

Meeting Date: 3/17/2015

Report Type: Staff/Discussion

Report ID: 2015-00260

Title: Agreement: Studios for the Performing Arts (Reviewed 03/10/2015)

Location: 2420 N Street, District 4

Recommendation: Pass a Resolution 1) authorizing the City Manager or his designee to execute the Studios for the Performing Arts Sublease Agreement to sublease the Fremont building, at 2420 N Street in Sacramento, California, to the Studios Operating Company at a rental rate of \$1.00 per year, which sublease authorizes the City to expend up to \$5 million on renovations to the Fremont building for the project; 2) authorizing the City Manager or his designee to appropriate \$2.5 million from the Economic Development Fund (Fund 2031) to the Studios for the Performing Arts Capital Improvement Project (B13000400); and 3) authorizing the City Manager or his designee to deposit the proceeds of the loan repayment of Non-Interest Bearing Principal B by the Crocker Art Museum Association, as specified in the Loan Forgiveness and Deferred Repayment Agreement (City Agreement 2013-0860) into the Economic Development Fund (Fund 2031).

Contact: Jody Ulich, Director, (916) 808-5105; Leslie Wisniewski, Administrative Officer, (916) 808-8920, Convention & Cultural Services

Presenter: None

Department: Convention & Cultural Services

Division: CCS Administration

Dept ID: 17001011

Attachments:

- 1-Description/Analysis
- 2-Resolution
- 3-Sublease

City Attorney Review

Approved as to Form
Kourtney Burdick
3/10/2015 5:15:08 PM

Approvals/Acknowledgements

Department Director or Designee: Jody Ulich - 3/6/2015 5:40:02 PM

Description/Analysis

Issue Detail: On December 17, 2013, City Council approved a lease agreement between the City and the Sacramento City Unified School District (“SCUSD”) for the lease of property at 2420 N Street (the “Fremont School Building”) as the new location for the Studios for Performing Arts. City Council also approved a sublease of the property to the Studios for the Performing Arts Operating Company (the “Studios Operating Company” or “SOC”), who would renovate the property and then further sublease it to its member organizations—the Sacramento Ballet and the Sacramento Region Performing Arts Alliance (“SRPAA,” formerly the Sacramento Opera and Sacramento Philharmonic)—and possibly to other arts and educational institutions.

Following the December 17, 2013 City Council meeting, SRPAA decided not to move forward with the project. Accordingly, the agreements were never executed by the City Manager. If the City Council approves the recommendations of this report and authorizes this project to move forward, the City Manager will execute the lease agreement with the District, which was previously approved by the City Council and the sublease as amended herein.

Under the original agreements, the City was to contribute \$2.5 million towards the \$6 million renovation and the SOC was to contribute the remaining funds. Upon completion of the renovation and the repayment by the Crocker Art Museum Association of a City loan, the City would contribute an additional \$2.5 million to the Studios project.

The SOC has been unable to raise the remaining funds needed for construction and has asked the City to provide its second \$2.5 million installment at the outset of construction. The project would be funded as follows:

- \$2.5 million from the CalEPA Fund (Fund 2801) for improvements, consistent with Council Resolution 2013-0144;
- Up to \$2.5 million from the Economic Development Fund ; and
- \$1.6 million (including costs already expended for the project) from the SOC and the SOC will be responsible for any cost overruns.

Within 60 days of the Commencement Date, the SOC will confirm that it has:

- \$1,144,167 cash on hand for the project
- A signed sublease agreement for 40% of the Exclusive Rentable Space to the Sacramento Ballet for a minimum of ten years beginning within 30 days of completion of the initial improvements
- Signed sublease agreements of at least 75% of the Exclusive Rentable Space (including the Sacramento Ballet) for a minimum of five years

Policy Considerations: The proposed actions in this report further the City’s goal of providing a diversity of first class arts and cultural facilities and programs.

Economic Impacts: None.

Environmental Considerations: This project is for the purpose of making improvements to the historic Fremont School for Adults building which is limited to the maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. This project is exempt under the California Environmental Quality Act Guidelines section 15331 – Historical Resource Restoration/Rehabilitation.

Sustainability: This agreement is consistent with the goals, policies, and targets of the City's Sustainability Plan.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The goal of the SOC is to bring together various arts organizations under one roof to share studio, office, rehearsal, performing, and classroom space. Working together in the same building will allow these groups to conserve resources as well as encourage communication and cooperation between the groups, thereby encouraging the fostering of innovative ideas for advancing the arts and arts education in the Sacramento community.

The underlying lease for the Fremont building for the Studios project was approved by the City Council on December 17, 2013. Under the lease, the City will lease the space for a 40-year term and then sublease the space to the SOC to house the Studios for the Performing Arts. The lease includes requirements that, in addition to the Studios' regular programming, the Studios Operating Company provide summer camps, performing arts internships, and scholarship funds for performing arts training for up to fifty students within the District, and office space for the SCUSD Visual and Performing Arts Director. The SCUSD approved the lease at their November 21, 2013 board meeting.

The proposed sublease that the Council is being asked to approve in this report, between the City and the Studios Operating Company for the Fremont School site, includes the following significant terms:

Operations

- The Studios Operating Company shall act as the manager of the Fremont School site and assume complete responsibility for the care and maintenance of the site.
- The Studios Operating Company shall pay \$1 per year in rent to the City.
- The arts organizations forming the Studios Operating Company and any other third party arts or educational organizations using the space shall execute sub-subleases subject to the same terms as the Studios Operating Company sublease. All sub-subleases shall be approved in writing by the SCUSD prior to execution.
- Use of the site shall be consistent with Education Code section 10900 et seq. related to educational activities.

- The Studios Operating Company shall establish an Operating Fund with a minimum initial deposit of \$55,000 and by the end of the third year of occupancy increase the reserve to \$126,000 or six months' worth of operating expenses, whichever is greater, for regular operating expenses including general repairs and maintenance.
- The Studios Operating Company shall establish a Capital Reserve Account with a minimum initial deposit of \$20,000 and maintain a minimum balance of \$15,000. Monthly contributions to the reserve shall be no less than \$1,500. This reserve is for extraordinary and substantial repairs and replacements above and beyond regularly-scheduled maintenance.
- The City and SCUSD shall each have a representative on the Studios Operating Company Board of Directors.

Staff has reviewed the Studios' operating proforma and believe it is a workable model based on best practices at other similar facilities in the region. The proposed tenants have been covering rent that is similar to what will be required at the Studio project. The Studios will establish a capital reserve to cover major repairs. In addition, an operating reserve will be established to cover unforeseen operating needs. To maintain revenue, the Studios will utilize adjustable leases to cover operating expenses. Operating cost models are based on actual past usage of the present facility when it was operated as an adult learning center.

Proposed Tenants

Currently, five organizations have executed letters of intent to lease a total of 82% (a total of 38,201 sq. ft.) of the Studios space – Sacramento Ballet, Capital Stage Company, Alliance Francaise de Sacramento, Calidanza- Children's Chorus, and the Brazilian Center for Cultural Exchange. All of these organizations have been in operation for over five years with the longest tenure being that of the Sacramento Ballet, which has served the Sacramento community for over sixty years.

Staff has reviewed the financials of each of the organizations to compare their current rent with that being proposed at the Studio space. With the exception of Capital Stage that is adding to their existing space, the other tenants are relocating to this space with terms that are generally comparable to their existing rental terms. Under the proposed lease terms, however, all of the operating costs will be divided among the tenants based upon the amount of space they occupy. This may result in rent fluctuations above what the organizations currently experience if there is variance in the amount of total space occupied. The tenants are currently operating in a positive position (other than the Children's Chorus which experienced a slight deficit last year). Most of the organizations have minimal operating reserves which is not optimal but typical of small arts organizations.

The tenants will be responsible for their own tenant improvements which should be negligible other than the improvements needed for the Ballet. Though exact cost figures have not been developed, the Ballet's costs are estimated to be in the \$100,000 range with those funds coming from a fundraising campaign which has recently initiated. Alliance Francaise de Sacramento has earmarked funds from their retained earnings for the improvements.

Improvements to the Building

- Improvements include the renovation of the site into dance studios, rehearsal and performance facilities, classrooms, offices, common use areas, and building systems to provide for the relocation of the Sacramento Ballet and other arts organization into the building.
- Improvements to the site must begin within three months of the sublease commencement date and must be completed within one year.

Project Funding

- The City is to contribute up to \$5 million for the improvements from sources as follows:
 - \$2.5 million from the CalEPA Fund for the improvements, consistent with Council action in Resolution No. 2013-144;
 - Up to \$2.5 million from the Economic Development Fund.
- The Studios Operating Company is to contribute the remaining cost of the Initial Improvements.

The City Council previously approved the suspension of competitive bidding for the sublease of the property to the SOC as well as the construction of improvements.

Financial Considerations: The Studios project is estimated to cost \$6,595,231 million, with the City contributing \$2.5 million from the Cal EPA fund, which was approved by the City Council on December 17, 2013, and \$2.5 million from the Economic Development Fund (Fund 2031). The remaining costs estimated at \$1.6 million will be funded by the SOC.

This report requests that Council approve the appropriation of \$2.5 million from the Economic Development Fund to B13000400 (Studios for the Performing Arts) and authorize the City Manager or his designee to disburse the funds in a manner consistent with the terms and conditions of the proposed Sublease.

When received, the proceeds of the loan repayment of Non-Interest Bearing Principal B by the Crocker Art Museum Association, as specified in the Loan Forgiveness and Deferred Repayment Agreement (City Agreement 2013-0860), shall be deposited into the Economic Development Fund 2031 as reimbursement for the \$2.5 million in expenditures from the Economic Development Fund.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO.

Adopted by the Sacramento City Council

STUDIOS FOR THE PERFORMING ARTS

BACKGROUND

- A. On December 17, 2013, the City Council authorized the City Manager to execute a lease agreement with the Sacramento City Unified School District (the "District") to lease the District's former Fremont School for Adults (the "Fremont"), located at 2420 N Street in Sacramento, to be used for the Studios for the Performing Arts. The City Council also authorized the City Manager to execute a sublease agreement ("Sublease") with the Studios for the Performing Arts Operating Company (the "Studios Company") to renovate the building and operate the Studios for the Performing Arts.
- B. The goal of the Studios project is to bring together various arts and educational groups under one roof where they can conserve resources and support one another by sharing studio, rehearsal, performing, and classroom space.
- C. Since the City Council's consideration of the project, the proposed tenant mix for the space has changed—namely, the California Musical Theatre and the Sacramento Region Performing Arts Alliance have decided not to move into the Fremont building at this time. Additionally, the Studios Operating Company (the "Studios") has been unable to raise sufficient funds to complete the necessary renovation of the building that would allow tenants to move in.
- D. To allow construction to proceed at this time, the City would like to modify the timing of its planned \$5 million contribution to the project. In lieu of contributing \$2.5 million to assist with the construction and \$2.5 million following construction (and upon the repayment of Non-Interest Bearing Principal B by the Crocker Art Museum Association pursuant to City Agreement 2013-0860, as stated in Resolution 2013-

0247), the City would like to contribute all \$5 million at this time to assist with construction.

