

Meeting Date: 12/15/2015

Report Type: Staff/Discussion

Report ID: 2015-00913

Title: Agreement: Forgivable Loan Agreement for the B Street Theatre (Published for Review 12/03/2015)

Location: District 4

Recommendation: Pass a Resolution: a) establishing a multi-year operating project for the B Street Theater project; b) appropriating \$2.5 million from the General Fund (Fund 1001) commitment of fund balance for the B Street Theatre project; c) authorizing the City Manager or his designee to execute a \$2.5 million forgivable loan agreement with the Theatre for Children, Inc.; d) authorizing the City Manager to execute any amendment to the forgivable loan agreement if the amendment does not change the total loan amount, term of the loan, loan repayment terms, or conditions for loan forgiveness, and if the amendment is approved as to form the City Attorney or his designee.

Contact: Leslie Fritzsche, Senior Project Manager, (916) 808-5450, Economic Development Department

Presenter: None

Department: Economic Development Dept / Convention and Cultural Services

Division: Administration

Dept ID: 18001011

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Location Map
- 4-Rendering
- 5-Resolution
- 6-Exhibit A (Forgivable Loan Agreement)

City Attorney Review

Approved as to Form
Michael Sparks
12/3/2015 11:05:40 AM

Approvals/Acknowledgements

Department Director or Designee: Melissa Anguiano - 10/14/2015 1:24:34 PM

Description/Analysis

Issue Detail: On November 6, 2014, Council conditionally approved a General Fund commitment of \$2.5 million to Theatre for Children, Inc. (commonly known as “B Street”) for the development of a new 45,000 sq. ft. theatre complex. The facility is to be located at 27th Street and Capitol Avenue (see location in Attachment 1).

At the time of Council approval, B Street was attempting to secure New Market Tax Credits and funds from the California Infrastructure and Economic Development Bank (IBank) for the estimated \$29.85 million project. While B Street principals have been successful in obtaining the commitment from IBank (this commitment remains valid until March 2016), they have not secured the New Market Tax Credits.

As an alternative to the aforementioned structure, B Street has secured an \$11.5 million commitment from Umpqua Bank. These funds, along with \$4.1 million in pre-construction prepaid costs, Sutter’s commitment of the land (valued at \$6 million), \$4.2 million in cash and pledges, and the previously pledged \$2.5 million in City funding results in a project gap of approximately \$1.5 million. B Street plans to address this shortfall through \$1 million in value engineering and reductions in the furniture, fixtures, and equipment budget bringing the net project cost to \$28.85 million. A \$500,000 gap remains, which may preclude building out of the administrative office space and reduces the amount and quality of the facility’s theatrical equipment, unless the gap is filled. B Street principals have requested that the City of Sacramento provide additional funding of \$500,000 to fill the funding gap, however, the recommendation only addresses the prior City commitment of \$2.5 million.

Despite this known gap, staff recommends solidifying the City’s commitment to the project through the approval of a \$2.5 million forgivable loan agreement with B Street. If B Street is able to secure an additional \$500,000 in funding, the City’s funds along with those from Umpqua and Sutter will enable this long-awaited project to begin construction in early 2016.

Policy Considerations: The B Street Project is consistent with the 2035 General Plan as it will add to Sacramento’s cultural amenities and contribute to the quality of life for residents and visitors.

Economic Impacts: The economic impact estimates are calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). The total estimated cost of construction for the B Street Theatre Project is \$15.65 million, which is projected to create 41 direct jobs and 30 indirect jobs. Additionally, according to the CSER calculation over \$7.7 million in direct output and over \$4.2 million in indirect or induced activities will be generated by the construction of the B Street Project. Actual impacts could differ significantly from the estimates and neither the City nor CSER shall be held responsible for consequences resulting from such differences.

A study completed in 2010 by Economic Planning Systems for the project estimated that, in addition to the benefits stated above, total off-site visitor spending will increase by \$625,000 annually.

Environmental Considerations: The project was reviewed under the California Environmental Quality Act (“CEQA”) as part of the Environmental Impact Report that was completed for the entire Sutter General Expansion project.

Sustainability: The B Street Theatre project will intensify the use of land near the Sutter Medical Center complex and comport with sustainable infill goals.

Commission/Committee Action: None.

Rationale for Recommendation: B Street began in 1986 as a touring theatre for children. Over 25 years later, the company’s two-theatre playhouse on B Street in Sacramento is home to its Mainstage, B3, and Family Series programs (see Background in Attachment 2). The theater has been a mainstay of the arts and cultural offerings in Sacramento and is known as one of the best professional regional theatres in the nation. It has steady levels of ticket sales averaging over 90,000 tickets annually and has introduced thousands of school children to high quality, educational theatre. B Street has demonstrated experience and has operated self-sufficiently for almost 30 years.

B Street has long envisioned the development of a more state-of-the art facility to fulfill its mission of education, literacy and cultural enrichment by engaging children and adults in high quality theatrical arts and playwriting. Currently the theatre turns away approximately 2,000 school children annually from attending the matinees due to space constraints. The proposed theatre complex would house two theatre spaces including a 364-seat children’s theatre, an intimate 250-seat theatre and a 3,000 sq. ft. restaurant. This configuration will enable B Street to serve approximately 35,000 more children and families and allow for an expansion of the current offerings. The new theatre will be in the heart of the midtown area, adjacent to restaurants, shopping and the medical complexes. These attributes will help the visibility and marketing of B Street thus increasing its ability to attract new audiences, a factor critical to the company’s survival. With this expansion, the theatre will enhance its position as a regional draw for Sacramento as well as provide California’s first year-round professional theatre for children.

Staff and supporters of B Street worked for over a decade to bring the project to fruition. From the early days of development of their hospital’s master plan, Sutter has incorporated and committed the land valued at \$6 million to the Project. Sutter has pledged an ongoing operational subsidy of \$50,000 annually for 10 years. This project represents a true public-private partnership.

