performances for children, schools, or similar groups.

   d. Encourage volunteerism in the community by providing opportunities for volunteers of such a nature that individuals of all ages may participate in performances or related activities within the Theatre.

   e. Avoid material of a profane, sexual, lewd, violent, or similar nature, but rather, be of such a nature that individuals of all ages may attend all performances.

   f. Avoid material that is discriminatory or insensitive towards groups or individuals in the community, or that portrays any race, creed, color, disability, age, sex, or national origin in a negative fashion.

49. **Tickets.** For ticketed events, the Association may either provide its own ticket services or utilize a ticket service approved by the RDA to sell tickets and maintain an accounting of the proceeds in a form approved by the RDA. The RDA's approval of such form and process shall not be unreasonably withheld or delayed. If the Association provides its own ticket services, all funds received from the sale of tickets to an event shall be deposited into a segregated account, the records of which may be examined and audited as set forth in Section 36. The RDA reserves the right to inspect ticket accounting records at any reasonable time in accordance with Section 36.

50. **Rules and Regulations.** The RDA may promulgate, from time to time, reasonable rules and regulations regarding the use of the Theatre for the purpose of ensuring that
the Theatre operations are in keeping with the community standards and the family atmosphere of the Theatre, or to provide for public safety. Such rules or regulations shall not adversely limit or restrict the Association's rights under this Lease and Operating Agreement and no such rule or regulation that would directly or indirectly affect any right granted to the Association by this Lease and Operating Agreement shall be promulgated without the RDA giving prior notice of such action to the Association and allowing the Association at least thirty (30) days to comment on such proposed action, unless such promulgation is because of an emergency reasonably declared by the RDA.

51. **Crowd Safety.** The Association shall comply with all laws, ordinances, and Fire Code regulations regarding the number of persons that can safely and freely move about the Theatre, the provision of adequate emergency exiting and emergency signage, and the access of emergency vehicles and equipment to the Theatre. The Association agrees not to sell or dispose of, or permit to be sold or disposed of, any tickets for any scheduled performance in excess of the legal seating capacity of the Theatre. No props, equipment or any other item shall be stored or placed in front of any emergency exit door or exit route.

52. **Signage.** Any and all outdoor signage for the Theatre and the Site shall be subject to approval by the RDA and the ACB. In addition to approval of any and all signage by the RDA and the ACB, the Association shall be required to comply with all applicable Centerville City Ordinances regarding signage for the Theatre and the Site, including, but not limited to, obtaining a sign permit from Centerville City.

53. **Maintenance.** Except as otherwise provided in Section 54 regarding the RDA's obligation to replace the boiler and chiller associated with the HVAC Systems for the Theatre, the Association shall, at its own cost and expense, keep, operate and maintain the Theatre's interior rooms, spaces, walls, doors, windows, fixtures, equipment, appurtenances, and systems (including, but not limited to, plumbing, electrical, HVAC, sound, and lighting) in good working order and repair and in a neat, clean, safe, and sanitary condition, and in compliance with the requirements of all applicable laws, ordinances, rules, and regulations, at all times throughout the term of this Lease and Operating Agreement. The Association shall be required to maintain and repair the HVAC systems, including the heating, ventilation and air conditioning systems for the Theatre ("HVAC Systems"). The Association shall obtain and enter into an annual service contract with a reputable provider for the ongoing maintenance of the HVAC System. Such contract shall be subject to approval by the RDA to ensure sufficient maintenance scheduling and upkeep of the HVAC System and compliance with the Maintenance Plan. Except as otherwise provided in Section 54 regarding the RDA's obligation to make repairs and replacements that are necessary to maintain structural integrity of the Theatre, such as roofs, exterior walls, foundation and structural supports of the Theatre, the Association shall, at its own cost and expense, keep, operate and maintain the Theatre's exterior trim, doors, windows, fixtures, equipment, building materials, appurtenances, and systems in good working order and repair and in a neat, clean, safe, and sanitary condition, and in compliance with the requirements of all applicable laws, ordinances, rules, and regulations, at all times throughout the term of this Lease and Operating Agreement. The Association shall immediately act to effect repairs when malfunctions or defects arise and, without limiting the generality of any of the foregoing, shall keep the glass of all windows, including all exterior glass, and doors clean and presentable; replace all broken glass immediately; paint and refinish the interior of the Theatre at regular intervals; keep all exterior door closing mechanisms functioning; and keep all pipes, drains, toilets, fixtures, and basins clean and free of debris and any obstructions. The Association shall provide, or cause to be provided, and pay the cost of all recurring janitorial, custodial, and repair services. In accordance
with the provisions of Section 32, the Association shall provide and pursue maintenance and repairs for the Theatre proactively in order to ensure the long-term sustainability and operation of the Theatre. All maintenance and repairs shall be performed in a timely manner. All maintenance obligations shall be addressed in the annual budgets and shall be performed in accordance with the approved Maintenance Plan as set forth in Section 33. The RDA reserves the right to require the Association to take such reasonable protective measures as the RDA may deem necessary to ensure the preservation and protection of the Theatre and equipment. In accordance with and subject to the limitations set forth in Section 22 and Section 34, the Association shall maintain sufficient and necessary funds in the Association’s Maintenance Reserve Fund to perform the Association’s current and future maintenance obligations set forth in this Lease and Operating Agreement. Subject to the priority and use provisions set forth in Section 26 regarding the RDA’s RDA Reserve Fund, the Association may request assistance from the RDA through the use of funds in the RDA Reserve Fund for maintenance and upkeep to the Theatre.

54. Repairs and Replacements. Except as otherwise provided herein regarding the RDA’s obligation to make repairs and replacements that are necessary to maintain structural integrity of the Theatre and the RDA’s obligations regarding the replacement of the boiler and chiller associated with the HVAC Systems for the Theatre, the Association shall be responsible for making all needed repairs to the Theatre and its equipment and fixtures, including all repairs and replacements that are necessary to maintain the operational functioning of the Theatre. All repairs to the Theatre, equipment or fixtures, other than general wear and tear replacement or repairs not exceeding five thousand dollars ($5,000), shall require prior written approval from the RDA. In accordance with and subject to the limitations set forth in Section 22 and Section 34, the Association shall maintain sufficient and necessary funds in the Association’s Maintenance Reserve Fund to perform the Association’s current and future repair and replacement obligations set forth in this Lease and Operating Agreement. The Association may request assistance from the RDA through the use of funds in the RDA Reserve Fund for any repairs or replacements to the Theatre. As indicated in Section 26, it is the parties’ intention that the primary use of the RDA Reserve Fund is to be used for repairs and replacements for the Theatre as more particularly described herein. Requests for the use of funds from the RDA Reserve Fund for such purposes provided herein shall be given a priority. The RDA shall be responsible for capital repairs and replacements that are necessary to maintain the structural integrity of the Theatre, such as roofs, exterior walls, foundation and structural supports. The RDA shall also be responsible for replacing the boiler and chiller associated with the Theatre’s HVAC Systems. The RDA may use the RDA Reserve Fund for such capital repairs and replacements for the Theatre or the replacement of the boiler and chiller associated with the HVAC Systems.