- E. The changes in the proposed tenant mix and funding strategy have necessitated changes to the Sublease with the Studios Company.

BASED ON THE FACTS SET FORTH IN THIS BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute the Studios for the Performing Arts Sublease Agreement (attached as Exhibit A) to sublease the Fremont building to the Studios Company (attached as Exhibit A) at a rental rate of \$1.00 per year.
- Section 2. The City Manager or his designee is authorized to appropriate \$2.5 million from the Economic Development Fund (Fund 2031) to the Studios for the Performing Arts Capital Improvement Project (B13000400).
- Section 3. The proceeds of the loan repayment of Non-Interest Bearing Principal B by the Crocker Art Museum Association, as specified in the Loan Forgiveness and Deferred Repayment Agreement (City Agreement 2013-0860), shall be deposited into the Economic Development Fund (Fund 2031). This section 3 supersedes any inconsistent language in Resolutions 2013-144 and 2013-0247 regarding the City's use of loan proceeds from Non-Interest Bearing Principal B.



Requires Council Approval: No YES Meeting: 3/17/15

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: Agreement	PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 5,000,000.00		Original Doc Number:
Other Party: Studios for the Performing Arts Operating Company		Certified Copies of Document::
Project Name: Studios for the Performing Arts		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:

Department Information

Department: Convention & Cultural Services Division: Admin
 Project Mgr: Leslie Wisniewski Supervisor: Jody Ulich
 Contract Services: Date: 3/4/15 Division Mgr:
 Phone Number: 8920 Org Number: 17001011
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>L. Wisniewski</i>	3-4-15
Accounting:	<i>f</i>	<i>f</i>
Contract Services:		
Supervisor:		
Division Manager:		

City Attorney	Signature or Initial	Date
City Attorney:	<i>KCP</i>	3/5/15

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Jody Ulich Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

For City Clerk Processing

Finalized:
Initial: _____
Date: _____

Imaged:
Initial: _____
Date: _____

Received:
(City Clerk Stamp Here)

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

Department: Convention & Cultural Services
Division: Administration

STUDIOS FOR THE PERFORMING ARTS SUBLEASE AGREEMENT

**STUDIOS FOR THE PERFORMING ARTS SUBLEASE AGREEMENT
TABLE OF CONTENTS**

Section 2.	Sublease Term.	2
Section 3.	Use of Premises; Sub-Subleases.	2
Section 4.	Rent.	5
Section 5.	City’s Disclaimer of Warranties; Lessee’s Release of Liability.	5
Section 6.	Lessee’s Representations, Covenants, Warranties.	6
Section 7.	Compliance with Applicable Laws.	8
Section 8.	Repairs and Maintenance.	8
Section 9.	Mold.	11
Section 10.	Modifications to Premises.	13
Section 11.	Compliance with Environmental Laws.	14
Section 12.	Records.	15
Section 13.	Additional Lessee Responsibilities.	16
Section 14.	Damage, Destruction, and Eminent Domain; Use of Net Proceeds.	19
Section 15.	No Agency.	20
Section 16.	Taxes, Licenses, and Permits.	20
Section 17.	Indemnity.	21
Section 18.	Insurance.	22
Section 19.	Waiver.	25
Section 20.	Assignment.	25

Section 21. Default and Termination.....25

Section 22. Surrender of Premises.....29

Section 23. Nondiscrimination in Employee Benefits.....29

Section 24. Notices.....29

Section 25. Entire Sublease: Amendment in Writing.....30

Section 26. Authority.....30

Section 27. Binding Effect.....30

Section 28. Severability.....30

Section 29. Execution in Counterparts.....30

Section 30. Applicable Law; Venue.....30

Section 31. City Manager Authority.....31

Section 32. Amendments.....31

Section 33. Exhibits.....31

Section 34. Definitions.....31

STUDIOS FOR THE PERFORMING ARTS SUBLEASE AGREEMENT

This Sublease ("**Sublease**") is made as of _____, 2015, by and between the City of Sacramento, a municipal corporation ("**City**" or "**Landlord**"), and the Studios for the Performing Arts Operating Company, a California nonprofit public benefit corporation (the "**Company**" or "**Lessee**"), which represents the interests of arts and education groups, including the Sacramento Ballet (collectively referred to as the "**Member Organizations**"). The City and Lessee may be referred to collectively as "**Parties**" or in the singular as "**Party**," as the context requires.

Recitals

- A. The Sacramento City Unified School District ("**District**") is the owner of the property at 2420 N Street, Sacramento, California (the "**Premises**"), formerly known as the Fremont School for Adults. The District has leased the Premises to the City through a lease agreement (the "**Master Lease**") (attached as Exhibit F) for a term of 40 years. As contemplated by the Master Lease, the City, by virtue of this Sublease, will sublease the Premises to the Company.
- B. Upon completion of certain improvements (the "**Initial Improvements**"), described in Exhibit B, the Company intends to sub-sublease the Premises to its Member Organizations and other arts and educational groups whose use of the space is consistent with Education Code sections 10900 et seq. Bringing the Member Organizations together under one roof—viewed as a whole as the Studios for the Performing Arts (the "**Studios Project**")—will allow the groups to conserve resources by sharing studio, rehearsal, performing, office, and classroom space. Further, working in close proximity to one another will facilitate communication and cooperation between the Member Organizations, thereby encouraging the fostering of innovative ideas for advancing the arts and arts education in the Sacramento community.
- C. In December 2013, the City Council approved a proposed sublease of the Premises to the Company; however, the document was never executed due to changes in the composition of the Member Organizations and funding strategies for the Initial Improvements. The parties have chosen to proceed with this Sublease.
- D. The Company will serve as manager of the Premises and shall assume complete responsibility over the care and maintenance of the Premises, including the responsibility of ensuring the Premises' compliance with all Applicable Laws. If not for the Parties' agreement on this point, the City would not enter into this Sublease.

- E. In addition to subleasing the Premises to the Company at the nominal rate of \$1.00 per year, the City has agreed to support the Studios Project as outlined in City Council Resolutions 2013-0416, 2013-144, and 2013-0247. All city funding is contingent upon the continued viability of the SPA Project and its value to the community.

Based on the facts set forth in the foregoing recitals, the City and Lessee agree as follows:

Section 1. Grant of Sublease; Right of Entry.

- (a) *Grant of Sublease.* The City subleases to Lessee and Lessee subleases from the City the Premises. The Premises is approximately 46,725 square feet in size and is described further in Exhibit A.
- (b) *Right of Entry.* Lessee agrees that the City and District shall have the right, at all reasonable times, to enter upon and to examine and inspect the Premises. Lessee further agrees that the City and District shall have such rights of access to the Premises as may be reasonably necessary to cause the proper maintenance of the Premises by the City or District in the event of failure by Lessee to perform its obligations hereunder.

Section 2. Sublease Term.

- (a) *Sublease Term.* The initial term of this Sublease shall commence on the date it is made above ("Commencement Date"), and shall terminate on the termination date of the Master Lease. In no event shall the expiration date of the Sublease exceed the termination date of the Master Lease. Lessee shall be entitled to take possession of the Premises on the Commencement Date.
- (b) *Holding Over.* If Lessee holds over for any reason beyond the Initial Term or any Extended Term with the consent, expressed or implied, of the City, such holding over shall be month-to-month only, subject to the terms and conditions of this Sublease but shall not be a renewal thereof; and the consideration to be paid shall be at rates then prevailing under the terms of this Sublease.

Section 3. Use of Premises; Sub-Subleases.

- (a) *Permitted Use.* Lessee may occupy and use the Premises solely for the Studios Project and other uses that are consistent with Education Code sections 10900 ("**Other Uses**") and that have been pre-approved in writing by the City and District in each entity's sole discretion.

(b) *Prohibited Use.*

- (1) Lessee shall not use the Premises in any manner that is contrary to Applicable Laws.
- (2) Lessee shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Lessee shall, at Lessee's own cost and expense, provide any and all insurance coverage, subject to approval by the City, necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.
- (3) Lessee shall not commit any waste or any public or private nuisance upon the Premises.

(c) *Sub-Subleases.*

- (1) Lessee may sublet the Premises to the Member Organizations in furtherance of the Studios Project and to third parties for Other Uses as pre-approved in writing by the District in its sole discretion. In this context, the Member Organizations and approved third parties shall be referred to as "**Sub-Sublessees**" and the lease agreements they enter into with Lessee shall be referred to as "**Sub-Subleases**". The terms and conditions of each Sub-Sublease must be approved in writing by the District prior to execution. The District's approval may be granted or withheld in its sole discretion. The District shall use good faith efforts to render its decisions within 45 days of receiving a proposed Sub-Sublease. If, however, the District has not made a decision by that date, the District will continue to use good faith efforts to expeditiously render a decision. No Sub-Sublease shall be valid and no Sub-Sublessee shall take possession of the Premises until the District has given its written approval of the Sub-Sublease.
- (2) Lessee shall provide the business and financial condition of each proposed Sub-Sublessee to the District, as well as any additional information that the District may reasonably request.
- (3) Lessee shall charge each Sub-Sublessee a Minimum Rent that 1) corresponds to the Sub-Sublessee's pro rata share of "**Exclusive Rentable Space**" (based on

square footage), "Common Space," and "**Shared Space**"; and 2) when taken in the aggregate with all Sub-Sublessee rent, is sufficient to fully fund the Operating Expenses Fund described in Section 13(e). Lessee may not charge any Founding Member (as defined in Exhibit C) more than the Minimum Rent; Lessee may charge other Sub-Sublessees more than the Minimum Rent.

Exclusive Rentable Space is that space that is used exclusively by a Sub-Sublessee, including exclusive office, studio, and rehearsal space. Exclusive Rentable Space does not include **Shared Space**, which covers those areas that are used by more than one Sub-Sublessee such as shared office, studios and rehearsal space; common lounges; and other similar areas. Shared Space does not include **Common Space**, which includes hallways and circulation areas; public restrooms; elevators and their mechanical areas; HVAC units; viewing halls, which allow patrons to observe rehearsals; janitorial, service, and utility areas; and other similar spaces.