B Street has received all of the required entitlements, environmental clearances and design review. Construction drawings have been completed and submitted for permits.

It is anticipated that building permits will be approved within the next 45 days and construction could begin early 2016.

Financial Considerations: The total project cost is \$28.85 million. The sources and uses for the project are (dollars in millions):

Proposed Uses	Amount
Value of Land Contingency	\$6.00
Construction and Contingency	\$15.65
Furniture, Fixtures and Equipment (net of \$1 ml. in value engineering)	\$1.50
Soft Costs including A/E, Permits, Loan Fees	\$1.60
Pre-Construction Prepays	\$4.10
Total Uses	\$28.85

Proposed Sources	Amount
Umpqua Bank Loan	\$10.00
Umpqua Bank Campaign Advance Loan	\$1.55
B Street Theatre – cash and pledges	\$4.20
Sutter (land contribution)	\$6.00
Pre-Construction Prepays	\$4.10
Subtotal	\$25.85
City Loan	\$2.50
Total Identified Sources	\$28.35
Project Gap	\$0.50
Total Project	\$28.85

A condition of the City's \$2.5 million in funding is B Street's securing all other funds needed to complete project construction. The funding source for the \$2.5 million City contribution is from the sale of City property at the southwest corner of Fair Oaks and Howe in November 2014 (Resolution 2014-0207). The project is required to comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code (regarding prevailing wages). B Street principals have requested that the City of Sacramento provide additional funding of \$500,000 to fill the project gap.

The Umpqua Bank financing utilizes an IBank tax-exempt bond conduit program (i.e., allowing Umpqua to directly purchase the tax-exempt bond funds issued by IBank) which will result in a 25-year loan to B Street with a fixed rate (currently estimated under 3%) for the first 10 years. The bond allocation was approved by the IBank Board at their meeting on November 17, 2015. B Street will utilize its ongoing ticket sales revenues, a

new ticket surcharge of \$5.00 - \$7.00 per ticket and revenues from the new restaurant at the theatre complex as the main sources of the loan repayment.

Sutter has been a major contributor, to this project, donating the property at 27th and Capitol valued at \$6 million and a ten-year pledge of \$50,000 in annual operating funds to the B Street.

Since the Umpqua Bank loan requires the pledge of most of B Street's operating revenue sources, the City assistance is proposed to take the form of a 22-year (two years for construction period) forgivable loan with one-twentieth of the loan forgiven each year following completion of construction based on the B Street meeting certain conditions. These conditions are outlined in the attached Loan Agreement and include the following:

- B Street performs at two schools per Council district with two "at-large" schools selected by the City per year for 20 years (the duration of the forgivable loan) on a pro-bono basis as part of the B Street's School Tour program. These pro-bono performances will commence as soon as construction on the project commences.
- Annually B Street provides 60 discounted student matinee tickets to each council district and 60 tickets for one or more schools selected by the City for 20 years. These tickets can be redeemed by teachers who wish to bring their students to the B Street Theatre for field trips. Tickets will be made available upon opening of the new theatre.
- B Street makes the facility available to the City for the purpose of conducting meetings, conferences, trainings, or community events on an as-available basis four times per year for 20 years. The City will not be charged any space rental or equipment fees, but will reimburse B Street for any direct staffing costs related to these events.

To account for the City's portion of the funding, a new multi-year operating project is recommended to be established for the Project as I80180000.

Local Business Enterprise (LBE): None.

Background

Project Information

The Theatre for Children, Inc., known as the B Street Theatre (B Street) is a 501(c)(3) that started over 25 years ago as a touring theatre for children. Today at their two-theatre playhouse on B Street they offer a variety of programs

A key feature of their mission is to work with children to promote education and literacy and to engage children in social interaction and cultural enrichment. Recognized as one of Northern California's top theatres, B Street produces 19 shows per year with a focus on new work for youth and adult audiences serving approximately 300,000 annually throughout Northern California.

The proposed project had its inception over 10 years ago, which began with discussions with Sutter Medical Center about the possibility of incorporating a new B Street Theatre facility into their plans for an expanded medical campus in Midtown Sacramento. Plans proceeded and the corner of 27th Street and Capitol Avenue was identified as B Street's future home. Sutter Medical Center has provided a gift of the land and an ongoing operational grant of \$50,000 per year for 10 years.

Plans for the project originally included a residential component; however, the current proposal is for two theatres, a 365-seat theatre for children and an intimate 250-seat theatre with a large public lobby, courtyard and restaurant. The children's theatre, once constructed, will be the only year-round professional theatre for children in California.

The project was included in the Sutter Medical Center's Environmental Impact Report and has thus obtained environmental clearance under CEQA. The project has received its required entitlements and regulatory approvals. Construction documents are being reviewed by the City Building Department. If funds are secured, the project could begin construction by early 2016.