55. Snow and Ice Removal. Snow and ice removal for the Easement Areas located on Lot 3, as defined in the Easements and Restrictions, including all parking facilities and drive aisle improvements, shall be maintained by the Subdivision Owners Association in accordance with the Easements and Restrictions. The Association shall be responsible for the removal of snow and ice and the sweeping and removal of debris at all the entrances to the Theatre and any areas of the Site that are not maintained by the Subdivision Owners Association as Easement Areas under the Easements and Restrictions.

56. Damages. Except as otherwise provided herein or approved by the RDA, the Association shall not injure, mar, or in any manner deface or damage the Theatre or any equipment contained therein, and shall not cause or permit anything to be done whereby the Theatre or equipment contained therein is in any manner injured, marred, damaged or defaced.
The Association agrees that it shall not stage any act or performance in which fire or flame is involved or use any flammable or combustible materials in or about the Theatre without proper industry standard practices and safeguards in place. Any such use of fire or flame in connection with any act or performance shall comply with applicable provisions of the Utah Fire Prevention and Safety Act, as set forth in Utah Code Ann. §§ 53-7-201, et seq., as amended, and any applicable rules and regulations. The Association agrees to keep the Theatre and facilities free from damage by the Association, its employees, agents, or invitees, including patrons. In the event of damage to the Theatre or equipment due to the acts or omissions of the Association, its employees, agents, or invitees, including patrons, the Association agrees to pay the RDA the sums needed to restore the Theatre or equipment or repair the damage, at the RDA's option.

57. Alterations, Improvements and Additions. The Association may make any alterations, improvements or additions to the Theatre or Site, at its sole cost and expense, subject to the prior written approval of the RDA. Prior to making any alterations, improvements or additions, the Association shall submit to the RDA, for review and approval, all schematic designs, design development drawings, and final working drawings and specifications for the undertaking of any and all construction, improvement, alteration, or addition in or on any portion of the Theatre or Site. All such designs, drawings, and plans shall be prepared by a licensed architect or engineer and shall contain the architect or engineer's signature and seal. The approval of such designs, drawings, and plans by the RDA shall not constitute an opinion or representation by the RDA as to their compliance with any law or ordinance or their adequacy for other than the RDA's purposes, and such approval shall not create or form the basis of any liability on the part of the RDA or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or for any failure to comply with applicable laws or ordinances. Any approvals by the RDA pursuant to this Section shall be in addition to (and not in lieu of) any other approvals required under applicable state and local building, fire, or life safety codes and Centerville City Ordinances. Subject to the priority and use provisions of Section 26 regarding the RDA Reserve Fund, the Association may request assistance from the RDA through the use of funds in the RDA Reserve Fund for any alterations, improvements or additions to the Theatre or Site. In addition to the traffic and parking alterations reserved to the RDA in Section 39, the RDA reserves the exclusive right to change, in any manner whatsoever, the number, appearance, dimension, and location of the walks, landscaping, parking and service areas on the Site. The RDA may use the RDA Reserve Fund for such changes to the Site.

58. Property of the RDA. All improvements, additions, and alterations made to the Theatre or the Site by the Association shall become the property of the RDA and upon the expiration or termination of this Lease and Operating Agreement shall remain in, and be surrendered with, the Theatre or Site without disturbance or injury. Personal property, trade fixtures, and equipment of the Association shall remain the property of the Association and may be removed by the Association upon the expiration or earlier termination of this Lease and Operating Agreement, subject to restoration obligations set forth in Section 69.

59. Completed Drawings of Alterations. As soon as possible after the completion of each improvement, addition, or alteration to the Theatre or Site, the Association shall deliver to the RDA a complete set of reproducible drawings, on Mylar sheets not smaller than two (2) feet by three (3) feet, reflecting the final as-built condition of said improvement, addition, and alteration, together with either the original or a copy of all maintenance and operation manuals necessary for the repair and maintenance of any structural, mechanical, or electrical building
system or piece of equipment installed in the Theatre or on the Site that is not considered removable personal property, trade fixture, or equipment of the Association.

60. **Electrical Wiring and Plumbing.** In addition to the utility connection provision of Section 38, no change shall be made to any permanent electrical wiring or other utility serving the Theatre prior to written approval from the RDA. Any approved alterations shall be made by a properly licensed electrical contractor or electrician, or plumbing contractor or plumber. The Association may modify or install temporary wiring or lighting as may be necessary to stage productions in the Theatre, provided that such wiring or lighting is in compliance with all applicable codes and regulations.

61. **Construction Insurance Requirements.** Prior to making any improvements, additions, or alterations to the Theatre or Site, the Association shall require its general contractor and subcontractors to furnish and maintain, at no cost to the RDA, during the full period of the making of any part of any physical addition, alteration, or improvement to the Theatre or Site, insurance coverage for workers' compensation, commercial general liability, and automobile liability in such amounts as determined are adequate by the RDA. The policies shall contain, or shall be endorsed to contain, provisions required by the RDA, including, but not limited to, the provisions set forth in Exhibit "C."

62. **Hazardous Waste.**

   a. For the purpose of this Lease and Operating Agreement, law or regulation ("Law or Regulation") shall mean any environmentally-related local, state, or federal law, regulation, ordinance, or order (including, without limitation, any final order of any court of competent jurisdiction of which the Association has knowledge) now or hereafter in effect, including, but not limited to, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act. Hazardous substance ("Hazardous Substance") shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination, or cleanup.

   b. The Association shall comply with every applicable Law and Regulation regulating any Hazardous Substance found in or about the Theatre or Site, and shall not cause to occur upon, in, or about the Theatre or Site, or use the Theatre or Site to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. The Association shall provide the RDA with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence the Association receives from, or provides to, any governmental unit or agency in connection with the Association’s handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous substance in or about the Theatre or Site.
c. If the Association violates any of the terms of this Section concerning the presence or use of any Hazardous Substance or the handling or storing of hazardous wastes, the Association shall promptly take such action as is necessary to mitigate and correct the violation. If the Association does not act in a prudent and prompt manner, the RDA reserves the right, but has no obligation, to act in its place, to come onto the premises, and to take such action as the RDA deems necessary to ensure compliance or to mitigate the violation. If the RDA determines that the Association is in violation of any Law or Regulation, or that the Association's actions or inactions present a threat of violation or a threat of damage to the Theatre or Site, the RDA reserves the right to enter the Theatre or Site and take such corrective or mitigating action as the RDA deems necessary. All costs and expenses incurred by the RDA, where an actual violation had or would have occurred, shall become immediately due and payable by the Association upon presentation of an invoice therefor by the RDA.

d. Upon forty-eight (48) hours' notice, the Association shall provide the RDA with access to the Theatre or Site to conduct environmental inspections and testing as deemed necessary by the RDA, at the RDA's expense. Except in the case of an emergency, the Association shall not conduct or permit others to conduct environmental testing in or about the Theatre or Site without first obtaining the RDA's written consent, which consent shall not be unreasonably withheld. In the event of an emergency, the Association shall immediately notify the RDA of the emergency and the actions taken. The Association shall promptly inform the RDA of the existence of any environmental study, evaluation, investigation, or results of any environmental testing conducted in or about the Theatre or Site whenever the same becomes known to the Association, and the Association shall provide a written copy of the same to the RDA within thirty (30) days after the preparation of any such material.