- (4) Lessee shall deposit each Sub-Sublessee's Minimum Rent into the Operating Expenses Fund (described in Section 13 below) on a monthly basis.
- (5) Lessee shall collect a deposit of a minimum of one-month's rent from each Sub-Sublessee and shall only return such deposits, provided the Sub-Sublessee is not in breach of its lease, upon the expiration of a full term of the applicable Sub-Sublease. Lessee shall collect the deposit no later than 30 days prior to a Sublessee's occupancy of the Premises.
- (6) The District's consent to one Sub-Sublease shall not be deemed consent to any subsequent Sub-Sublease.
- (7) No Sub-Sublessee shall have a further right to sublet the Premises.
- (8) Each Sub-Sublessee shall agree in the Sub-Sublease to comply with the terms and conditions of this Sublease as if they were the Lessee, including agreeing to indemnify the City and District to the same extent as set forth in Section 17 of this Sublease as well as complying with the insurance requirements set forth in Section 18 of this Sublease. In addition, each Sub-Sublessee shall agree to comply with the terms of the Master Lease, and agree that the Sub-Sublease shall terminate upon the termination of the Master Lease.

Section 4. Rent.

Lessee shall pay rent to the City in the amount of \$1.00 per year.

Section 5. City's Disclaimer of Warranties; Lessee's Release of Liability.

- (a) *Disclaimer of Warranties.* THE CITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PREMISES OR ANY PORTION OR ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO. LESSEE ACKNOWLEDGES THAT THE CITY IS NOT THE OWNER OF THE PREMISES OR A MANUFACTURER OF THE INITIAL IMPROVEMENTS, OR DEALER THEREIN, THAT LESSEE LEASES THE PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY LESSEE. IN NO EVENT SHALL THE CITY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING, OR USE OF THE PREMISES BY LESSEE OR ANY ITEM OR PRODUCTS OR SERVICES PROVIDED FOR IN THIS SUBLEASE.
- (b) *Lessee's Release of Liability.* For and in consideration of the City's Sublease of the Premises to Lessee at the nominal rate of \$1.00 per year and the City's contribution of City Funds (as outlined in Exhibit B), Lessee, on behalf of itself, administrators, and assigns, hereby waives and releases any and all claims of whatever sort or nature that may arise against the City, its officers, employees, agents, contractors and subcontractors, in connection with this Sublease and any damage to the Premises or injury to persons or properties arising from the installation, maintenance, operation, leakage, rupture, collapse, repair, or replacement of any improvements to the Premises; this waiver shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, Lessee expressly acknowledges that this

agreement is intended to release and extinguish, without limitation, all claims for loss of any sort or nature arising hereunder that Lessee does not know or suspect to exist.

Section 6. Lessee's Representations, Covenants, Warranties.

Lessee represents, covenants, and warrants to the City and to the District the following:

- (a) *Due Organization and Existence.* Lessee is a nonprofit public benefit corporation organized and existing under the laws of the State, has the power to enter into this Sublease and is possessed of full power to own, hold, lease and sell real and personal property.
- (b) *Authorization.* The laws of the State authorize Lessee to enter into this Sublease, and to enter into the transactions contemplated hereby and thereby and to carry out its obligations under this Sublease. Lessee has duly authorized the execution of this Sublease.
- (c) *No Conflict.* Neither the fulfillment of or compliance with the terms and conditions of this Sublease hereof or thereof, nor the consummation of the transactions contemplated by this Sublease hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which Lessee is now a party or by which Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee or upon the Premises.
- (d) *Approvals.* No consent or approval of any trustee or holder of indebtedness of Lessee, and no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.
- (e) *No Litigation.* There is no action, suit, arbitration, mediation or other proceeding, at law or in equity, before or by any court or Governmental Authority, pending or, to the best knowledge of Lessee's Knowledge, after reasonable inquiry, threatened against Lessee or any that is likely to result in an unfavorable decision, ruling or finding.
- (f) *Consent to Use Raised Funds for Initial Improvements.* Lessee represents and warrants that its Lessee's Contribution, as defined in Exhibit B, consists solely of funds for which

Lessee has permission from its donors to use on the construction of the Initial Improvements.

(g) *Information Supplied by Lessee.*

- (1) To Lessee's knowledge, the information heretofore supplied by Lessee to the City with respect to Lessee, its ownership structure, and the experience, financial condition and contractual rights and obligations of Lessee, and its principals was correct and complete in all material respects as of the date or dates submitted.
- (2) *Defaults.* Lessee is not in default under any "**Contractual Obligation**" or in violation of any Applicable Law.
- (3) *501(c)(3) Status.* Lessee is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and exempt from federal income tax under Section 501(a) of said code.
- (4) *No Agreement to Sell Assets, Etc.* Lessee has no legal obligation, absolute or contingent, to any Person to sell the assets of Lessee, or to effect any merger, consolidation or other reorganization of Lessee or to enter into any agreement with respect thereto.
- (5) *Government Charges.* Lessee has filed or caused to be filed all tax returns, which are required to be filed by it. Lessee has paid, or made provision for the payment of, all taxes and other Governmental Charges which have or may have become due pursuant to said returns or otherwise and all other indebtedness, except such Governmental Charges or indebtedness, if any, which are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided.
- (6) *Formation Documents.* Lessee's **Formation Documents** are in full force and effect, and there has been no breach by any of the parties thereto or event or condition that would otherwise give rise to a breach thereof. The Formation Documents delivered to the City are true, correct, and complete.
- (7) *Public Records Act.* Lessee agrees that all proprietary and other information received from Lessee by the City will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, if any information is set apart and clearly marked "trade secret" when it is

provided to the City, the City shall give notice to the Lessee of any request for the disclosure of such information. Lessee shall then have five days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by the City in any legal action to compel the disclosure of such information under the California Public Records Act. Lessee shall have sole responsibility for defense of the actual "trade secret" designation of such information. Lessee understands and agrees that any failure by Lessee to respond to the notice provided by the City or to enter into an agreement with the City, as described above, shall constitute a complete waiver by Lessee of any rights regarding the information designated "trade secret" by Lessee, and such information shall be disclosed by the City pursuant to applicable procedures required by the Public Records Act

Section 7. Compliance with Applicable Laws.

Lessee shall do all things necessary to conduct its affairs and carry on its business and operations in such manner as to comply with any and all Applicable Laws and to duly observe and conform to all valid orders, laws, or regulations of any Governmental Authority relative to the conduct of its business and the management and/or operation of the Premises.

Section 8. Repairs and Maintenance.

(a) *Repair and Maintenance Obligation.* Prior to construction of the Initial Improvements, Lessee, at its sole cost and expense, shall maintain and repair the Premises and all improvements and Modifications (defined in Section 10 below) located thereon in good condition and repair and in compliance with all Applicable Laws and consistent with other similar facilities. Upon completion of the Initial Improvements, at Lessee's sole cost and expense, Lessee shall maintain and repair the Premises and all improvements and Modifications located thereon in first-class condition and repair and in compliance with all Applicable Laws and consistent with other similar adaptive reuses of historic facilities. Subject to the City's prior written approval, and within any reasonable period specified by the City, Lessee shall, at Lessee's sole cost and expense, promptly make (or cause others to make) all necessary or appropriate repairs, alterations, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted.

(b) At Lessee's sole cost and expense, Lessee shall promptly comply with all Applicable Laws now in force or that may later be in force, including, but not limited to, all provisions of

the Americans with Disabilities Act (42 U.S.C. §§ 12101et seq.) and with any direction or occupancy certificate issued by the City, insofar as they relate to the condition, use, occupancy or Lessee's alteration of the Premises.

- (c) Lessee shall procure, maintain, and comply with all licenses, permits, orders, approvals, consents, and other authorizations required for the construction, use, maintenance and operation of the Premises and for the use, operations, maintenance, repair, and restoration thereof.
- (d) At the City's or District's option or if Lessee fails to make such repairs, the City or the District may, but need not, make the repairs and replacements. On receipt of an invoice from the City or District, Lessee shall promptly pay the requesting party its out-of-pocket costs incurred in connection with such repairs and replacements together with interest on such sums expended from the date incurred at a rate of 10% per annum as of the date the costs were incurred. Lessee waives and releases its rights, including the right to make repairs at the City's or District's expense, under California Civil Code sections 1941-1942 or any similar law, statute, or ordinance now or hereafter in effect.
- (e) Any violation of any rules, regulations, or instructions established by City that has not been corrected by Lessee within 30 days or such other time as may be reasonable after the mailing by City of a written notice of such violation shall be sufficient cause for the cancellation of this Sublease and revocation thereof without compensation or the payment of damages to Lessee.
- (f) *Annual Inspection.* The City or District may annually cause an inspector to inspect the Premises and prepare a report on the condition of the improvements, floors, walls, and such other elements of the Premises as the City or District requests. Lessee shall be responsible for the cost of the inspection, whether it be performed by City or District employees or an outside party hired by the City or District, chosen in the City's and District' sole discretion. In addition to documenting existing conditions, the inspector's report shall detail any and all deterioration of the Premises during the preceding tenancy period which, in the inspector's opinion, constitutes damage in excess of ordinary wear and tear. The costs incurred to repair and/or replace the excess damage shall be borne by Lessee.
- (g) *Capital Reserve Account.*

- (1) *Generally.* Lessee shall establish and maintain a Capital Reserve Account ("Account"), into which Lessee shall deposit \$1500 per month throughout the

Term of this Sublease. The Account shall be maintained by Lessee in a separate and exclusive bank account, designated solely for use consistent with the terms of this Subsection 8(g). The purpose of this Account is to fund (in whole or in part) extraordinary and substantial repairs and replacements above and beyond regularly-scheduled maintenance of the Premises and which repair or replacement costs are \$5,000 or more and such repairs and replacements have a useful life of five years or more ("**Capital Repairs**"), such as the repair, refurbishing, or replacement of HVAC, carpeting, flooring, and major equipment. The Account may not be used to cover the costs of Lessee's own employees performing such repairs and replacements.