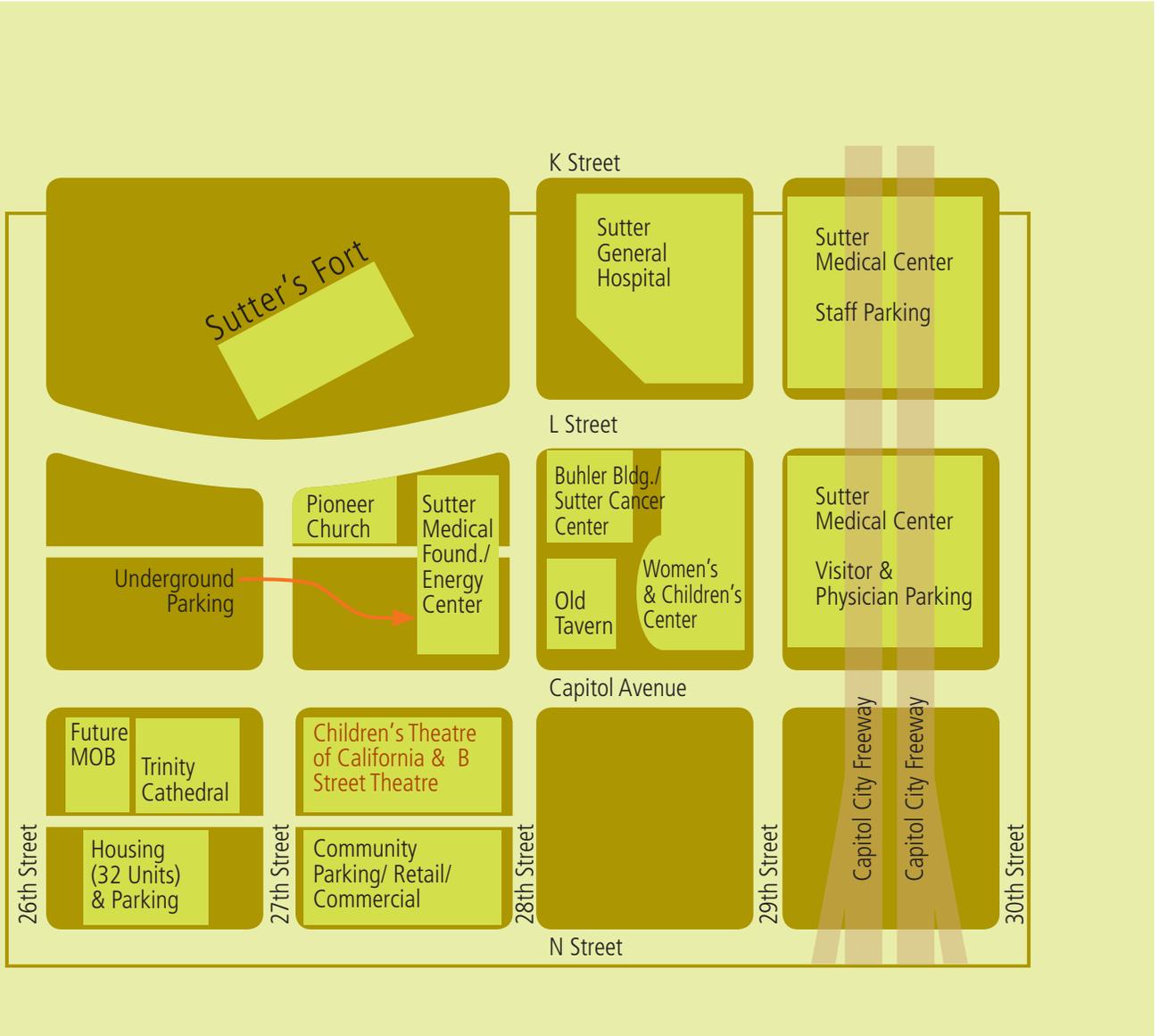
Project Financing

The B Street Theatre project has been more than eight years in development. The current total project cost is estimated at \$28.85 million.

In May 2014, B Street secured conditional approval from the IBank Board of Directors for \$8.4 million from the Infrastructure State Revolving Fund Loan Program. This commitment was renewed at the IBank's September 2015 meeting and is valid until March 2016. This financing structure remains an option for the project but includes a smaller loan amount, a higher interest rate, a shorter term, and more requirements than the \$11.5 million in financing through the IBank's bond conduit program and Umpqua Bank that was recently secured. With funds from Sutter, Umpqua (through the IBank's

Bond conduit program), B Street equity, and the City's contribution, there remains a project gap of \$500,000.

NEW B STREET THEATRE LOCATION





Proposed New B Street Theatre

Attachment 3

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROPRIATION OF FUNDING AND APPROVAL OF LOAN AGREEMENT FOR \$2.5 MILLION FOR THE B STREET THEATRE PROJECT

BACKGROUND

- A. On October 11, 2005, City Council authorized the City Manager to identify project for a Community Reinvestment Capital Improvement Program (CRCIP) bond issuance.
- B. On April 18, 2006, City Council approved the Final Tier I and Tier II project list and project financing of which the B Street Theatre Project (Project) was included as a Tier 1.
- C. On May 23, 2006, City Council authorized the issuance of approximately \$150 million in 2006 bonds, authorized funding for the Tier I CRCIP projects and adopted policy directives.
- D. On September 11, 2007, City Council approved the Memorandum of Understanding providing \$1 million in predevelopment costs for Theatre for Children, Inc. for the Project.
- E. These funds were expended by Theatre for Children, Inc. for predevelopment work for a mixed-use project that included the Project as well as a residential component.
- F. On March 26, 2013, the City Council directed the City Manager to bring forward information with recommendations to address project funding needs for the Community Center Theatre Renovation project, the Crocker Art Museum, the Studios for Performing Arts and the B Street Theatre.
- G. On May 7, 2013, the City Council directed the City Manager to continue to work and assist Theatre for Children, Inc. in the evaluation of financing alternatives for the proposed Project.
- H. On June 17, 2014, the City Council authorized the sale of property at the corner of Fair Oaks Boulevard and Howe Avenue resulting in \$3.1 million which was added to the General Fund Administrative Contingency (Resolution 2014-0207).
- I. On November 6, 2014, the City Council conditionally approved a commitment of \$2.5 million from the Fair Oaks Boulevard and Howe Avenue sale for the Project (Resolution 2014-0360).

- J. Theatre for Children, Inc. has secured a commitment from Sutter Health for donation of the land for the Project and \$50,000 in annual operating funds for the theatre.
- K. On November 17, 2015, the California Infrastructure Bank approved up to \$12 million in tax-exempt bond financing for the Project.
- L. Theatre for Children, Inc. has a commitment from Umpqua Bank for \$11.5 million of the IBank tax-exempt bond funding to be used as a loan to the Project.