e. Prior to vacation of the premises, in addition to all other requirements under this Lease and Operating Agreement, the Association shall remove any Hazardous Substance that the Association or any of its employees, agents, concessionaires, or contractors or any of its contractors' subcontractors has placed in or about the Theatre or Site during the term of the Association's use of the Theatre and Site, and shall demonstrate such removal to the RDA's reasonable satisfaction.

f. In addition to any remedy provided above, the RDA shall be entitled to full reimbursement from the Association whenever the RDA incurs any cost resulting from the Association's violation of any of the terms of this Section, including, but not limited to, the cost of cleanup or any other remedial activity, fines, or penalties assessed directly against the RDA; injuries to third persons or other property; and loss of revenue resulting from an inability to lease or market the Theatre or Site due to its environmental condition as the result of the Association's violation of the terms of this Lease and Operating Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Lease and Operating Agreement).

g. In addition to all other indemnities provided in this Lease and Operating Agreement, and notwithstanding the expiration or earlier termination of this Lease and Operating Agreement, the Association agrees to defend, indemnify, and hold the RDA free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including, without limitation, cleanup or other remedial costs, and including attorneys' fees, costs and all other reasonable
litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation, arising from the existence or discovery of any Hazardous Substance in or about the Theatre or Site resulting from a violation of the terms of this Section or the migration of any Hazardous Substance from the Theatre or Site to other property or into the surrounding environment that is the result of a violation of the terms of this Section by the Association whether (1) made, commenced, or incurred during the term of this Lease and Operating Agreement, or (2) made, commenced, or incurred after the expiration or termination of this Lease and Operating Agreement, if arising out of an event occurring during the term of this Lease and Operating Agreement. The indemnification provided in this Section shall survive the expiration or earlier termination of this Lease and Operating Agreement. Notwithstanding anything contained herein, this Section shall not require the Association to indemnify the RDA against the RDA's negligence.

h. The RDA expressly acknowledges and discloses that chemicals, fertilizers and other substances were used on the Site in connection with the historic usage of the Site as a Centerville City municipal facility and ballpark. The RDA hereby agrees, for a period not to exceed fifteen (15) years from the Effective Date of this Lease and Operating Agreement, to indemnify and hold the Association harmless against any and all costs and liability solely from the cleanup or remediation of environmental contamination from the leaking petroleum underground storage tanks (LUST) which was located on the Site, Facility ID #3000032, Release Site EH1K. It is expressly agreed and understood that this indemnity shall not indemnify the Association for any consequential damages whatsoever, or for anything other than the costs and liability for actual cleanup or remediation of contamination from the identified leaking petroleum underground storage tank. This indemnity and hold harmless provided for in this Section 62(h) shall automatically expire fifteen (15) years from the Effective Date of this Lease and Operating Agreement. The RDA represents that its current board and staff employees have no knowledge of any other environmental contamination of the Site and no knowledge of any other environmental enforcement efforts or proceedings regarding the Site.

63. RDA Right of Access.

a. The Association shall provide the RDA with access to the Theatre and Site at all reasonable times, to inspect the same and to make any repair, improvement, alteration, or addition thereto.

b. In inspecting and in making repairs, improvements, alterations, or additions, the RDA may erect barricades and scaffolding inside and outside of the Theatre and may otherwise interfere with the conduct of the Association's business and operations, where such action is reasonably required by the nature of the work, and such interference shall not be deemed to be a breach or default under the Lease and Operating Agreement. The RDA shall use its best efforts to minimize interference with access to and from the Theatre and with the Association's business and operations in, on, or from the Theatre and Site.

c. The RDA shall have the right to use any and all means it deems proper to obtain entry to the Theatre in an emergency, without liability to the Association, except for any failure to exercise due care for the Association's property. Any entry to the
Theatre or any portion thereof obtained by the RDA by reasonable means shall not be
construed or be deemed, under any circumstances, to be a forcible or unlawful entry into,
or a detainer of the Theatre, or a termination of the Association's lease to use and occupy
the Theatre. The RDA agrees to use its best efforts to minimize interference with the
business and operations of the Association in, on, or from the Theatre when exercising its
rights under this Section.

64. Miscellaneous Covenants. The Association hereby agrees to comply with all
applicable federal, state, and local laws, rules, ordinances, and regulations while managing,
operating, or conducting activities in the Theatre and on the Site. The Association shall make an
effort to familiarize itself with these regulations. The Association shall not do, permit or
authorize others to do, any of the following:

a. Operate the Theatre in any manner in violation of the family values
provisions as set forth in Section 48 of this Lease and Operating Agreement, or for any
purpose other than as set forth herein.

b. Knowingly or intentionally engage in any act that, to an ordinarily prudent
person in the position of the Association, would be reasonably foreseeable to cause
substantial or irreparable damage to the Theatre.

c. Abandon the Theatre during the term of this Lease and Operating
Agreement.

d. Knowingly use or occupy, or knowingly permit the Theatre or Site, or any
part thereof, to be used or occupied, for any unlawful, disreputable, or ultra-hazardous
use (including the prohibited or unauthorized use, storage, or disposal of any Hazardous
Substance), or operate or conduct the business of the Theatre in any manner known to
constitute or give rise to a nuisance of any kind.

e. Knowingly do any act or take any action prohibited by or not authorized
by the Lease and Operating Agreement.

f. Make, authorize, or permit any material modifications or alterations to the
Theatre, except as expressly authorized by this Lease and Operating Agreement.

g. Authorize or permit permanent fixed signs or advertising on the exterior of
the Theatre without the express written permission of the RDA in accordance with
applicable provisions of this Lease and Operating Agreement and Centerville City
Ordinances.

h. Unless specifically authorized to do so by this Lease and Operating
Agreement, knowingly allow or authorize, directly or through an Affiliate, by action or
inaction, without the prior written consent of the RDA: (a) any material or substantial
extension of time for, or excuse of use or operating covenants under this Lease and
Operating Agreement; (b) any substantial modification, deferral, or waiver of payments,
revenue sharing, or other business terms of this Lease and Operating Agreement; (c) any
Assignment or transfer of interest requiring the RDA's consent under this Lease and
Operating Agreement; (d) any action that would invalidate or cause a default by the
Association under this Lease and Operating Agreement or excuse performance by the other party; (e) any termination of this Lease and Operating Agreement prior to the expiration of its term; or (f) any action to be taken as an agent or representative of the RDA.