- (2) *Draws.* By November 1 of each year, Lessee shall propose a list of items and/or projects (and their estimated costs) to be funded by the Account in the upcoming calendar year. The City, in its sole discretion, may approve or reject Lessee's proposal. Once the City has approved the proposal—and thus the proposal becomes the "**Approved Plan**"—Lessee may make expenditures in accordance with the Approved Plan throughout the year. The Approved Plan may be amended at any time by agreement of the parties.
- (3) *Emergency Draws.* In the event of an emergency, Lessee may spend up to \$10,000 per year from the Account for unauthorized expenditures, subject to the reporting requirements outlined in (4) below. The City may approve or reject Lessee's emergency draw. Should the City reject Lessee's emergency draw, Lessee shall reimburse the Capital Reserve Account within 30 days from the City's written notice rejecting the draw.
- (4) *Reporting.* Within 30 days of expending money from the Account, Lessee shall provide the City with a written report that details the use of the Account along with accompanying receipts supporting all expenditures. By the 20th of each month, Lessee shall provide the City with copies of the monthly bank statements for the Account. By April 1 of each year, Lessee shall provide the City with a written report that summarizes the deposits and withdrawals from the Account in the prior year.
- (5) *Remaining Balance.* At the termination of the Sublease, the remaining balance in the Account not already committed to a designated project or use, shall belong to Lessee, less amounts necessary to complete projects and uses in progress as of the termination of the Sublease.

(6) *Starting and Minimum Balances.* Not less than 45 days prior to occupying the Premises, Lessee shall deposit \$20,000 into the Account and must maintain a minimum balance of \$15,000 in the Account throughout the Term of the Sublease.

Section 9. Mold.

Lessee agrees to maintain the Premises in a manner that prevents the occurrence of an infestation of mold, mildew, microbial growths, and any associated mycotoxin ("Mold") in the Premises. Lessee agrees to:

- (a) Immediately fix or abate any water intrusions, such as plumbing leaks, drips, or sweating pipes;
- (b) Use all reasonable care to close all windows and other openings in the Premises to prevent outdoor water from penetrating the interior unit;
- (c) Clean and dry any visible moisture on the windows, walls, and other surfaces, including personal property, as soon as reasonably possible;
- (d) Keep the Premises free of dirt and debris that can harbor Mold;
- (e) Regularly clean and sanitize windows, bathrooms, kitchens, and other surfaces where water, moisture condensation, and Mold can collect;
- (f) Use exhaust fans whenever dishwashing or cleaning;
- (g) Maintain regular air flow and circulation throughout the Premises;
- (h) Limit the indoor watering of plants;
- (i) Prevent the overflow or release of water from the bathrooms or kitchens, including but not limited to toilets, sinks, kitchen appliances, and other receptacles of water;
- (j) Maintain and not obstruct ventilation in all locations of the Premises;
- (k) Prevent the closing of all plumbing;
- (l) Not engage in any conduct that promotes or creates Mold growth;

(m) Report within 48 hours the following to the City:

- (1) Any nonworking fan, heater, air conditions, or ventilation system;
 - (2) Plumbing leaks, drips, sweating pipes, wet spots;
 - (3) Overflows from bathroom, kitchen, or other facilities, including but not limited to, tubs, showers, shower enclosures, toilets, sinks, kitchen appliances, or other receptacles of water, especially in cases when the overflow may have permeated walls, floors, ceilings, or fixtures;
 - (4) Water intrusion of any kind;
 - (5) Any Mold or black or brown spots, or moisture on surfaces inside the Premises;
 - (6) Broken plumbing systems or standing water near structures;
 - (7) Any discovery of adverse health conditions or symptoms related to Mold growth at the Premises;
 - (8) Any discovery of allergies, predisposition to or heightened risk of adverse health reactions, or hypersensitivity to Mold growth on the Premises;
 - (9) Any odors consistent with Mold growth;
- (n) Further, Lessee agrees not to use any methods of Mold investigation, testing, remediation, and repair that are speculative and not generally accepted within the scientific community. As of the date of this Sublease, such speculative and generally unaccepted methods of investigation, testing remediation, and repair include (1) any use of settled dust vacuum sampling; (2) any use of interior wall cavity air sampling; (3) Lessee's use of do-it-yourself Mold investigation kits; and (4) use of any methods that have not been peer-reviewed and generally accepted within the scientific community.
- (o) To the maximum extent permitted by law, Lessee agrees to indemnify, defend, and hold harmless the City and the District, its officers and employees, and each and every one of them from and against any and all claims, demands, liabilities, judgments, actions, damages, causes of action or otherwise, in any manner related to the presence in the

Premises or the Building of Mold that was caused or contributed to by Lessee in any manner whatsoever, and regardless of whether the City's or District's active or passive negligence contributed to such presence.

Section 10. Modifications to Premises.

- (a) *The City and District's Consent to Modifications.* Lessee may not make any improvements, alterations, additions, or changes to the Premises (collectively, "**Modifications**") without first obtaining the City's and District's prior written consent, which may be granted or withheld in each entity's sole discretion. Lessee shall request such consent by written notice to the City and District, which must be accompanied by detailed and complete plans and specifications for the proposed work. As a condition of its consent to Modifications, the City and District may impose any requirements that either party considers desirable or necessary, including a requirement that Lessee provide the City and the District with a surety bond, letter of credit, payment bond, or other financial assurance that the cost of the Modifications will be made and paid when due.
- (b) *Costs of Review.* Lessee shall reimburse the City and District for the reasonable fees and costs of architects or engineers, whether they be City or District employees or outside consultants hired by the City or District to review the proposed Modifications.
- (c) *Compliance of Modifications with Applicable Laws.* Lessee shall cause all Modifications to comply with all Applicable Laws.
- (d) *Quality of Work.* All work relating to any Modifications to the Premises shall be done in a good and workmanlike manner, using new materials equivalent in quality to those used in the adaptive reuse of historic buildings. All work shall be diligently prosecuted to completion. Before beginning construction of any Modification, Lessee shall obtain the City and District's written consent and any building and other permits that may be required by Applicable Laws.
- (e) *Payment.* Lessee shall promptly pay all charges and costs incurred in connection with any Modifications to the Premises, as and when required by the terms of any agreements with contractors, designers or suppliers. At least ten (10) Business Days before beginning construction of any Modification to the Premises, Lessee shall give the City and District written notice of the expected commencement date of that construction to permit the City and District to each post and record a notice of nonresponsibility.

(f) *Liens.* Lessee shall not suffer or permit any lien of mechanics or material suppliers to be placed against the Premises with respect to work or services performed or claimed to have been performed for Lessee or materials furnished or claimed to have been furnished to Lessee or to the Premises on behalf of or for the benefit of Lessee. The City and District have the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. If any such lien attaches or Lessee receives notice of any such lien, Lessee shall cause the lien to be released and removed of record within ten (10) days after receipt of the written demand of the City or District. Since the Modifications are being made on publicly owned property, Lessee shall promptly resolve, or defend against, any stop notices with respect to the Modifications or services performed and shall defend and hold harmless the City and the District.

(g) *Initial Improvements.* In addition to the foregoing, the construction of the Initial Improvements shall be governed by the terms and conditions described in Exhibit B.

Section 11. Compliance with Environmental Laws.

(a) *Compliance.* Lessee shall comply with, and cause its contractors, agents, servants and employees and each tenant and other occupant and user of the Premises, and the contractors, agents, servants and employees of such tenants, occupants and users, to comply with each and every Environmental Law, as defined in Exhibit C, as applicable to the Premises. Specifically, but without limitation:

- (1) Lessee shall obtain and maintain, and cause each occupant and user to obtain and maintain, all permits, certificates, licenses and other consents and approvals required by each Environmental Law from time to time applicable to Lessee, each and every part of the Premises and/or the conduct of any business there at or related thereto;
- (2) Lessee shall not cause any Release on or off the Premises and will not suffer or permit any Release, or the presence of Hazardous Substances, on the Premises, except in compliance with applicable Environmental Law;
- (3) If Lessee causes a Release on or off the Premises, or if a Release occurs on the Premises during the Term of the Sublease in violation of any Environmental Laws, and such Release is not caused by the City or any employees, officers, contractors or agents thereof, Lessee shall promptly effect the clean-up of any

resulting Contamination in accordance with and as required by the provisions of all applicable Environmental Laws; and

(4) Within thirty (30) days after the date that any lien is imposed against the Leased Premises or any part thereof under any Environmental Law, Lessee shall cause such lien to be discharged or bonded or otherwise secured to the satisfaction of the City.

(b) *No Obligation of the City.* Notwithstanding any provision of this Sublease, the City shall not have any obligation to (i) cure any failure by Lessee to comply with any Environmental Law, (ii) take any actions or complete any actions taken, or expend any sums, to cure any failure by Lessee to comply with any Environmental Law or (iii) compel, enjoin or otherwise cause Lessee to do any of the same; nor shall the execution by Lessee, or the execution or acceptance by the City of this Sublease, or the existence or the exercise of any provision hereof or of any other document, operate to place upon the City any responsibility for the operation, control, care, management or repair of the Premises, or any responsibility for, or any right, power or ability to control or direct the storage, transportation, release, removal, containment, encapsulation, remediation, monitoring, or other disposition of any Hazardous Substance, or make the City an "operator" of the Premises within the meaning of any Environmental Law.

Section 12. Records.

(a) Lessee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions of or in relation to the business, properties and operations of Lessee. Such books of record and account shall be available for inspection by the City at reasonable hours and under reasonable circumstances.

(b) Lessee shall furnish to the City, with a copy to the District, within thirty (30) days of receipt by Lessee of its audited financial statements, and in any event within one hundred eighty (180) days after the end of each Fiscal Year, with copies of its complete financial statements, including a statement of financial position, a statement of activities, a statement of cash flow and such other financial reports and schedules as may have been delivered to Lessee in connection with such financial statements, together with (1) the report and opinion of an Independent Accountant stating that the financial statements have been prepared in accordance with generally accepted accounting principles (with such exceptions as are not objected to by the City) and that

such Independent Accountant's audit was performed in accordance with generally accepted auditing standards, and (2) a Certificate of the chief financial officer of Lessee, stating that no event which constitutes an Event of Default under this Sublease has occurred as of the end of such Fiscal Year, or specifying the nature of such event and the actions taken and proposed to be taken by Lessee, to cure such default.

- (c) Lessee shall also furnish to the City Lessee's unaudited quarterly financial statements within ninety (90) days of the end of each fiscal quarter.
- (d) If the City is not satisfied with the records or statements submitted by Lessee, the City shall have the right to make a special audit by auditors selected by City of the books and records required to be made and prepared by Lessee.

Section 13. Additional Lessee Responsibilities.