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

- Section 1. The City Council hereby establishes a new multi-year operating project for the Project as I80180000.
- Section 2. The City Council hereby appropriates \$2.5 million from the General Fund commitment of fund balance to I80180000.
- Section 3. The City Manager or his designee is authorized to execute the \$2,500,000 forgivable loan agreement with the Theatre for Children, Inc. The forgivable loan agreement is attached as Exhibit 1 and is a part of this resolution.
- Section 4. The City Manager is authorized to execute any amendment to the forgivable loan agreement if the amendment does not change the total loan amount, term of the loan, loan repayment terms, or conditions for loan forgiveness, and if the amendment is approved as to form by the City Attorney or his designee.

Attachments:

Exhibit 1 – Forgivable Loan Agreement for B Street Theatre Project

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Forgivable Loan Agreement

This forgivable loan agreement, dated December 15, 2015, for purposes of identification only, is between the **Theatre for Children, Inc.**, a California non-profit public benefit corporation ("**Borrower**"), and the **City of Sacramento**, a California municipal corporation ("**Lender**").

Background

The Theatre for Children, Inc. began in 1986 as a touring theatre company for children. The theater has been a mainstay of the arts and cultural offerings in Sacramento and is known as one of the best professional regional theatres in the nation, introducing thousands of school children to high-quality, educational theatre. The Theatre for Children, Inc. has demonstrated experience and has operated self-sufficiently for almost 30 years.

The Theatre for Children, Inc. has long envisioned the development of a more state-of-the art facility to fulfill its mission of education, literacy and cultural enrichment by engaging children and adults in high-quality theatrical arts and playwriting.

The proposed theatre facility in midtown Sacramento would house two theatre spaces including an approximately 364-seat children's theatre, a 250-seat theatre, and a 3,000 square foot restaurant. This configuration will enable B Street to serve approximately 35,000 more children and families and enhance its position as a regional draw in the City Sacramento as well as provide California's first year-round professional theatre for children.

The Theatre for Children, Inc. has secured the majority of the funding necessary to develop the project. It now seeks assistance from the City of Sacramento to complete the necessary funding.

With these background facts in mind, Lender and Borrower agree as follows:

1. **Definitions.** Terms not defined in this section may be defined elsewhere in this agreement where they first appear.
 - 1.1. "**Approval Documents**" means all of the following documents: documents evidencing a legally binding contractual obligation for \$3,000,000 to be used for the development of the Project, documents evidencing a legally binding commitment by Umpqua Bank to lend \$11,700,000.00 to Borrower, documents evidencing a binding legal obligation by Sutter Health Sacramento Sierra Region to provide Borrower with \$50,000.00 per year for ten years for the operation of the Project, documents evidencing a binding legal obligation by Sutter Health Sacramento Sierra Region to transfer fee title to the Property to Borrower at no cost, the Budget for the Project, documents evidencing the Project financing as described in this Loan Agreement, and the Plans and Specifications.
 - 1.2. "**Budget**" is the budget approved by Lender for the development of the Project.

- 1.3. **“Change”** means any extra work or installation of materials not included in the Plans and Specifications or any change in or deviation from the Plans and Specifications.
- 1.4. **“Close of Escrow”** means the fulfillment of the Escrow terms and conclusion of the Escrow, including the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of any title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on December 18, 2015, or a later date agreed upon by the parties (the **“Closing Date”**).
- 1.5. **“Completion Date”** means June 30, 2018, which is the date by which the Completion of the Project must occur.
- 1.6. **“Completion of the Project”** means that, in Lender's sole judgment the Project has been constructed, rehabilitated, completed, equipped, and furnished in a good and proper manner in accordance with the Plans and Specifications, the Scope of Development and the Budget as approved by Lender; all notices of completion with respect to the Project have been filed and all statutory lien periods have expired; all costs of constructing the Project have been paid; all necessary certificates of occupancy have been issued; and all of the conditions to final disbursement of the Loan have been satisfied.
- 1.7. **“Effective Date”** means the date as of which both the Lender and Borrower have signed this agreement, as indicated by the dates in the signature blocks below.
- 1.8. **“Escrow”** is the escrow with title company for the closing of the Loan.
- 1.9. **“Event of Default”** is breach of or default in a party's obligations under this Loan Agreement, the Trust Deed, the Note and any other instrument which is incorporated in this Loan Agreement or which otherwise secures the repayment of the Loan.
- 1.10. **“Financial Statements”** means the financial statements of Borrower as may be required by Lender from time to time, including operating statements, balance sheets, and any other financial reports and information that Lender may require.
- 1.11. **“Fixtures”** means all fixtures located on or within the Project or now or later installed in or used in connection with any of the Project, including, as applicable, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, built-in refrigerators, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Project.
- 1.12. **“General Contractor”** means Market One Builders, Inc., or any other general contractor designated by Borrower and approved in writing in advance by Lender.

- 1.13. **“Governmental Authority”** means the United States of America, the State of California, the County of Sacramento, the City of Sacramento, or any other political subdivision, agency, department, commission, board, bureau, or instrumentality of any of them.
- 1.14. **“Governmental Requirement”** means any law, ordinance, order, rule, regulation, plan, ruling, determination, or requirement of a Governmental Authority.
- 1.15. **“Loan”** is the loan from Lender to Borrower made under this Loan Agreement.
- 1.16. **“Loan Agreement”** means this agreement, all exhibits attached to this agreement, and the Loan Documents that are not otherwise included in this definition.
- 1.17. **“Loan Amount”** means \$2,500,000.00.
- 1.18. **“Loan Documents”** means the Note, this agreement, the Security Documents, and all other documents (including guaranties) evidencing, securing, or relating to the Loan.
- 1.19. **“Loan Proceeds”** means funds disbursed by Lender on account of the Loan and pursuant to this Loan Agreement.
- 1.20. **“Obligations”** means all liabilities and obligations of Borrower to Lender of every kind and description, direct, absolute or contingent, due or to become due, whether now existing or hereafter executed, or by operation of law, whether or not evidenced by a written agreement, document, or promissory note or other instrument, including duties to perform acts or refrain from taking action, as well as obligations to pay money.
- 1.21. **“Other Lender Draw”** means a draw request or other request for disbursement submitted to another lender for the Project.
- 1.22. **“Personalty”** means all of Borrower's interest in all accounts, contract rights, and general intangibles (specifically including any insurance proceeds and condemnation awards) arising out of the ownership, development, or operation of the Property, and all furniture, furnishings, equipment, machinery, construction materials and supplies, leasehold interests in personal property, and all other personal property (other than Fixtures) of Borrower, now or later located about the Property, together with all present and future attachments, accessions, replacements, substitutions, and additions, and the cash and noncash proceeds.
- 1.23. **“Plans and Specifications”** means the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street, and utility plans and specifications for the Project, including all supplements, amendments, and modifications.
- 1.24. **“Potential Default”** means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse.