65. Insurance Coverage. The Association, throughout the term of this Lease and Operating Agreement, shall maintain the following insurance coverage. All insurance policies required by this Section or this Lease and Operating Agreement shall comply with the Insurance Policy Requirements set forth in Exhibit "C."

a. Commercial general liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Theatre or Site in a minimum amount of Five Million Dollars ($5,000,000) combined single limit per occurrence, and not less than Five Million Dollars ($5,000,000) in the aggregate. The general aggregate limit shall apply separately to the Theatre and Site (or to the activities to be performed pursuant to this Lease and Operating Agreement), or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be at least as broad as Commercial General Liability, ISO Form CG 0001 (edition date of 2001 or newer) and shall specifically include an Additional Insured Endorsement naming the RDA and Centerville City, their officers, employees, representatives and agents.

b. If the Association owns any automobiles or uses automobiles in its normal course of business, it shall obtain automobile liability insurance against claims for death bodily injury, personal injury, and property damage in a minimum amount of Two Million Dollars ($2,000,000) combined single limit per occurrence and shall specifically include, at minimum, the following types of coverage: (i) Owned Automobiles; (ii) Hired Automobiles; and (iii) Non-Owned Automobiles.

c. Workers' compensation coverage in a minimum amount at no times less than as required by the workers' compensation laws of the State of Utah, and Employer's Liability limits of Two Million Dollars ($2,000,000) per injury.

d. Business interruption insurance in an amount ten percent (10%) greater than the projected Rent for the first year of this Lease and Operating Agreement, and in an amount ten percent (10%) greater than the previous year's total combined Rent for each year thereafter.

e. Under the original terms of this Lease and Operating Agreement the Association was required to obtain property and general insurance for the Theatre. Pursuant to amendments to the original terms, the RDA has agreed to obtain and maintain property insurance for the Theatre building as part of its public buildings coverage for so long as the RDA determines appropriate. If the RDA decides it is no longer willing to provide property insurance for the Theatre building, the Association shall thereafter be required to provide such property insurance. The RDA shall provide the Association with at least nine months’ notice of the RDA’s intent to terminate its obligation to provide property insurance and to transfer that obligation to the Association. During such period the RDA provides property insurance for the Theatre building, it is expressly acknowledged by the parties that the RDA’s property insurance does not provide coverage for property or equipment owned by the Association. The Association shall obtain and maintain additional insurance for personal property or other specialty fixtures
or equipment within the Theatre as deemed necessary and appropriate by the Association.

f. All coverage provided under the terms of this Lease and Operating Agreement shall be written on a "replacement cost basis" to ensure that coverage adjusts at least annually to meet current requirements for adequate insurance coverage.

g. Notwithstanding anything to the contrary herein, the Association shall provide and maintain insurance in a form and amount that, at a minimum, meets the immunity caps set forth in the Utah Governmental Immunity Act, as set forth in Utah Code Ann. §§ 63G-7-101, et seq., and any future amendments thereto. As provided under current law, the governmental immunity limits are adjusted each even numbered year based on the methodology set forth in Utah Code Ann. § 63G-7-604, as amended, and adopted by rule no later than July 1. The Association shall be required to annually review such governmental immunity caps and to annually increase its insurance coverage under the terms of this Lease and Operating Agreement accordingly.

h. Insurance coverage required herein shall be with a company licensed or authorized to do business in Utah. The insurance coverage shall be with a company or companies that maintain a Bests' Rating of at least A-XI.

i. All policies shall contain an endorsement listing the RDA and Centerville City, and their officers, employees, representatives and agents as additional insureds and shall contain a provision that such insurance shall not be canceled without a minimum of thirty (30) days’ prior written notice to the RDA Proof of insurance shall be provided to the RDA prior to Possession of the Theatre. If the Association fails to maintain the insurance required by this Lease and Operating Agreement and in accordance with Exhibit "C," the RDA is authorized to purchase such insurance coverage and to bill the Association for the cost of the same. The Association shall be required to pay for any invoiced insurance costs incurred by the RDA within thirty (30) days from the date of invoice.

j. The Association shall obtain and maintain any casualty or other insurance deemed desirable by the Association to protect the Association's facilities, equipment and property. The RDA shall have no liability for loss or damage to any of the Association's facilities, equipment or property, unless caused by the RDA's tortious conduct.

k. All insurance policies and coverage shall be written on a primary basis.

l. The Association shall provide the RDA, upon request, a copy of all insurance policies for the purpose of ascertaining their compliance with the requirements contained herein.

66. **Indemnification.**

a. To the fullest extent permitted by law, the Association shall indemnify, hold harmless, and, at the RDA's option, defend the RDA from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or
omission of the Association, including its agents, employees, independent contractors, concessionaires, invitees and performance patrons, in or about the Theatre or Site in connection with the Association's use of the Theatre and/or Site under this Lease and Operating Agreement. Employees of the RDA attending Association performances in their individual capacity shall be considered members of the general public.

b. As part of the consideration for this Lease and Operating Agreement, to the fullest extent permitted by law, the Association shall indemnify, hold harmless, and, at the RDA's option, defend the RDA from all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment that are brought, caused, alleged to arise, or obtained as a result of the Association's use or administration of its right to control the presentation of performances in the Theatre.

c. If the RDA, pursuant to the provisions of this Section, exercises its option to require the Association to defend the RDA, then the Association may participate in said defense for the purpose of ensuring that the attorney's fees and costs of defense are reasonable and necessary.

d. To the fullest extent permitted by law, the RDA shall indemnify, hold harmless, and, at the Association's option, defend the Association from and against all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment, including, but not limited to, attorney's fees or other liability, that are brought, caused, alleged to arise, or obtained for death or injury to any person or property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent acts or omissions of the RDA, including its agents or employees, when acting in their official capacity, in or about the Theatre.

e. Nothing in this indemnification provision shall be construed to prevent the RDA and/or the Association from raising any defense under the Governmental Immunity Act with regard to claims from persons not a party to this Lease and Operating Agreement.

f. Notwithstanding anything contained herein, the indemnity provisions of this Section shall not require the indemnitee to indemnify the indemnitee against its sole negligence, gross negligence and/or intentional tortious conduct.

g. The Association assumes full responsibility for equipment brought or used by it, and for the acts and conduct of employees, performers, and all other persons participating in a performance or event.

h. The Association agrees that its agents and employees involved in the preparation for, or presentation of, any Association production or performance shall not be considered employees or agents of the RDA for insurance purposes. The Association further agrees that in the event of a claim for benefits against the RDA made by one of the Association's agents or employees, the Association shall indemnify, defend, and hold harmless the RDA from any and all damages payable by the RDA as an employer under the Utah Workers' Compensation Insurance Act.
i. The indemnity provisions contained herein shall survive the expiration or termination of this Lease and Operating Agreement.