- (a) *Health and Safety.* Lessee shall, at its own expense, operate and maintain the Premises in a safe, clean, wholesome, and sanitary condition in accordance and consistent with all Applicable Laws. In addition, Lessee shall conduct the operation of the Premises in such a way as to prevent the escape of garbage and debris from the Premises.
- (b) *Business Plan.* Not less than 30 days prior to requesting City Funds (as described in Exhibit B), and every other November 1 thereafter, Lessee shall provide the City with a professional business plan, subject to the City's approval, with a copy to the District, for managing the Premises and the Studios Project. The plan shall include Lessee's business goals, the reasons it believes those goals are attainable, and a plan for reaching those goals. It shall also include Lessee's plan and strategy for managing its marketing, financial, operational, human resource, and legal needs. In addition, the plan shall include all relevant background information about Lessee, milestones, and challenges it has faced or anticipates facing in the future, whether they be legal or otherwise. The City must approve the business plan prior to releasing any City Funds.
- (c) *List of Sub-Sublessees.* At the time Lessee submits its Business Plan (as outlined in Section 13(b) above), Lessee shall also submit a list of its current Sub-Sublessees, the durations of the Sub-Subleases, and the Sub-Sublessees' rent payment history at the Premises. Lessee shall also identify any potential changes to the makeup of the Sub-Sublessee list and potential financial weaknesses.
- (d) *Operating Budget.* Not less than 30 days prior to requesting City Funds (as described in Exhibit B), and each November 1 thereafter, Lessee shall provide the City with a

proposed operating budget (“Operating Budget”), with a copy to the District, that details Lessee’s expected income, including rental income, generated from the Premises, along with a projection of all expenses for maintaining the Premises and managing the Studios Project in accordance with this Sublease. Lessee shall continuously budget and appropriate an amount for general repairs and maintenance that is sufficient to maintain the Premises in first-class condition. The City, in its sole discretion, may approve or reject the proposed Operating Budget. If the City does not approve the proposed Operating Budget, it has no obligation to release any City Funds. The Parties may agree to amend the Operating Budget at any time. Lessee shall act in accordance with the approved Operating Budget at all times.

(e) *Operating Expenses Fund.*

- (1) *Generally.* Lessee shall establish and maintain an Operating Expenses Fund (“**Operating Expenses Fund**”) that is sufficient to cover the cost of operating and maintaining the Premises in accordance with the terms of this Sublease (“**Operating Expenses**”), plus a “**Reserve Amount**,” as defined below. Lessee may use the Operating Expenses Fund to pay for expenses such as the cost of utilities, general repairs and maintenance (but not Capital Repairs as defined in Section 8), janitorial services, landscaping and grounds maintenance, elevator service and certifications, Lessee’s office expenses incurred at the Premises such as the cost of computers and copiers, and the salaries of Lessee’s staff and contractors that are dedicated solely to the operation and maintenance of the Premises.
- (2) *Fund Maintenance.* The Operating Expenses Fund shall be maintained by Lessee in a separate and exclusive bank account, designated solely for use consistent with the terms of this Section.
- (3) *Operating Expenses Fund Reporting.* Lessee shall provide the City, and a copy to the District, with the following: (1) By the 20th of each month, copies of the monthly bank statements for the Operating Expenses Fund; (2) Within 30 days of the end of each calendar quarter, a written report that includes (a) a comparison of actual expenditures and the Operating Budget for the prior calendar quarter; and (b) a statement of all deposits and draws from the Operating Expenses Fund during the prior calendar quarter, along with accompanying documentation (satisfactory to the City) to support the various expenditures; and (3) By April 1

of each year, a written report that summarizes the deposits and withdrawals from the Operating Expenses Fund the prior year.

(4) *Remaining Balance.* At the termination of the Sublease, the remaining balance in the Operating Expenses Fund not already committed to a designated expenditure, shall belong to Lessee, less amounts necessary to complete projects, uses, and expenditures in progress or incurred but not paid for as of the termination of the Sublease.

(5) *Reserve Amount.* Not less than 45 days prior to occupying the Premises, Lessee shall deposit \$55,000 into the Operating Expenses Fund to serve as the “**Reserve Amount.**” By the end of the third year of occupancy and throughout the remaining Term of this Sublease, Lessee shall increase the Reserve Amount to \$126,000 or six months’ worth of Operating Expenses, as determined by the City, whichever is greater. Lessee may not draw from the Reserve Amount absent the City’s written consent, which may be granted or withheld in the City’s sole discretion.

(f) *Corporate Governance.*

(1) *City and District Seats on Lessee’s Board of Directors.* Lessee shall reserve two seats on Lessee’s Board of Directors (“Board”) for one representative designated by the City and one representative designated by the District. Both representatives shall have the same powers as other members of the Board, including full voting rights, but their terms of office shall be unlimited.

(2) *Bylaws Amendments.* All proposed revisions to Lessee’s Bylaws, including those related to the makeup of the Board of Directors and governance of Lessee’s operations, shall be presented to the City for approval, which may be granted or withheld in the City’s sole discretion. The City shall not disburse any City Funds prior to approving the current bylaws. Such approval may be granted or withheld in the City’s sole discretion.

(3) *Operation of the Premises.* All decisions related to the operation of the Premises, including the distribution of Exclusive Rentable Space, Shared Space, and the Minimum Rent charged by Lessee shall be approved by Lessee’s Board of Directors pursuant to the terms and conditions of Lessee’s Bylaws.

- (g) *Utilities.* Lessee shall obtain and pay, before delinquency, all charges or assessments for telephone, water sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises.
- (h) *Management Requirements.* Lessee agrees that it will operate and manage its operation in a first class, businesslike manner. Lessee shall ensure that its employees conduct themselves at all times in a professional manner. Lessee shall maintain a staff adequate to operate and administer any services performed on the leased premises in a safe and quality manner. Lessee shall further ensure that a competent representative is in attendance on the Premises at all times during the hours of operation of the Premises to make decisions binding on the Lessee. In addition, Lessee shall furnish City with the name of person(s) who will be responsible for the daily on-site operation and management of the Premises.
- (i) *Security Devices.* Lessee may provide, at its own expense, any legal devices, installations, or equipment designed for the purpose of protecting the Premises from theft, burglary, or vandalism provided, however, that prior written approval for any such installation be first obtained from the City.
- (j) *Signs.* Lessee shall not place, maintain, nor permit on any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the express written consent of City, which may be withheld in its sole discretion. Furthermore, Lessee shall not place any decoration, lettering, or advertising matter on the glass of any exterior show window of the Premises without the written approval of City. If City consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Lessee shall maintain it in good appearance and repair at all times during the term of this Sublease. At the Termination Date, any of the items mentioned in this section that are not removed from the Premises by Lessee may be removed and destroyed by the City without any damages or liability attributable to the City.
- (k) *Master Lease.* This Sublease is subject to the terms and conditions of the Master Lease by and between the District and the City, attached as Exhibit F to this Sublease, the terms of which are hereby incorporated by reference into this Sublease, including but not limited to the Company's obligations under Exhibit B of the Master Lease.

Section 14. Damage, Destruction, and Eminent Domain; Use of Net Proceeds.

- (a) *Damage and Destruction.* If the Premises or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, Lessee,

at Lessee's sole cost and expense, but utilizing the proceeds of Lessee's insurance, if any, may repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction. However, at Lessee's discretion, in the event of such damage or destruction, Lessee may elect to immediately terminate the Sublease provided Lessee removes all damaged buildings and other improvements made by Lessee to the Premises as a condition to Lessee's termination of the Lease.

- (b) *Eminent Domain.* If the Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority threatening to exercise the power of eminent domain, the parties hereto agree that the Net Proceeds shall be split between Lessee, the District, and City in three equal shares.
- (c) *Prosecution of Claims for Net Proceeds.* The parties hereto agree that Lessee shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.
- (d) *Termination of Sublease Upon Damage, Destruction, or Condemnation of the Premises.* If the Premises are destroyed (in whole or in part), are damaged by fire or other casualty, or taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority threatening to exercise the power of eminent domain, the City, in its sole discretion, may terminate this Sublease. Such termination shall be treated as an Event of Default, as defined in Section 21.

Section 15. No Agency.

Except as City may specify in writing, Lessee shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Lessee shall have no authority, express or implied, pursuant to this Sublease to bind City to any obligation whatsoever.

Section 16. Taxes, Licenses, and Permits.

- (a) *Lessee's Obligation.* Lessee agrees to secure and provide any and all necessary licenses and permits, and shall pay before delinquency all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the Premises by any governmental tax-levying body because of the occupancy, use, or possession of the Premises (including but not limited to taxes on, or which shall be measured by, any rents or rental income, and taxes on Lessee's personal property,

subsequent to the commencement of the Term, and all installments of assessments that are due during the Term).

- (b) *Possessory Interest.* This lease may create a possessory interest subject to property taxation. Lessee shall be liable for the payment of any possessory interest tax, and Lessee shall be responsible for the payment of any tax associated with Lessee's business on the Premises, including but not limited to possessory interest and sales tax.
- (c) Prior to taking possession of the Premises, Lessee shall pay to the City's Revenue Division the business operations tax levied by City. The Business Operations Tax Certificate shall be provided by Lessee to the City's representative in Section 24 of the Sublease prior to taking possession of the Premises, and shall also be prominently displayed at all times on the Premises.

Section 17. Indemnity.

- (a) *Indemnity.* Lessee shall defend, hold harmless and indemnify the City and the District, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by the City or District's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by Lessee, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the City and/or the District, its agents, servants, or independent contractors who are directly responsible to the City and/or the District, except when such agents, servants, or independent contractors are under the direct supervision and control of Lessee. There shall be no joint and several liability between the City and the District in enforcing this Indemnity section.

(b) *Existence of Insurance Policies.* The existence or acceptance by the City of any of the insurance policies or coverages described in this Sublease shall not affect or limit any of the City's rights under this section, nor shall the limits of such insurance limit the liability of Lessee hereunder. The provisions of this section shall survive any expiration or termination of this Agreement.

Section 18. Insurance.

(a) *Required.* During the term of this Sublease, and until final completion and acceptance of any work required by this Sublease, Lessee shall maintain in full force and effect at its own cost and expense the insurance coverage required by this section. By requiring the insurance herein, the City does not represent that the coverage and limits will necessarily be adequate to protect the Lessee. It is understood and agreed by the Lessee that the required insurance coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnities granted to the City in this Sublease.

(b) *Review.* Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

(c) *Minimum Scope & Limits of Insurance Coverage.*

(1) *General Liability Insurance* is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than two million dollars (\$2,000,000). The policy shall include coverage for premises, operations, products and completed operations, contractual liability and liquor liability for the term of the policy. The policy shall include a fire legal liability limit of \$50,000.