- 1.25. **“Project”** means all work required to develop the Property as an approximately 364-seat children’s theatre and an approximately 250-seat theatre in accordance with the Plans and Specifications.
- 1.26. **“Property”** means the real property located at 2708 and 2710 Capitol Avenue, Sacramento, California 95816, and identified as Assessor’s Parcel Number 007-0172-004. The Property is more particularly described in Exhibit 1.
- 1.27. **“Retention”** means the amount of each disbursement for construction work retained by the Lender for disbursement with the final disbursement of the Loan. Lender will retain 10% of each disbursement of Loan funds, not to exceed, in the aggregate, 10% of the Loan Amount.
- 1.28. **“Security Documents”** means the documents entered into between Borrower and Lender or by Borrower and any partners, in favor of, or for the benefit of, Lender that recite that they are to secure the Loan.
- 1.29. **“Theatre Facility”** means the approximately 364-seat children’s theatre and the approximately 250-seat theatre developed on the Property.
- 1.30. **“Unavoidable Delay”** is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of the parties shall be extended for the period of the enforced delay, as determined by the Lender, provided that the party seeking the benefit of the provisions of this Section shall, within 30 days after it has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

2. Borrower's Representations and Warranties. As a material inducement to Lender to enter into this Loan Agreement and to make the Loan to Borrower, Borrower unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to Lender, as of the Close of Escrow, as follows:

- 2.1. **Legal Organization.** Borrower is duly formed and validly exists in the form stated in the Definitions, is qualified to do business in California, and has full power to consummate the transactions contemplated.
- 2.2. **Borrower's Powers.** Borrower has full authority to execute this Loan Agreement, the Note, and all of the other Loan Documents, to undertake and consummate the contemplated

transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

2.3. Binding Obligation. This Loan Agreement, the Note, and each of the other Loan Documents constitute a legal and binding obligation of, and are valid and enforceable against, each party other than Lender, in accordance with the terms of each.

2.4. Litigation. There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower, the Property, or any part of it, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any Governmental Authority. Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or other Governmental Authority.

2.5. No Other Breach. The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Borrower or any of its general partners is a party or by which it or they or the Property may be bound or affected.

2.6. No Default. There is no Event of Default or Potential Default on the part of Borrower.

2.7. Use of Proceeds. All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of construction of the Project in accordance with the Plans and Specifications and for other purposes specified in the Loan.

2.8. Plans and Specifications. The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and all other lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Borrower or its agents and employees, and to the best of Borrower's knowledge, no violation of any Governmental Requirement exists.

2.9. Accuracy. All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to Lender by Borrower concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct, and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

3. Loan. Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to finance the development of the Project and for other purposes as specified in the Scope of Development, subject to the terms, conditions, representations, warranties, and covenants in this Loan Agreement.

3.1. Principal Amount. The principal amount of the Loan shall be the actual disbursements of the Lender on account of the Project, not to exceed the amounts stated in the Budget (as

the Budget may be adjusted by written approval of Lender). In any event, the principal amount of the Loan shall not exceed the Loan Amount.

3.2. Use of Loan Funds. Loan funds shall be used solely for actual costs of the Project as stated in the Budget. Unless otherwise noted in the Budget, allowed predevelopment costs and costs incurred for furnishings, fixtures, and equipment, if any, are not subject to the withholding as Retention.

3.3. Loan Terms. Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement. This is a non-interest bearing loan. Repayment of the Loan shall be made in lawful tender of the United States.

3.4. Loan Maturity Date. The Loan Maturity Date is the date that is 228 months after the Payment Start Date, as defined in Section 3.5.1.

3.5. Repayment. Borrower shall repay the Loan in accordance with the Note, without demand of the Lender, as follows:

3.5.1. The first day of the 12th calendar month following the date of the issuance of the final certificate of occupancy for the Theatre Facility or June 30, 2019, whichever is earlier, is the “**Payment Start Date.**” On the Payment Start Date, and on every one-year anniversary date of the Payment Start Date including the Loan Maturity Date, Borrower shall make an annual loan payment of \$125,000 unless the annual loan payment is forgiven in accordance with Section 3.5.2. Borrower shall pay a late charge of 5.0% of any payment not paid within five days of the due date of that payment in addition to any other amounts due under this Loan Agreement. Each payment under this Loan Agreement will be credited in the following order: first, to any late charges and costs or expenses Lender incurs in collecting the payment; second, to the unpaid principal.

3.5.2. Lender shall forgive an annual loan payment of \$125,000 if (a) Borrower provides Lender with a written report at least 14 days before the payment due date that contains sufficient information for Lender to determine if Borrower has satisfied all of the Performance Targets described in Sections 3.5.3.1 – 3.5.3.4 during the 12 months preceding the payment due date, and (b) Lender determines that Borrower has satisfied all of the Performance Targets described in Sections 3.5.3.1 – 3.5.3.4 during the 12 months preceding the payment due date.