67. Remedies for Breach.

a. In the event either party fails to perform any obligation required by this Lease and Operating Agreement, whether imposed by law, ordinance, regulation, or otherwise, or violates any provision of this Lease and Operating Agreement, the other party shall notify the breaching party of such failure or violation and, except where impracticable, shall provide the other with a reasonable period to correct, remedy, or cease such failure or violation, which period shall not exceed thirty (30) days after the date of such notice, unless the nature of the notified party's obligation is such that more than thirty (30) days is reasonably required for its performance, in which case the notified party shall not be in default, if, within such thirty (30) day period, it commences the activity necessary to enable it to perform, and thereafter diligently undertakes such activity to its completion. Nothing in this Lease and Operating Agreement shall enable the Association to avoid liability for interest on any delinquent payments due to the RDA.

b. In the event the Association fails to correct, remedy, or cease such breach or violation within the time specified in the RDAs notice or time allowed under Subsection (a), above, the RDA may, at the RDA's option, terminate this Lease and Operating Agreement; reenter the Theatre; lease and license others to use the Theatre and receive rent and license fees therefor as if this Lease and Operating Agreement had not been made; provided that the Association shall remain liable for the full rental amount due to the RDA pursuant to this Lease and Operating Agreement when due, but may offset against such liability the amount received by the RDA as a consequence of such subsequent sublease or license. The RDA shall also have such other remedies as may be available to it, which shall include, without limitation, the right to injunctive relief to restrain any breach or violation, and the right to invoke any remedy allowed by law or in equity, including the right to money damages and consequential damages, but not including punitive damages. The RDA shall take reasonable measures to mitigate any damages.

c. In the event the RDA fails to correct, remedy, or cease such breach or violation within the time specified in the Association's notice or the time allowed under Subsection (a), above, the Association's sole remedy shall consist of the right to injunctive relief to restrain any breach or violation and/or specific performance.

d. At any time after termination of this Lease and Operating Agreement, the RDA may remove from the Theatre and retain or dispose of any Association property or item remaining in or about the Theatre.

e. The rights and remedies given to the RDA in this Lease and Operating Agreement are distinct, separate, and cumulative remedies, and none of them, whether or not exercised by the RDA, shall be deemed to be in exclusion of any of the others provided herein or by law or equity.

f. The provisions of this Section shall survive the termination of this Lease and Operating Agreement.
68. Receivership and Foreclosure.

a. The Association shall promptly notify the RDA in writing if it files a voluntary petition or has an involuntary petition filed against it under the bankruptcy laws of the United States of America or similar laws of any state, or if it makes an assignment for the benefit of creditors or if appointment of a receiver, trustee, examiner, custodian or other fiduciary is sought in any proceeding with jurisdiction over all or any part of its property including all or any parts of its business operations, fixtures or equipment within or affecting the Theatre.

b. Upon foreclosure, judicial sale or disposition, or other involuntary assignment or transfer by an assignee for the benefit of creditors, receiver, trustee, examiner, custodian or other fiduciary of all or a substantial part of the Association's business operations, fixtures or equipment within or affecting the Theatre, or upon the occasion of additional events which effectively cause termination of the Association's rights or ability to operate the Theatre, the Association shall notify the RDA of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that an assignment or transfer of the Association's interest has or will take place, and the provisions of this Lease and Operating Agreement governing such assignment or transfer including those of Section 73 shall apply.

c. The RDA shall have the right to cancel this Lease and Operating Agreement one hundred twenty (120) days after the appointment of a debtor, a debtor-in-possession, an assignee for the benefit of creditors, a receiver, trustee, examiner, custodian or other fiduciary with jurisdiction over all or any part of the Association's property including all or any part of its business operations or fixtures or equipment within or affecting the Theatre, whether in receivership, bankruptcy, or other action or proceeding, unless such proceeding shall have been vacated or dismissed prior to the expiration of said one hundred twenty (120) days, or unless: a) within such one hundred twenty (120) days debtor, debtor-in-possession, assignee for the benefit of creditors, receiver, trustee, examiner, custodian or other fiduciary shall have fully complied with all of the provisions of this Lease and Operating Agreement and remedied any existing violations and/or defaults; and b) within said one hundred twenty (120) days, such debtor, debtor-in-possession, assignee for the benefit of creditors, receiver, trustee, examiner, custodian or other fiduciary shall have executed an agreement, duly approved by the court having jurisdiction, whereby such party assumes and agrees to be bound by each and every provision of this Lease and Operating Agreement and gives reasonable and adequate assurance of its ability to perform all future obligations of this Agreement.

69. Termination. In the event of termination of the Lease and Operating Agreement, either voluntary or involuntary, the Association shall at its sole cost and expense remove all of its personal property, trade fixtures and other equipment and accessories owned by the Association from the Theatre and Site and repair any damages to the Theatre or Site caused by the Association's use of the Theatre and Site within thirty (30) days from the effective date of termination, normal wear and tear excepted. Any personal property, trade fixtures, equipment, or accessories remaining in the Theatre or on the Site longer than thirty (30) days after the effective date of termination shall be deemed abandoned and forfeited and may be removed and retained or disposed of or sold by the RDA. The Association shall be required to reimburse the RDA for any costs incurred by the RDA for such removal, disposal or sale of the Association's property, or for any costs incurred by the RDA to remedy any damages to the Theatre or Site caused by the
Association. In the event of termination of the Lease and Operating Agreement for any reason, either voluntary or involuntary, the Association may retain any remaining funds in the Association's Operations Reserve Fund, but shall transfer and donate any remaining funds within the Association's Maintenance Reserve Fund and Capital Reserve Fund to the RDA within thirty days from the effective date of termination. The RDA shall deposit all such funds from the Association to the RDA Reserve Fund as more particularly described in Section 26. The following Sections shall survive any termination of this Lease and Operating Agreement: Section 62 (Hazardous Waste); Section 65 (Insurance); Section 66 (Indemnification); Section 67 (Remedies); Section 68 (Receivership and Foreclosure); Section 69 (Termination); Section 79 (Risks and Liabilities); and Section 81 (Remedies at Law).

70. **Damage, Destruction or Condemnation.** If, during the term of this Lease and Operating Agreement, the Theatre or any substantial portion of the Theatre or Site is damaged, destroyed or if title to or use of the Theatre is lost due to an exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation and acts constituting inverse condemnation, such that the Theatre is rendered unusable, or in case of emergency, which in the reasonable determination of the Association and the RDA prevents the Theatre from being used for Association performances, the Association may stage theatrical performances at a site other than the Theatre during the period the Theatre is not usable. In the event of an occurrence described herein, which is not caused by any act or omission of the Association, the Association's rental payments to the RDA shall be suspended during the period that the Theatre is not usable, unless and to the extent the Association is entitled to receive reimbursement for such payments through business interruption insurance or some other form of insurance. Any condemnation awards shall be paid to the RDA. Nothing in this Lease and Operating Agreement shall limit the right of the Association to any separate insurance or condemnation award made for the Association's loss of business, for the Association's relocation expenses, or with respect to the Association's equipment and personal property. The provisions set forth herein are in addition to the Force Majeure provisions set forth in Section 104.

71. **Notice of Casualty.** The Association shall give written notice (the "Notice of Casualty") to the RDA immediately upon the occurrence of any event of damage, destruction, or emergency as set forth in Section 70 describing the nature and scope of any event described in Section 70. Upon the occurrence of an event of substantial damage, destruction, or emergency, the RDA shall determine, in its sole discretion, whether to: (1) repair and/or reconstruct ("Reconstruct") the Theatre, or (2) terminate this Lease and Operating Agreement. The RDA shall give written notice to the Association, delivered within ninety (90) days after the RDA's receipt of the Notice of Casualty, of its determination. If the RDA elects to Reconstruct the Theatre pursuant to this provision, the RDA shall Reconstruct the Theatre to a Performance Ready condition within a reasonable time under the circumstances. Once the RDA elects to Reconstruct, it shall commence and complete such reconstruction work with due diligence. If the RDA determines to terminate this Lease and Operating Agreement, then it shall give written notice to the Association of the termination of this Lease and Operating Agreement, effective as of the date of such notice. The RDA shall not be liable to the Association or in breach if this Lease and Operating Agreement is terminated as a result of damage or destruction of the Theatre as provided herein.