Liquor liability insurance shall not be required if Lessee completes the following certification:

"I certify that alcohol will not be served on any premises leased under this agreement." RL (Lessee's initials)

(2) *All Risk Property Insurance* against all risks of loss to any tenant improvements, fixtures or equipment added to the Premises is required. All property insurance must be for replacement value and name the City as loss payee.

- (3) *Builders Risk Insurance* is required at the beginning of any major improvement project, determined at the sole discretion of the City, utilizing an all-risk coverage form, with limits equal to the completed value of the improvement project and no coinsurance penalty provisions.
- (4) *Workers' Compensation Insurance* with statutory limits and *Employers' Liability Insurance* with limits of not less than one million dollars (\$1,000,000) are required. The Worker's Compensation policy shall include a waiver of subrogation.
- (5) *Automobile Liability Insurance* providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Lessee.

No automobile liability insurance shall be required if Lessee completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." BR (Lessee initials)

- (d) *Additional Insured Coverage*. With respect to General Liability insurance, the City and the District, their officers, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of the Lessee including products and completed operations of Lessee and premises owned, leased or used by Lessee.
- (e) *Other Insurance Provisions*. The policies are to contain or be endorsed to contain the following provisions.

- (1) Lessee's insurance shall be primary as respects the City, and secondary as respect to the District, their officers, employees and volunteers. Any insurance or self-insurance maintained by the City or the District, their officials, employees or volunteers shall be in excess of Lessee's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City or the District, their officers, employees and volunteers.

(3) Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

(4) The City and the District will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

(f) *Acceptability of Insurers.* Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self insured retentions, policy terms or other variations that do not comply with the requirements of this section must be declared to City's representative and approved by the City Risk Management Division.

(g) *Verification of Coverage.*

(1) Lessee shall provide initial insurance documents to the City representative upon request, prior to execution of the final contract. All future insurance renewal documents shall be sent to:

EBIX BPO
212 Kent Street
Portland, MI, 48875
Phone: (517) 647-1700
Fax: (517) 647-7900
Email: certsonly@periculum.com

(2) Copies of policies shall be delivered to the City, and to the District, on demand.

(3) The City may withdraw its offer or cancel this Sublease Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Sublease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Lessee of this Sublease Agreement.

(h) *Contractors and Sub-Sublessees.*

(1) Lessee shall require and verify that all contractors, subcontractors, and Sub-Sublessees maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified above, except that (1) the General Liability

policy limits shall not be less than one million dollars (\$1,000,000); and (2) Sub-Sublessees shall also maintain All Risk Property Insurance that includes coverage for special perils for any improvements, fixtures and equipment added to the building. All property insurance must be for replacement value and name the City as loss payee.

- (2) Lessee shall provide the City with evidence of all contractors and subcontractors insurance, consistent with this Sublease, prior to the commencement of work.

Section 19. Waiver.

The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same of any other term, covenant, or conditions herein contained. The subsequent acceptance of any sum due hereunder by City shall not be deemed to be a waiver of any prior occurring breach by Lessee to pay the particular sum so accepted regardless of City's knowledge of such prior existing breach at the time of acceptance of such sum.

Section 20. Assignment.

The Parties agree that the purpose of this Sublease is to support and advance arts and arts education in the community. In recognition of this consideration, no assignment of this Sublease shall be permitted. Any attempt by the Lessee to assign, hypothecate, mortgage, or grant of control shall be void, and, at the election of City and without notice, render this Sublease null and void and of no further force and effect.

Section 21. Default and Termination.

(a) *Events of Default.* The following events are hereinafter called "Events of Default":

- (1) The failure of the Lessee to commence construction of the Initial Improvements within three months of the Commencement Date or to complete construction of the Initial Improvements within one year of the Commencement Date of this Sublease;
- (2) The failure of Lessee, within 60 days of the Commencement Date, to sub-lease at least 40% of the Exclusive Rentable Space to the Ballet for a minimum of ten years beginning within 30 days of the completion of the Initial Improvements. In such a case, the City shall not be obligated to contribute any funding to the Studios Project or construction of the Initial Improvements;

- (3) The failure of Lessee, within 60 days of the Commencement Date, to sublease at least 75% of the Exclusive Rentable Space (including the Ballet's space) for a minimum of five years (not including the Ballet's space, which shall be leased for a minimum of 10 years) beginning within 30 days of the completion of the Initial Improvements. In such a case, the City shall not be obligated to contribute any funding to the Studios Project or construction of the Initial Improvements;
- (4) Following completion of the Initial Improvements, the Premises ceases to operate as a studios and arts space for a period of six continuous months;
- (5) The failure by Lessee to perform any other obligation under this Sublease, if the failure has continued for a period of ten days after the City demands in writing that Lessee cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Lessee may have a longer period as is necessary to cure the failure, but this is conditioned upon Lessee's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Lessee shall indemnify and defend the City against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;
- (6) Any of the following: A general assignment by Lessee for the benefit of Lessee's creditors; any voluntary filing, petition, or application by Lessee under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Lessee without the City's prior written consent; or the dispossession of Lessee from the Premises (other than by the City) by process of law or otherwise;
- (7) The appointment of a trustee or receiver to take possession of all or substantially all of Lessee's assets; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Sublease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Lessee, or any general partner of Lessee if Lessee is a partnership, of (1) a petition to have Lessee, or any partner of Lessee if Lessee is a partnership, declared bankrupt, or (2) a petition for reorganization or arrangement of Lessee

under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

- (8) The abandonment of the Premises by Lessee;
- (9) Any representation or warranty made by Lessee in Section 6 of this Sublease is determined to have been false or misleading in any material respect at the time made; and
- (10) The failure to perform the obligations of Exhibit B (Company Obligations) of the Master Lease (attached as Exhibit F).

(b) *Remedies on Event of Default.*

(1) Upon the occurrence of any one or more Event of Default, the City, at its option, shall have the right to terminate this Sublease, which shall also immediately terminate all Sub-Subleases. Upon such termination, Lessee's and Sub-Sublessee's right to possession of the Premises shall terminate and Lessee and Sub-Sublessee shall surrender possession thereof immediately. In such event, Lessee and Sub-Sublessee hereby authorize the City and the District to enter upon the Premises or any part thereof immediately and to take possession of said premises and all improvements, equipment, and inventory.

(2) Upon the occurrence of any one or more Event of Default, the City and the District shall each also have the right, with or without terminating this Sublease or Sub-Sublease, to re-enter the Premises or subleased portion thereof and remove all persons and property from the Premises or subleased portion. The City may store the property removed from the Premises or subleased portion in a public warehouse or elsewhere at the expense of the Lessee or Sub-Sublessee.

(c) It is the Parties' intention that the City not incur any repair and maintenance obligations of any kind by entering into this Sublease. If, contrary to the Parties' intent, a court determines the City is obligated to perform some repairs, alterations, renewals, or replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted, in lieu of performing those repairs, alterations, renewals, or replacements, the City shall have the option of terminating this Sublease.

- (d) *No Remedy Exclusive.* No right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Sublease, shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.
- (e) *Indemnification.* The exercise of the City of any one or more of the remedies set forth in this Section shall not affect the rights of the City or the obligations of Lessee under the indemnity provisions set forth in this Sublease.
- (f) *Agreement to Pay Attorneys' Fees and Expenses.* If either party hereto should default under any of the provisions hereof and the non-defaulting party should employ or use attorneys, including the City's staff attorneys, or incur other expenses for the collection of money or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, then the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party.
- (g) *No Additional Waiver Implied By One Waiver.* If any agreement contained herein should be breached by either party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- (h) *Notice of Default.* Lessee agrees that, as soon as is practicable, and in any event within ten (10) days after such event, Lessee will furnish the City notice of any event which is an Event of Default under this Sublease, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Sublease, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Lessee proposes to take with respect thereto.

Section 22. Surrender of Premises.

Upon the expiration of the term hereof, or sooner termination of this Sublease as provided for, Lessee shall peaceably vacate the Premises and any and all improvements located thereon and deliver up such premises to City in its original condition, ordinary wear and tear excepted. Within fifteen (15) days of any cancellation or other termination, Lessee shall remove, at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. Said removal shall be conducted in an expeditious and orderly manner and shall be accomplished in such a way as to minimize the nature and the extent of any disruption of service to the public contracted for herein and the Premises shall be restored to its original condition, ordinary wear and tear excepted. Should Lessee fail to remove said items within the fifteen (15) day period, Lessee shall lose all right, title and interest in and to said items, and the District may elect to keep same upon the Premises or to sell, remove or demolish them. In the event of such sale, removal or demolition, Lessee shall reimburse the District for any cost in excess of any consideration received by the District as a result of said sale, removal or demolition.

Section 23. Nondiscrimination in Employee Benefits.

This Sublease is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized Exhibit E. Lessee is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

Section 24. Notices.

All notices and orders that may be given under this Sublease shall be served by first class mail or in person. Service shall be deemed complete upon deposit in the mail or upon delivery.

To City: Director of Convention and Cultural Services Department
City of Sacramento
1030 15th Street, Suite 250
Sacramento, California 95814
(916) 808-5105

To Lessee: President, Studios for the Performing Arts Operating Company
1510 J Street, Suite 200
Sacramento, CA 95814

To District: Serna Center at Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

Attn: Facilities Support Services.

Section 25. Entire Sublease: Amendment in Writing.

This Sublease, together with all exhibits referenced herein, contains the entire agreement between the Parties. Any agreements or representations not contained herein are null and void. This Sublease may be amended only by a writing signed by both Parties.

Section 26. Authority.

The individuals executing this Sublease on behalf of the Parties hereto represent and warrant that they are authorized to execute and deliver this Sublease on behalf of the respective parties. Lessee represents and warrants that Lessee is a duly authorized and existing company that it is qualified to do business in California, and that Lessee has full right and authority to enter into this Sublease.

Section 27. Binding Effect; District as Third Party Beneficiary.

This Sublease shall inure to the benefit of and shall be binding upon the City and Lessee and their respective successors and assigns. The District is a third party beneficiary to the Sublease and shall have the right, but not to the obligation, to enforce the benefits inuring to the District and to protect the Premises, whether in equity or at law, including the right of unlawful detainer and ejection, for waste or damage occurring at the Premises by the Lessee or its Sub-Sublessees.

Section 28. Severability.

In the event any provision of this Sublease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 29. Execution in Counterparts.

This Sublease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 30. Applicable Law; Venue.