3.5.3. The following are the Performance Targets:

3.5.3.1. Borrower maintains the Property in a clean and safe condition.

3.5.3.2. Borrower provides a minimum of 18 free school performances through the B Street’s School Tour program at schools in the City of Sacramento as follows: (a) two schools per council district, and (b) two schools at-large selected by the City.

3.5.3.3. Borrower makes 540 half-price student matinee tickets available to schools in the City of Sacramento as follows: (a) 60 tickets per council district, and (b) 60 tickets for one or more schools at-large selected by the City.

3.5.3.4. Borrower makes the Theatre Facility available to Lender on an as available basis for up to four meetings (including employee meetings), luncheons, banquets, seminars, community events, and other similar events (each, a "**Lender Event**" and collectively, the "**Lender Events**") each calendar year. As between Lender and Borrower, Borrower has the first priority for scheduling events as set forth in this Section 3.5.3.4. On the first business day of each quarter, Borrower shall deliver a current and updated schedule of events for the Theatre Facility (the "**Event Schedule**") to the City for each calendar year for which any events have been scheduled or reserved. For the purposes of this Loan Agreement, the four quarters that make up the year are January, February, and March (first quarter); April, May, and June (second quarter); July, August, and September (third quarter); and, October, November, and December (fourth quarter). At all times, Borrower shall cause the Event Schedule to cover at least the succeeding 365 days. Lender may schedule Lender Events by delivering written notice to Borrower (which notice will include the Lender's reasonable and good faith estimate of the number of attendees of the Lender Event) at least seven days in advance of the Lender Event, subject to availability of desired space within the Theatre Facility. Borrower shall not charge Lender rent or any kind of use fee with respect to the use of the Theatre Facility for Lender Event; however, Borrower may charge Lender for all out-of-pocket costs (without markup) and direct staffing costs actually incurred by Borrower in connection with hosting a Lender Event that would not have been incurred by Borrower but for the Lender Event.

3.6. Note and Security Documents. The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. The Loan is also secured by the Property as evidenced by the applicable Security Documents.

3.7. Escrow. The parties shall open the Escrow promptly after the Effective Date. Escrow shall close as provided in the Escrow Instructions on or before the Closing Date.

3.8. Commissions. Lender is not responsible to pay commissions in relation to this transaction.

4. Performance Conditions. The following are conditions precedent to performance under this Loan Agreement:

4.1. Conditions to Lender's Performance. Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (c) this agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that, with

the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and, (d) Lender has approved the Approval Documents.

4.2. Conditions to Borrower's Performance. Borrower's obligation to perform under this Loan Agreement is subject to satisfaction of all of the following conditions: (a) Lender has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) Borrower has met the Conditions to Close of Escrow, (c) Lender's representations and warranties in this Loan Agreement are correct as of the date of this Loan Agreement and as of the Close of Escrow; and (d) the Loan Agreement continues to be in full force and effect, no default on the part of Lender has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Lender under the Loan Agreement.

5. Construction. As a condition of the Loan, Borrower will diligently proceed with construction in accordance with the Scope of Development as approved by Lender. Borrower shall complete such work on or before the Completion Date, subject to Unavoidable Delay.

5.1. Changes. In order to assure sufficient funding for the Project, Borrower shall not authorize any Change without the prior written consent of Lender. If in the judgment of Lender, a Change, together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will, as a condition precedent to Lender's consent, provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes. Borrower will submit any such Change to Lender for approval on a form acceptable to Lender, together with approvals by the Project Architect, if any, and the General Contractor. Borrower shall maintain funds available in the contingency reserve that are in substantially the same percentage of the original contingency reserve as the percentage of the Project then remaining to be completed.

5.2. Contractors and Contracts. Upon Lender's request, Borrower will furnish to Lender correct lists of all contractors, subcontractors and material suppliers employed in connection with the Project, specifying their addresses, their respective portion of the Project and their respective Project cost. Lender may contact directly each contractor, subcontractor, and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan. All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

5.3. No Discrimination during Construction. Borrower for itself, the general contractor and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the construction of the Project.

5.3.1. Employment. Borrower shall not discriminate against any employee or applicant for employment because of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. Borrower will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, race, color, religion,

ancestry, national origin, disability, medical condition, marital status, or sexual orientation in connection with employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Lender setting forth the provisions of this nondiscrimination clause.

5.3.2. Advertising. Borrower will insure that its General Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the General Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability.

5.3.3. Monitoring Provisions. Borrower shall oversee its General Contractor and subcontractors to verify compliance with these requirements of the Lender for the anti-discrimination and all applicable labor requirements.

5.4. Inspection. Lender may, at any time and without notice to Borrower, enter on the Property and inspect the Project; and, during regular business hours, examine the books, records, accounting data, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Project and to make extracts or copies. Borrower shall make all such documents available to Lender promptly on demand. Borrower agrees to cooperate fully with the Lender and its Lender's designated agent and to permit all appropriate access to the Property and to all relevant books and records. Borrower shall bear the cost of reasonable inspections, except that Lender shall bear its costs of inspection. If however, Lender's inspection discovers issues of a nature that require further third-party review or investigation, Borrower shall bear the costs of such third party review.

5.5. Protection against Lien Claims. Borrower shall promptly and fully discharge all claims for labor, materials and services in connection with the Project. Borrower shall promptly file a valid Notice of Completion on completion of the Project. Borrower shall promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of 30 days or more. Borrower shall take all other reasonable steps to protect against the assertion of lien claims against the Property. Within ten days after the filing of any claim of lien against the Property, Borrower shall record a surety bond in the office of the Recorder of the County where the Property is located in an amount sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender as evidenced by Lender's written acceptance of such assurance.

5.5.1. Lender, at any time, may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers. Lender, at any time, may require Borrower to make any payments for the Project by joint check made payable to the General Contractor and subcontractor for whose account the payment is to be made, as joint payees.