72. **Notices.** Unless otherwise expressly provided in this Lease and Operating Agreement, all notices, requests, demands, and other communications required under this Lease
and Operating Agreement shall be in writing and directed to the recipient at the address set forth in this Section. Such written communication shall be served personally or by certified mail, return receipt requested, postage prepaid, and addressed to the respective recipient listed below. Notice shall be deemed delivered upon receipt or refusal to accept delivery at the addresses specified in this Section. Each party may change its address and/or designated recipient by written notice given in accordance with this Section.

To the Association: 
Davis Performing Arts Association  
Attn: Executive Director  
525 North 400 West  
Centerville, Utah 84014

With a Copy to:  
Cathleen C. Gilbert  
P.O. Box 790  
Bountiful, Utah 84011

To the RDA:  
Redevelopment Agency of Centerville City  
Attn: Executive Director  
250 North Main Street  
Centerville, Utah 84014

73. Assignment by Association. The Association shall not assign, mortgage, pledge, or encumber the Theatre or Site in whole or in part, or permit the Theatre or Site to be used or occupied by others, except as otherwise expressly provided in this Lease and Operating Agreement, nor shall the Association assign any of its rights and obligations under this Lease and Operating Agreement without prior written notice to and approval from the RDA in accordance with the provisions of this Section. Written notice of any proposed assignment shall include the name of the proposed assignee and relevant information regarding the proposed assignee, including, but not limited to, evidence regarding factors to be considered by the RDA for the proposed assignment. The Association and/or proposed assignee shall also provide any other relevant information required by the RDA in connection with its review of the proposed assignment. The RDA shall review the proposed assignee's qualification and approve or deny the proposed assignee. The RDA, in its sole discretion, may consider any or all of the following in providing or withholding its approval of the proposed assignee: (1) financial capacity; (2) reputation as to integrity; (3) record, experience, and qualifications in owning and operating Theatre companies; (4) record and reputation in dealing with local government and community concerns; (5) status of the proposed assignee as a governmental entity or tax exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Service Code; and (6) any other factors and information the RDA reasonably deems to be relevant. To be a valid assignment under this Lease and Operating Agreement, and as a condition precedent to the effectiveness of the RDA's approval of any assignment hereunder, the assignee shall enter into a written assignment and assumption agreement acceptable to the RDA agreeing to assume all of the rights, interests, liability and obligations of the Association under this Lease and Operating Agreement, to cure any default committed by the Association, and to perform all of the terms and provisions of this Lease and Operating Agreement ("Assignment and Assumption Agreement"). The assignee shall also be required, prior to and as a condition precedent to the RDA's approval of any assignment hereunder, provide the RDA the requisite proof of insurance and bonding required by this Lease and Operating Agreement. Any attempted assignment in violation hereof shall be null and void.
74. **Assignment by RDA.** The RDA shall have the right and the authority to assign its rights and obligations under this Lease and Operating Agreement, in whole or in part, to the extent permitted by law. The RDA shall provide the Association with thirty (30) days’ prior notice of any such assignment by the RDA.

75. **Non-Appropriations.** The parties acknowledge the Utah Constitutional limitation on governmental entities in contracting for expenditures of revenues beyond the end of any fiscal year. All terms and provisions of this Lease and Operating Agreement shall be subject to such applicable Constitutional limitations including annual appropriations by the RDA.

76. **Taxes and Assessments.** The Association shall pay all applicable fees, charges, and taxes, both personal and property, if any, resulting from its possession, occupancy, management, and use of the Theatre and Site. In the event a possessory interest tax or privilege tax is imposed on the Association, such tax shall be the sole responsibility of the Association, and shall be paid by the Association.

77. **Recorded Encumbrances.** This Lease and Operating Agreement and the use of the Site and Theatre provided herein shall be subject to all easements, rights, encumbrances, appurtenances and related documents of record recorded against the subject property.

78. **Compliance.** This Lease and Operating Agreement is conditioned upon the terms and conditions contained herein and the Association's compliance with all applicable federal, state or local laws and ordinances that currently exist or may hereafter be enacted by applicable governmental agencies. The Association and its employees, agents, subcontractors and concessionaires shall obtain and comply with any required permits or licenses from applicable local governmental entities. The Association shall comply with all health, safety and environmental regulations with regards to the use and operation of the Theatre and Site.

79. **Risks and Liabilities.** Except for the RDA's responsibility and obligations regarding the structural integrity of the Theatre and the replacement of the boiler and chiller associated with the HVAC Systems as more particularly provided in Section 54, by entering into this Lease and Operating Agreement, the RDA is not assuming any risks or liabilities for the maintenance or operation of the Theatre or Site, which risks and liabilities shall be solely and separately borne by the Association. The Association shall take all necessary and prudent steps as required by law or based on reasonable care to keep the Theatre and Site in a safe condition and to protect the public, employees and invitees of the Theatre safe from harm. In no event shall the RDA be liable to the Association for any consequential, indirect, liquidated or special damages, or lost revenue or lost profits arising out of this Lease and Operating Agreement and the lease of the Theatre and Site to the Association.

80. **No Waiver.** Neither party shall be excused from complying with any of the terms and conditions of this Lease and Operating Agreement by any failure of the other party to seek compliance or enforcement of such terms and conditions. The failure of either party to exercise a particular remedy at any time shall not waive such party's right to terminate, assess penalties, or assert any other remedy provided herein, at law or in equity, for that or any continuing or future breach or default by the other party. Acceptance of Rent or continued performance does not waive full compliance with the terms of this Lease and Operating Agreement by the Association.

81. **Remedies at Law.** In addition to any other remedy provided herein, the RDA shall have the right to pursue any remedy provided by law or in equity in the enforcement or
dispute of issues hereunder, including, but not limited to, injunction, specific performance and breach of contract. The enumeration in this Lease and Operating Agreement of specific rights reserved shall not be construed as exclusive or as limiting such rights as the RDA may now or hereafter have in law. All RDA rights and remedies shall be non-exclusive.

82. **Attorneys' Fees.** In the event there is a default under this Lease and Operating Agreement, and it becomes reasonably necessary for either party to employ the services of an attorney or attorneys in connection with the default, either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorneys' fees incurred by such party and, in addition, such reasonable costs and expenses as are incurred in enforcing or terminating this Lease and Operating Agreement.

83. **Americans with Disabilities Act.** The RDA shall be responsible for ensuring the Theatre is constructed to meet accessibility standards applicable to public facilities in accordance with the Americans with Disabilities Act, as amended (the "ADA"). The Association shall be responsible for ensuring that the Theatre and Site are maintained and operated in compliance, in all respects, with the provisions of the ADA.