This Sublease shall be governed by and construed in accordance with the laws of the State. Any action or proceeding to enforce or interpret any provision in this Sublease shall be brought, commenced or prosecuted in Sacramento County, California.

Section 31. City Manager Authority.

Whenever under the provisions hereof the approval or consent of the City is required, or the City is required to take some action at the request of Lessee, such approval or consent or such request shall be given for the City by its City Manager or the City Manager's designee and each party hereto shall be authorized to rely upon any such approval or request.

Section 32. Amendments.

This lease may be modified only in writing and only if signed by the Parties at the time of the modification.

Section 33. Exhibits.

The Exhibits attached to this Sublease are a part of this Sublease and are incorporated into this Sublease by reference.

Section 34. Definitions.

The terms defined in Exhibit C, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning. Other terms shall have the meanings given to them herein. Words not defined herein shall be given their common and ordinary meaning.

(Signature Page Follows)

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

Kourtney C. Bourdick
Deputy City Attorney

ATTEST:

City Clerk

LESSEE:

Studios for the Performing Arts Operating Co.
NAME OF FIRM

30-0390619
Federal I.D. No.

2929373
State I.D. No.

Non profit 501(c)3
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify: Non Profit)

[Signature]
Signature of Authorized Person

Richard Rich President of the Board
Print Name and Title

Additional Signature (if required)

Print Name and Title

Attachments

- Exhibit A – Description of Premises
- Exhibit B – Initial Improvements
- Exhibit C – Master List of Definitions
- Exhibit D – Consent of District
- Exhibit E – Non-Discrimination in Employee Benefits
- Exhibit F – Master Lease

EXHIBIT A

DESCRIPTION OF PREMISES

The property bounded by "N" and "O" Streets and 24th and 25th Streets in the City of Sacramento, California, more specifically located at 2420 N Street.

EXHIBIT B

INITIAL IMPROVEMENTS

The **Initial Improvements** shall be constructed in accordance with the following:

- (1) *Defined and Timeline.* Lessee shall design and construct the Initial Improvements, which include the construction of dance studios, rehearsal and performance spaces, classrooms, offices, common use areas, storage areas, and building systems such as HVAC, fire suppression, plumbing, electrical, and communications, to provide for the relocation of the Member Organizations into the building. Lessee shall commence construction of the Initial Improvements within three months of the Commencement Date and complete construction within one year of the Commencement Date of this Sublease.
- (2) *Funding of the Initial Improvements.*
 - (a) *Lessee's Contribution.* Lessee shall contribute the following sum towards the total cost of the Initial Improvements: 1) \$1.5 million; and 2) the total cost of the Initial Improvements less \$6,595,231 (i.e. "Cost Overruns"). Lessee alone shall be solely responsible for Cost Overruns on the construction of the Initial Improvements. As of the Commencement Date, Lessee must have \$1.5 million between cash on hand and expended predevelopment funds for the Initial Improvements, supported by documentation satisfactory to the City.
 - (b) *City Funds.*
 - i. City will contribute up to a maximum of \$5,000,000 ("City Funds") for the Initial Improvements, upon the following:
 1. Receipt of documentation satisfactory to the City that Lessee has Lessee's Contribution;
 2. Lessee has spent all of Lessee's Contribution on the construction of the Initial Improvements, less the following amounts: \$268,000 (Lessee's Hard-Cost Contingency); \$16,000 (Lessee's Pre-Opening Carry and Soft-Cost Contingency); \$110,000 (Lessee's Dance Floors); \$200,000 (Lessee's Furniture, Fixtures, and Equipment Reserve); \$20,000 (Lessee's Capital Reserve Account in accordance with Section 8(g) of this Sublease; and \$126,000

(Lessee's Operating Expenses Fund in accordance with Section 13(e) of this Sublease);

3. Lessee, within 60 days of the Commencement Date, has sub-leased at least 40% of the Exclusive Rentable Space to the Ballet for a minimum of ten years beginning within 30 days of the completion of the Initial Improvements;
 4. Lessee, within 60 days of the Commencement Date, has sub-leased at least 75% of the Exclusive Rentable Space (including the Ballet's space) for a minimum of five years (not including the Ballet's space, which shall be leased for a minimum of 10 years) beginning within 30 days of the completion of the Initial Improvements;
 5. Lessee, within 30 days of the Commencement Date, providing the following in a form satisfactory to the City: (A) all certificates of insurance and endorsements required by this Sublease (including those required in connection with the construction of the Initial Improvements); (B) surety bonds as outlined in Exhibit B; (C) evidence that Lessee has contractually required its general contractor for the Initial Improvements to indemnify the City and District to that extent set forth in Exhibit B.
 6. Lessee satisfaction of all requirements of the Sublease; and
 7. Lessee's satisfaction of any and all other applicable City conditions of investment;
- ii. City Funds shall be disbursed on a schedule to be determined by the City in its sole discretion and only following the City's receipt of documentation adequately supporting an expenditure for the Initial Improvements (as determined by the City in its exclusive judgment).
 - iii. Prior to the City's distribution of the last \$740,000 in City Funds, Lessee shall spend all of Lessee's Contribution less \$200,000 (Lessee's Furniture, Fixtures, and Equipment Reserve) and \$110,000 (Lessee's Dance Floors) and fund Lessee's Capital Reserve Account in accordance with Section

8(g) of this Sublease and fund Lessee's Operating Expenses Fund in accordance with Section 13(e) of this Sublease. Lessee shall provide the City with sufficient documentation (as determined in the City's exclusive judgment) to support Lessee's expenditures for Furniture, Fixtures, and Equipment and Lessee's Dance Floors, all of which shall be commercially reasonable.

iv. The distribution of City Funds is contingent upon the continued viability of the SPA Project and its value to the community.

(c) *Lessee Reimbursement of City's Costs.* In addition to contributing Lessee's Contribution towards the cost of the Initial Improvements, Lessee shall reimburse the City its administrative costs incurred in connection with the construction of the Initial Improvements, including reviewing change orders and contractor payment applications.

(3) *Design and Construction.* All work shall be performed in accordance with plans and specifications approved in writing by the City and District, and any City- and District-approved changes thereto, and in strict conformity with the City's Standard Specifications, dated June 2007, unless exceptions are approved by the City and District. Such plans and specifications, upon approval by the City and the District, shall be deemed incorporated herein and made a part of this Sublease. Except as provided in paragraph (2) above, Lessee shall be solely responsible, at Lessee's sole cost, for the performance of all work necessary to fully design and construct the Initial Improvements. Neither the City or District, or their officers, employees or agents thereof, shall be responsible to Lessee for any claim, cost, damage or other liability occurring by reason of anything done or omitted to be done in connection with the design and construction of the Initial Improvements, and Lessee hereby waives and releases any and all such claims, costs, damages or other liabilities.

(4) *Approvals.* Lessee shall be solely responsible, at Lessee's sole cost, for obtaining and complying with the terms and conditions of any and all approvals, licenses and/or permits necessary to construct the Initial Improvements.

(5) *Bidding and Award of Construction Contract.* Lessee, in its construction contract for the Initial Improvements, shall require its general contractor to obtain a minimum of three bids for all construction work not performed by the general contractor with its

own labor forces in accordance with the procedures and requirements attached hereto as Attachment 1 to Exhibit B.

- (6) *Insurance.* Prior to the commencement of any work on the Initial Improvements, and until the Initial Improvements is completed and accepted by the City, Lessee or Lessee's contractor(s) shall maintain insurance against liabilities arising out of the performance of such work by or on behalf of Lessee or Lessee's contractor(s) as specified in Attachment 2 to Exhibit B.
- (7) *Performance and Payment Bonds; Prevailing Wages; Non-Collusion Affidavit.* Lessee shall require its general contractor for the Initial Improvements: (1) to provide performance and payment bonds from a surety admitted to transact surety insurance in the State of California, in the full amount of the Initial Improvements contract, in the form provided by the City, and naming the City and District as co-obligees; (2) to pay, and require all subcontractors to pay, not less than the prevailing wage rates determined by the State Director of Industrial Relations pursuant to the California Labor Code, for all construction work performed on the Main Extension; and (3) to provide a non-collusion affidavit executed in a form approved by the City. Lessee shall provide City copies of the executed contract, performance and payment bonds and non-collusion affidavit prior to the commencement of any construction work, and, if requested by City, shall provide the City with certified payroll information for Lessee's contractor and subcontractors in accordance with applicable provisions of the California Labor Code.
- (8) *Failure to Maintain Bonds or Insurance.*
 - (a) If, at any time during the performance of this sublease, Lessee or Lessee's contractor fails to maintain any item of the bonds and/or insurance required under the Sublease in full force and effect, Lessee shall immediately suspend all work and notify the City in writing of such failure. After such notice is provided, or if City discovers such failure and notifies Lessee, the City thereafter may withhold all City Funding not yet disbursed until notice is received by City that such bonds and/or insurance have been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the City's Division of Risk Management. Lessee shall not resume work until notified by City to do so, and the City shall have no responsibility or liability for any costs incurred by Lessee as a result of such suspension of work.

- (b) In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Sublease will be sufficient cause for termination of the Sublease by City.
- (c) Lessee shall be solely responsible for, and shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of work or termination of the Sublease under the provisions of this section.
- (9) *Inspection.* The City and District shall be allowed to enter the construction site and Premises to perform construction inspection whenever deemed necessary by the City or District. Upon completion and testing of the Initial Improvements, the City and District shall inspect the Initial Improvements and either (1) accept the Initial Improvements as complete, or (2) identify any deficiencies to be corrected before the City and District will accept the Initial Improvements as complete. Lessee shall correct any deficiencies identified, and the City and District thereafter shall inspect the Initial Improvements and notify Lessee whether such corrections are approved or disapproved. Lessee shall reimburse the City and District for their costs in inspecting the Initial Improvements, whether the costs are incurred by their employees or third parties hired to handle the job.
- (10) *Acceptance by the City and District.* The Initial Improvements shall become the sole and exclusive property of the District upon completion of construction, final inspection and testing, and final acceptance by City, after the correction by Lessee of any deficiencies identified by City; provided that, as a precondition to final acceptance by City: (1) Lessee shall take any and all actions necessary to insure that the Initial Improvements is free and clear of all liens, stop notices and encumbrances of any kind, and that the City is in possession of all rights, approvals and permits necessary to operate, maintain and repair the Initial Improvements upon final acceptance by City; (2) Lessee shall have satisfied all of the terms and conditions of this Sublease; and (3) Lessee shall provide the City and District with a set of record plans.
- (11) *Guarantee.* The Lessee guarantees and agrees, at Lessee's sole cost, to remedy any defects in the Initial Improvements arising from faulty or defective construction occurring at any time within one (1) year after final acceptance thereof by the City. In the event that Lessee fails to remedy any and all such defects within ten (10) days after being notified of the defects in writing by City, City shall have the right, but shall

not be obligated, to repair or cause to be repaired such defects, and Lessee shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects. Notwithstanding anything herein to the contrary, if any defects in the improvements result in a condition that, in the City's sole and exclusive judgment, constitutes an imminent hazard to public health or safety, or to any person or property, City shall have the right to immediately repair or cause to be repaired such defects, with or without prior notice to Lessee, and Lessee shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects. Any costs incurred by the City under this section, but not paid by Lessee, may be deducted from the City's contribution in paragraph 2, and if already paid to Lessee, Lessee shall reimburse that amount to City.