84. **Non-Discrimination.** The Association shall be responsible for ensuring that the Theatre and its performances, operations and employment relationships, comply, in all respects, with applicable federal, state and local laws governing non-discrimination in business and employment practices. The Association hereby covenants that there shall be no unlawful discrimination against any person or group of persons, on account of sex, marital status, race, color, religion, disability, creed or national origin, in the use, operation, maintenance or enjoyment of the Site and Theatre, nor shall the Association establish or permit such practice or practices of unlawful discrimination with reference to the selection, location, number or occupancy of performers, vendors, contractors, concessionaires or similar contracted or employed personnel or services for the Site and Theatre.

85. **Entire Agreement.** This Lease and Operating Agreement, including all exhibits attached hereto and all other documents incorporated herein by reference, contain and represent the entire agreement between the parties with respect to the subject matter herein and supersede all prior oral negotiations between the parties. No statement, promise, or inducements made by either party or their agents that are not contained in this Lease and Operating Agreement shall be binding or valid.

86. **Amendments.** This Lease and Operating Agreement may not be modified, supplemented, changed or amended, except in writing signed and duly executed by the parties.

87. **Construction of Agreement.** This Lease and Operating Agreement is the result of the joint efforts and negotiations of the parties hereto, and no single party is the author or drafter hereof. The parties assume joint responsibility for the form and content of this Lease and Operating Agreement and agree that this Lease and Operating Agreement shall be interpreted as though each of the parties participated in the composition of this Lease and Operating Agreement.

88. **Section Headings.** The section headings in this Lease and Operating Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the section to which they apply.
89. **Relationship of Parties.** It is understood that this Lease and Operating Agreement is a contract that has been negotiated and voluntarily entered into by the parties. Nothing contained in this Lease and Operating Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture between the parties or to impose a trust, partnership or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Lease and Operating Agreement. In no event shall the employees, agents and servants of the Association be considered to be the employees, agents or servants of the RDA, and in no event shall the employees, agents and officers of the RDA be considered to be the employees, agents or officers of the Association.

90. **No Representation of Sponsorship.** The Association agrees not to represent or advertise, or allow others to represent or advertise, that the RDA is sponsoring any event held by the Association in the Theatre, without the prior written consent of the RDA and approval of the advertisement or representation by the RDA.

91. **Utah Law.** This Lease and Operating Agreement shall be governed by and construed in accordance with the laws of the State of Utah and the laws of the United States of America. The parties agree that any judicial action associated with the Lease and Operating Agreement shall be taken in the Utah state or federal court of competent jurisdiction.

92. **Government Records Act.** All records received, created and maintained by the RDA under this Lease and Operating Agreement shall be maintained and accessed in accordance with the Utah Governmental Records Access and Management Act, as set forth in Utah Code Ann. §§ 63G-2-101, et seq., as amended.

93. **Severability.** If any portion of this Lease and Operating Agreement is held to be unenforceable, illegal, or invalid by a court or agency of competent jurisdiction, such unenforceability, illegality, or invalidity shall not affect the remaining enforceable, legal and valid portions of this Lease and Operating Agreement, and such remaining provisions shall continue in full force and effect to the extent that such remaining provisions can still be implemented reasonably and fairly.

94. **Binding Agreement.** The parties represent that when executed this Lease and Operating Agreement shall constitute legal and binding obligations of the parties and that each party has complied with all applicable statutes, ordinances, resolutions, by-laws and other legal requirements applicable in entering into this Lease and Operating Agreement. This Lease and Operating Agreement shall be binding upon the authorized successors, administrators and assigns of each of the parties.

95. **Authority.** The Association represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the State of Utah, that it has full authority to enter into and to perform the obligations and responsibilities of this Lease and Operating Agreement, and that it is not in default or violation of any licensing, permit, or similar requirement necessary to carry out the terms of this Lease and Operating Agreement.

96. **Nonprofit Status.** The parties expressly acknowledge that the Association is a Utah non-profit corporation. The Association has filed its articles of incorporation with the Utah Department of Commerce and has been duly formed and created under applicable laws of Utah.
The Association shall maintain at all times during the Term of this Lease and Operating Agreement its status as a valid Utah nonprofit corporation in good standing and shall perform its obligations and take such actions as may be necessary for the Association to obtain and remain a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code or such successor statutes as may be applicable, including all financial reporting requirements.

97. **Conflict of Interest.** The Association acknowledges and warrants that no RDA employee, official, or agent has been retained by the Association to solicit or secure this Lease and Operating Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of the Association, or to receive a commission, percentage, brokerage, or contingent fee or any other form of compensation.

98. **Copyrighted Material.** The Association warrants, in its own behalf and in the artist/performer's behalf, that all copyrighted material to be performed in the Theatre has been and will be timely and duly licensed or authorized by the copyright owner or its representatives, and the Association further warrants, in its own behalf and in the artist/performer's behalf, that any and all royalty fees arising from the use of copyrighted material in the performance have been and will be timely paid in full. The Association specifically agrees to fully indemnify, defend and hold harmless the RDA and its agents and employees against any losses or liabilities relating to copyright or trademark violations or claims arising from the Association's performances, activities, or other use of the Theatre or Site.

99. **Time of Essence.** Time shall be of the essence of this Lease and Operating Agreement. Whenever this Lease and Operating Agreement sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a violation, default and/or breach of this Lease and Operating Agreement.

100. **Financing.** The RDA reserves the right to engage in public or private financing for the purpose of funding, in whole or in part, the RDA's undertakings under this Lease and Operating Agreement. The Association shall reasonably cooperate with the RDA in such financing and shall execute any amendments to this Agreement or any other documents reasonably requested or needed by the RDA to facilitate such public or private financing; provided, the Association's rights are not adversely modified, impaired, or diminished by such modifications or its obligations increased.

101. **Tax-Exempt Bonds and Restrictions.** The construction of the Theatre was financed through tax-exempt sales tax revenue bonds. In order to maintain the tax-exempt status of the bonds, the use of Rent proceeds from the Theatre for debt retirement or service is prohibited. The parties shall not do anything with respect to the Theatre that would have an adverse impact on the tax-exempt status of the bonds.

102. **Third Party Beneficiaries.** The benefits, protections and obligations provided by this Lease and Operating Agreement shall inure solely to the benefit of the parties. This Lease and Operating Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

103. **Association Certification.** The Association certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any
Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it has not executed this Lease and Operating Agreement, directly or indirectly, on behalf of, or instigating or facilitating this Lease and Operating Agreement, on behalf of any such person, group, entity or nation. The Association hereby agrees to indemnify, defend and hold harmless the RDA from and against 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.

104. **Force Majeure.** Neither party hereto shall be liable for any delay or failure in the keeping or performance of its obligations under this Lease and Operating Agreement during the time and to the extent that any such failure is due to acts of God, acts of the United States Government or the State of Utah, fires, floods, or other casualties or causes beyond the reasonable control and without the fault or negligence of the party obligated to perform hereunder; provided the party seeking relief under the provisions of this Section: (1) notifies the other party in writing of a force majeure event within fifteen (15) days following the affected party's knowledge of the occurrence of the claimed force majeure event; and (2) promptly resumes the keeping and performance of the affected obligations after such cause has come to an end. Each party shall make every reasonable effort to keep delay in performance as a result of such a cause to a minimum. The provisions of this Section are intended to excuse either party from performance of its obligations hereunder during the time and to the extent such failure is due to specified grounds beyond such party's control, fault or negligence, and shall not otherwise relieve such party from its liability, insurance and indemnification obligations set forth in this Lease and Operating Agreement.

105. **Effective Date.** This Lease and Operating Agreement shall become effective upon the execution of this Lease and Operating Agreement by the respective parties ("Effective Date").

106. **Naming Rights.**

(a) Subject to the terms and conditions set forth herein, the RDA hereby assigns to the Association, during the term of this Lease and Operating Agreement and any extensions thereto, all right and authority regarding naming rights for the Theatre and all improvements and facilities related thereto, including, but not limited to, the building, and any theatres, performances, seats, rooms, halls, recital areas, conference rooms, offices, mezzanine and balcony areas, lobby areas, and public spaces located within and around the Theatre.

(b) The RDA hereby authorizes the Association to campaign for, negotiate and enter into naming rights agreements with interested parties or donors, subject to prior RDA review and approval of the name and the proposed naming rights agreement. All naming rights agreements shall be subject and subordinate to the terms and conditions of this Lease and Operating Agreement and all naming rights activities of the Association shall comply with the provisions of any Naming Rights policies as adopted by the parties.

(c) Any name or naming rights signage attached to the exterior of the Theatre or Site shall require approval of the RDA and shall be subject to submittal of all
construction drawings and specifications for the signage. The Association shall be responsible for obtaining any and all required permits for exterior signage.

(d) Subject to the terms and conditions set forth herein, the Association shall receive all proceeds and donations obtained through naming rights agreements. Notwithstanding anything herein to the contrary, naming rights funds shall be considered donations required to be included in the calculation of Annual Revenues, as used in this Agreement, and shall not be deemed an "earmarked donation."

(d) All proceeds and donations obtained by the Association through naming rights agreements may be retained by the Association; provided, the Association is able to make its Total Target Annual Contribution to the Maintenance Reserve Fund.

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

"RDA"
Redevelopment Agency of Centerville City

By: ________________
Clark A. Wilkinson, Chair

ATTEST:

_________________
Secretary

"Association"
South Davis Performing Arts Association,
dba Centerpoint Legacy Theatre

By: ________________
IIts: ________________

ATTEST:

_________________
Secretary

Approved as to Form:

Administrative Control Board

By: ________________
IIts: ________________
ASSOCIATION ACKNOWLEDGMENT

STATE OF UTAH
COUNCIL OF DAVIS

On the 9th day of May, 2019, personally appeared before me Amanda Henderson, who being duly sworn by me did say that (s)he is the Chairman of the Board of the Davis Performing Arts Association, a Utah non-profit corporation, and that the foregoing instrument was signed on behalf of said non-profit corporation by authority of a resolution of its Board of Directors and that said non-profit corporation executed the same.

Amanda Henderson
Notary

My Commission Expires:
May 1, 2022

Residing at:
Davis County
EXHIBIT “A”

SITE DESCRIPTION

All of Lot 3 of the Centerville City Corporate Park Subdivision, as amended and recorded at the Davis County Recorder’s Office, State of Utah.
EXHIBIT “B”

CENTERVILLE CORPORATE PARK
SUBDIVISION PLAT

AND

CENTERVILLE CORPORATE PARK (AMENDED)
SUBDIVISION PLAT
EXHIBIT "C"

INSURANCE POLICY REQUIREMENTS

The following are insurance coverage requirements for all insurance provided and required under the Theatre Lease and Operating Agreement. Where a specific form is listed, coverage shall be at least as broad as that provided by the form indicated. Any reference to ISO means the Insurance Service Office forms.

A Certificate of Insurance must be provided to the RDA and Centerville City with evidence of the following coverage. The RDA and Centerville City retain the right to request an actual copy of the policy or policies.

All insurance policies will comply with the following:
- 30 day notification cancellation provision
- Bests' rating of at least A- XI
- Carriers must be admitted and approved to conduct business in Utah

Commercial General Liability
Form: ISO CG 0001, edition date 2001 or newer, or its equivalent
- Written on an occurrence basis.
- Include a waiver of subrogation.
- Coverage will be primary. Any insurance maintained by the RDA or Centerville City will be excess of the Associations insurance coverages.

Limits: $5,000,000 per occurrence/aggregate with a per location aggregate endorsement or $5,000,000 per occurrence $10,000,000 aggregate without one.
Additional Insured Endorsement to include the RDA and Centerville City and its officers, employees, representatives and agents as additional insureds, on primary basis.

Automobile Liability (if applicable)
Limits: $2,000,000 per occurrence
Endorsements: To include coverage for owned, hired and non-owned vehicles

Workers' Compensation
Utah Statutory Coverage
Employers Liability Limits: $2,000,000
**Business Interruption**

Limit: At least 10% greater than the current year's Projected Rent plus the Variable Rent.

Form: At least as broad as ISO Special Form Coverage, and including Earthquake coverage.

**Property Coverage**

Limit: Replacement Cost

Form: At least as broad as ISO Special Form coverage, and including Earthquake coverage.

Endorsements: No coinsurance clause
**Bill To**
Centerpoint Legacy Theatre  
PO Box 62  
Centerville, Utah 84014

**REMIT TO:**  
American Mechanical Systems Service  
P.O. Box 22570  
Salt Lake City, Utah 84122

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**WE APPRECIATE YOUR BUSINESS, CALL 801-428-0400 WITH ANY QUESTIONS**

**Total**  
$9,927.92

**Balance Due**  
$9,927.92
SERVICE TICKET

Customer Name: CenterPoint Theatre
Address: 525 N 400 W
City: Centerville
State: Utah
Zip: 84104
Contact: Jansen

Job #: SR-20-21582-SS
Bldg # or Location:
Problem: Burner Repair Boiler #1
Unit Tag #: 1
Unit Model #: APS-459217
Unit Serial #: 6-08-0133

Service Details:
(2-19-20) We removed old burner assembly to access heat exchanger for cleaning. We flushed out heat exchanger until we saw clear water, then in removed exhaust manifold and cleaned it. We replaced gaskets and o-rings on burner assembly. We then installed new flame rod. Took apart float assembly and replaced o-rings. After boiler was reassembled we began checking for any leaks in system. When we started up boiler, we had difficulty time tuning. Inlet gas pressure would operate properly but Maxitor Differential regulator would not adjust. After several attempts we finally concluded that regulator needed to be replaced. Notified customer and began locating parts from supplier.

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CUSTOMER or his DULY AUTHORIZED AGENT hereby acknowledges receipt of the labor, material, and work described and certifies that he has personally inspected the same, all of which have been furnished and done in a satisfactory manner, and agrees that in the event it becomes necessary to enforce payment of the amount due and interest, customer will pay all costs and expenses incurred including a reasonable attorneys fee. All invoices not paid within thirty (30) days from date of invoice are subject to 1 1/2% per month FINANCE CHARGE (18% annum).