(12) *Indemnity.*

- (a) Lessee shall defend, hold harmless and indemnify the City and District, and their officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the work, including, but not limited to, any fees and/or costs reasonably incurred by the City's and District's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the work by the Lessee, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.
- (b) The existence or acceptance by City of any of the insurance policies or coverages described in this Sublease shall not affect or limit any of City's rights under this

section, nor shall the limits of such insurance limit the liability of Lessee hereunder. The provisions of this section shall survive any expiration or termination of the sublease.

- (c) Lessee shall require its general contractor and subcontractors for the Initial Improvements to defend, hold harmless, and indemnify the City and District to the same extent as stated in Sections 12(a)-(b) of this Exhibit B.

ATTACHMENT 1 TO EXHIBIT B

BIDDING AND AWARD PROCEDURES AND REQUIREMENTS

1. After the plans and specifications for the Initial Improvements are approved in writing by the City and District, Lessee, for all work not performed by its general contractor, shall require the general contractor to solicit and obtain sealed bids to perform the work shown on the approved plans and specifications from a minimum of three licensed contractors.
2. All requests for bids shall inform bidders that all work shall be performed in accordance with the approved plans and specifications and any City-approved changes thereto, and in strict conformity with the City's standard specifications and requirements, unless exceptions are approved by the City.
3. All requests for bids shall inform bidders of the requirement to pay prevailing wages, provide insurance coverage, and a non-collusion affidavit as required in this Sublease, and comply with all other applicable provisions of this sublease.
4. Bidders shall be provided a minimum of ten (10) working days to prepare and submit bids, and the City's designee shall be present at the opening of the bids by Lessee.
5. Lessee shall provide the City with a list of subcontractor awards, including the subcontractor's name, address, and license number, and the work to be performed.

ATTACHMENT 2 TO EXHIBIT B

INSURANCE FOR THE INITIAL IMPROVEMENTS

1. *Minimum Scope and Limits of Insurance Coverage.*

(a) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(b) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(c) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

(d) All-Risk Property Insurance against all risks of loss to any improvements, fixtures, or equipment added to the Premise, with a limit equal to the completed value of the Initial Improvements. All property insurance must be for replacement value and name the City as loss payee.

2. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Department.

3. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:

(a) The City and District, and their officials, employees and volunteers are to be covered as additional insureds, and the coverage shall contain no special limitations on the scope of the protection afforded to the City, its officials, employees or volunteers.

- (b) The insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
 - (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and District, their officials, employees or volunteers.
 - (e) Coverage shall state that the insurance required herein shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (f) Each insurance policy required herein shall be endorsed to state that cover ages shall not be cancelled or materially changed except after thirty (30) days prior written notice has been given to the City.
4. *Acceptability of Insurance.* Insurance shall be placed with insurers with a Bests' rating of not less than A:V.
5. *Verification of Coverage.* Lessee or Lessee's contractor shall furnish the City and District with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative designated by the City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
6. *Subcontractors.* Lessee shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified above.

EXHIBIT C

MASTER LIST OF DEFINITIONS

"Applicable Laws" means all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, regulations, written interpretations, directives, licenses, permits, and orders, and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental authority, now in force or hereafter enacted, promulgated, or issued, including the Americans with Disabilities Act and Environmental Laws and any amendments thereto. The term also includes government measures regulating or enforcing public access, occupational health, or safety standards for employers, employees, landlords, or tenants.

"Approved Plan" means the Approved Plan as defined in Section 8 of the Sublease.

"Budget" means "Budget" as defined in Section 13 of the Sublease.

"CAMA" means the Crocker Art Museum Association.

"Capital Repairs" means Capital Repairs as defined in Section 8 of the Sublease.

"City Funds" means City Funds as defined in Exhibit B of the Sublease.

"City Representative" means that person identified by the City in Section 24 of the Sublease.

"Commencement Date" means the Commencement Date as defined in Section 2 of the Sublease.

"Common Space" means "Common Space" as defined in Section 3 of the Sublease.

"Contamination" or **"Release"** means the presence of any Hazardous Substances in the soil or groundwater in violation of any Environmental Laws or the release of any Hazardous Substances into the environment.

"Contractual Obligation" of any Person means, any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

"Deposit Amount" means Deposit Amount as defined in Section 13 of the Sublease.

"Environmental Laws" means, but shall not be limited to: the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive

Environmental Response, Compensation and Liability Act of 1980 (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code §§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; and all rules and regulations under each of the foregoing; and all other governmental rules relating to the protection of human health and the environment including all governmental rules pertaining to the reporting, licensing, permitting, transportation, storage, disposal, investigation or remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater, land, or other environments or relating to the manufacture, processing, distribution, use, generation, control, treatment, storage, disposal, transportation, handling, removal or recovery of Hazardous Substances.

"Event of Default" is defined in Section 21 of the Sublease.

"Exclusive Rentable Space" means "Exclusive Rentable Space" as defined in Section 3 of the Sublease.

"Formation Documents" means the articles, bylaws, operating agreement or any other organizational or formation document related to Lessee.

"Founding Member" means the Sacramento Ballet and the Sacramento Region Performing Arts Alliance.

"Leased Premises" or "Premises" means, collectively, premises and improvements and all incidentals located at 2420 N Street, as shown on Exhibit A.

"Lessee's Reserve Amounts" means "Lessee's Reserve Amounts" as defined in Exhibit B of the Sublease.

"Fiscal Year" means the period beginning on _____ 1 of each year and ending on the succeeding _____ 30(31), or any other twelve-month period hereafter selected and designated as the official fiscal year of Lessee.

“Formation Documents” means the articles, bylaws, operating agreement or any other organizational or formation document related to Lessee.

“GAAP” means generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

“Governmental Authority” means any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the Federal Deposit Insurance Company, the Federal Reserve Board, the Comptroller of the Currency, any central bank or any comparable Person, but excluding the City or any political subdivision thereof.

“Governmental Charges” means, with respect to any Person, all levies, assessments, fees, claims or other charges imposed by any Governmental Authority upon such Person or any of its property or otherwise payable by such Person.

“Hazardous Substances” means any substance: (1) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or (2) which is or becomes defined as a “hazardous waste” or “hazardous substance” or “pollutant” or “contaminant” under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any Governmental Authority; or (4) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of Persons on or about the Premises; or (5) which contains volatile organic compounds such as gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (7) radon gas.

“Indemnified Party” shall have the meaning given to such term in Section 17 of the Sublease.

“Independent Accountant” means an independent certified public accountant acceptable to the City of Sacramento.

“Initial Improvements” means the Initial Improvements as defined in Exhibit B of the Sublease.

“Lessee” means the Studios for the Performing Arts Operating Company.

“Lessee’s Contribution” means Lessee’s Contribution as defined in Exhibit B of the Sublease.

“Lien” means, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, Capital Lease or other title retention agreement, or any agreement to provide any of the foregoing, or the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction.

“Master Lease” means that agreement executed between the City and District and attached as Exhibit F to this Agreement.

“Member Organizations” means Member Organizations as defined on Page 1 of the Sublease.

“Modifications” means Modifications as defined in Section 10 of the Sublease.

“Mold” means Mold as defined in Section 9 of the Sublease.

“Net Proceeds” means any insurance proceeds or condemnation award paid with respect to the Premises, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Operating Budget” means Operating Budget as defined in Section 13 of the Sublease.

“Operating Expenses” means Operating Expenses as defined in Section 13 of the Sublease.

“Operating Expenses Fund” means Operating Expenses Fund as defined in Section 13 of the Sublease.

“Person” means and includes an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a limited liability company, a joint venture, a trust or other entity or a Governmental Authority.

“Phase I Improvements” means Phase I Improvements as defined in Exhibit B of the Sublease.

“Phase II Improvements” means Phase II Improvements as defined in Exhibit B of the Sublease.

“Premises” means, collectively, premises and improvements and all incidentals located at 2420 N Street, as shown on Exhibit A.

“Rent” or **“Rental Payments”** means the Base Rental Payments and the Additional Rental Payments and any other amounts, charges or sums payable by Lessee pursuant to the Sublease.

“Reserve Amount” means Reserve Amount as defined in Section 13 of the Sublease.

“Shared Space” means “Shared Space” as defined in Section 3 of the Sublease.

“State” means the State of California.

“Studios Project” means Studios Project as defined in Recital B of the Sublease.

“Sublease” means this Sublease Agreement, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

“Sub-Subleases” means those agreements between Lessee and Sub-Sublessees to sublet all or a portion of the Premises.

“Sub-Sublessees” means all Member Organizations and all City- and District-approved third parties to whom the Lessee subleases the Premises.

“Termination Date” means the date on which the Sublease ends or terminates as provided under the Sublease or as otherwise provided by law.

EXHIBIT D

CONSENT OF DISTRICT

By signing below, the District acknowledges that it has carefully read and understands the terms of the Sublease and agrees that the Sublease, including the exhibits attached thereto, satisfies all of the City's obligations imposed onto it by the Master Lease, including Exhibit B to the Master Lease (Company Obligations).

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Date: _____

EXHIBIT E

NON-DISCRIMINATION IN EMPLOYEE BENEFITS

DECLARATION OF COMPLIANCE

Equal Benefits Ordinance

Name of Lessee ("Contractor"): Studios for the Performing Arts Operating Company

Address: 1510 J St, Sacramento, CA 95814

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the [Ordinance](#)).
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

- a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
- c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
- g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
- h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
- i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to

eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.

5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

(Signature Page Follows)


Signature of Authorized Representative

3/4/15
Date

RICCARDO Riet.
Print Name

President of the Board
Title

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

“Contract” shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected

by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status

as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

EXHIBIT F
MASTER LEASE