5.5.2. In any event, Borrower is not required to pay, prior to adjudication, any claims for labor, materials, or services that Borrower, in good faith, reasonably disputes, and that Borrower, at its own expense, is currently and diligently contesting in the proper forum, provided that Borrower has filed the surety bond or given Lender such other assurance as Lender accepts in writing.

5.6. Security Instruments. Upon request by Lender and subject to the security interests of lender whose loan is secured by the Property and senior to Lender's security interest in the Property, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

5.7. Other Lender Draw. Borrower shall provide Lender with true, accurate, and correct copies of each Other Lender Draw, if any, including all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

5.7.1. Acknowledgment of Reliance. Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

5.8. No Prior Liens. Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

6. Prevailing Wages. The parties acknowledge that the Project is subject to the prevailing wage requirements contained in section 1720 et seq. of the California Labor Code. Borrower shall require its contractor and subcontractors to adhere to prevailing wage requirements in California Labor Code section 1720 et seq., including the following requirements: contracts between the contractor and subcontractors must include provisions requiring the payment of prevailing wage; the contractor shall monitor subcontractors' payment of prevailing wage by periodically reviewing certified payroll records and diligently taking corrective action if the subcontractors fail to pay prevailing wage; contractor and subcontractors shall maintain certified payroll records and time records. The contractor to whom a contract is awarded, and any subcontractor under him, shall not pay less than the specified prevailing wage; contractor and subcontractors are subject to penalties for violations of prevailing wage provisions. Borrower shall indemnify, hold harmless, and defend the Lender from all additional wages, benefits, fees, damages, penalties, fines, legal

fees, court costs, arbitration costs, and other costs arising from Borrower or General Contractor's improper application of California's prevailing wage laws to the Project.

7. Loan Disbursement Procedures.

7.1. Conditions Precedent to Each Loan Disbursement. The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

7.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

7.1.2. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender approved liens or security interests.

7.1.3. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

7.1.4. Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

7.1.5. Borrower has delivered to Lender all documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

7.1.6. Lender has approved the Approval Documents.

7.1.7. Borrower is the fee owner of the Property.

7.2. Conditions Precedent to First Disbursement. Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 7.1 have been met:

7.2.1. There is no legal action threatened or pending against Borrower or affecting the Property.

7.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement.

7.2.3. Borrower has obtained and Lender has approved a loan approval from a financial institution or other lender approved by Lender in its sole discretion to make the permanent financing that is secured by a senior lien against the Property. The loan approval must provide: (a) that it is subject only to those conditions that are usual and customary in the industry and that can be satisfied by the proposed closing date of the permanent financing; (b) that it is in full force with no default by any party; and (c) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults.

7.2.4. Borrower has provided proof of all insurance required by the Loan Documents.

7.2.5. Borrower has entered into a legally binding contractual obligation for \$3,000,000 to be used for the development of the Project. Nothing about that contractual obligation as documented and executed, or in submissions and approvals made under it, conflicts with this Loan Agreement. Borrower has done all things necessary to keep unimpaired its rights under that contract.

7.2.6. Borrower must request First Disbursement consistent with the terms and conditions of this Loan Agreement no later than 11 months following the Effective Date of this Loan Agreement.

7.3. Conditions Precedent to Final Disbursement. Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 7.1 have been met:

7.3.1. As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

7.3.1.1. That the Project has been duly completed in a good and proper manner using sound, new materials;

7.3.1.2. That the Project complies with the Plans and Specifications, the requirements of all Governmental Authorities and any other party having enforceable rights regarding the construction of the Project; and

7.3.1.3. That the Project is structurally sound.

7.3.2. Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

7.3.3. Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

7.3.4. Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

- 7.3.4.1. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;
 - 7.3.4.2. Borrower has obtained final certificates of occupancy for all of the Project;
 - 7.3.4.3. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and
 - 7.3.4.4. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.
- 7.3.5. Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.
- 7.3.6. Lender has received written approval from the surety on any bond required by Lender.
- 7.3.7. Borrower has submitted to Lender a final cost certification prepared by a qualified, independent auditor who is acceptable to Lender. The cost certification must indicate the amounts actually spent for each item in the cost breakdown and shall indicate the projected final sources of funding. If there is a reduction in the total cost of the Project, after all other lenders have taken their share of the savings through loan balance reductions, then Lender may withhold for itself as loan repayment the amount of the residual savings, if any, from the amount of retention then held by the Lender, and the Loan Amount shall be reduced by the amount that is withheld.
- 7.3.8. Borrower must request Final Disbursement consistent with terms and conditions of this Loan Agreement no later than three years and 11 months following the Effective Date of this Loan Agreement. If Borrower fails to request Final Disbursement consistent with the terms and conditions of this Loan Agreement within three years and 11 months of the Effective Date, the remaining funds will be recaptured by Lender.
- 7.4. **Completion Disbursement.** Notwithstanding any provision of this Agreement to the contrary, in no event shall the Final Disbursement be disbursed until the Project has received a temporary or final certificate of occupancy.
- 7.5. **Making Disbursement.** Lender shall pay each disbursement request within 25 business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 7.1. Lender shall disburse the actual cost of the

work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

7.6. Compliance. To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and Specifications, will comply in full with, all Governmental requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

8. Default.

8.1. Events of Default. At the option of Lender, each of the following events will constitute an Event of Default, subject to applicable cure rights, if any:

- 8.1.1.** Subject to Borrower's legal rights to contest a Governmental Requirement, Borrower's failure to comply with any Governmental Requirements, unless within ten days after notice of such failure by Lender or the respective governmental entity or after any action has been commenced to enforce such requirement, Borrower has cured such failure.
- 8.1.2.** Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction of the Project, unless within ten days after notice by the issuing entity or Lender of such failure, Borrower has promptly cured such failure.
- 8.1.3.** Any material deviation from the Plans and Specifications in the construction of the Project, or the appearance or use of defective workmanship or materials in the construction of the Project, if Borrower fails to remedy them or to diligently proceed to remedy them to Lender's satisfaction within ten days after Lender's written demand to do so.
- 8.1.4.** Borrower's failure to complete the construction of the Project by the Completion Date.
- 8.1.5.** The filing of any lien against the Property or Project or the service on Lender of any bonded stop notice related to the Loan, if the claim of lien or bonded stop notice continues for 30 days without discharge, satisfaction, or the making of provision for payment (including bonding) to the satisfaction of Lender.
- 8.1.6.** The attachment, levy, execution, or other judicial seizure of any portion of the Property or Project, or any substantial portion of the other assets of Borrower, that

is not released, expunged, bonded, discharged, or dismissed within 30 days after the attachment, levy, execution, or seizure.

8.1.7. Making of any unauthorized payment from Loan Proceeds or other funds of Lender.

9. Remedies.

9.1. Option to Act. On the occurrence of any Event of Default, in addition to its other rights in this Loan Agreement or in any of the other Loan Documents, at law, or in equity, Lender may, without prior demand, exercise any one or more of the following rights and remedies:

9.1.1. Terminate its obligation to make disbursements.

9.1.2. Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due.

9.1.3. Make any disbursements after the happening of any one or more of the Events of Default, without waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further disbursements, regardless of Lender's previous exercise of any rights and remedies.

9.1.4. Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Loan Agreement.

9.1.5. Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents, together with interest at the maximum amount allowed by law from the date the funds were spent until repaid.

9.2. Rights Cumulative, No Waiver. All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver will be implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms.

9.3. Disclaimer. Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default, Lender will not be liable to construct, complete, or protect the Project; to pay any expense in connection with the exercise of any remedy; or to perform any other obligation of Borrower.

9.4. Grant of Power. Subject to the prior rights of lenders whose loans are secured by the Property and senior to the rights of Lender, Borrower irrevocably appoints Lender as its

attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, to act for Borrower in its name, place, and stead as provided in this Loan Agreement, to take possession of the Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the work of construction, and to market, sell, or lease the Project; to make any additions, changes, and corrections in the Plans as may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Personalty, or for the protection of Lender's interests, to employ security guards to protect the Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Project, and to do all other acts with respect to the Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

10. Insurance. Borrower shall require the General Contractor to maintain the insurance described in this Section 10 until the Completion of the Project except as provided in Section 10.1.5.

10.1. Minimum Scope & Limits of Insurance Coverage.

10.1.1. 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, arising out of activities performed by or on behalf of Contractor and its subcontractors, products and completed operations of Contractor and its subcontractors, and premises owned, leased, or used by Contractor and its subcontractors, 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.

10.1.2. Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 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 accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the Contractor.

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

10.1.4. Borrower or the General Contractor shall purchase and maintain Builder's Risk Insurance until Completion of the Project with a company or companies lawfully authorized to do business in California. The Builder's Risk Policy shall be written in the amount of \$2,500,000.00. The City shall be a loss payee under the policy. Borrower or the General Contractor shall be responsible to pay any deductible under the policy.

10.1.5. Borrower shall purchase and maintain until the Loan Maturity Date All Risk Property Insurance including coverage for special perils and flood is required for the Theatre Complex, including all improvements, fixtures, and equipment. All property insurance must be for replacement value and name the City as loss payee.

10.2. Additional Insured Coverage.

10.2.1. Commercial General Liability Insurance: The City, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of the General Contractor and its subcontractors; products and completed operations of Contractor and its subcontractors; and premises owned, leased, or used by the General Contractor and its subcontractors.

10.2.2. Automobile Liability Insurance: The City, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

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

10.3.1. Contractor's insurance coverage, including excess insurance, shall be primary insurance as respects City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be in excess of the General Contractor's insurance and shall not contribute with it.

10.3.2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, or volunteers.

10.3.3. Coverage shall state that the General Contractor'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.

10.3.4. City will be provided with 30 days written notice of cancellation or material change in the policy language or terms.

10.4. Acceptability of Insurance. Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not

comply with the requirements of this Section 10.4. must be declared to and approved by the City in writing prior to the Close of Escrow.

10.5. Verification of Coverage. Borrower shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative named in Section 11.10.1. 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.

10.6. Subcontractors. Borrower shall include in its contract with the General Contractor a requirement that the General Contractor require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in Section 10.1.1 – 10.1.4.

11. Miscellaneous.

11.1. Nonrecourse. Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this Loan, Borrower, and Borrower's principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

11.2. Cure By Party Other than Borrower. Any lender whose loan is secured by the Property and any principal of Borrower may cure a default of the Loan, provided that such cure rights shall be the same as Borrower's cure rights. Such other curing party must cure by the date on which Borrower was obligated to cure, except if Lender is obligated by this Loan Agreement to give separate notice to such other curing party, in which instance, the cure period shall begin when Lender makes such notice to such other curing party.

11.3. Condemnation. The Borrower's proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a taking of all of the Property, the proceeds shall be applied to the sums provided by this Loan, subject to any claims of prior lienholder, with the excess, if any, paid to junior lienholders and Borrower, as they may determine. In the event of the partial taking of the Property, unless Borrower and Lender otherwise agree in writing, and subject to any claims of prior lienholders, there shall be applied to the sums secured such proportion of the proceeds as is equal to that proportion which the amount of the sums immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to junior lienholders and Borrower, as they may determine.

If the condemnor offers to make an award or settle a claim for damages to the Property and: (1) the Property is abandoned by Borrower; or (2) after notice by Lender to Borrower of the condemnor's offer, Borrower fails to respond to Lender within 30 days after the date such notice is mailed; Lender is authorized to collect and apply the proceeds, at

Lender's option, either to restoration or repair of the Property or to the sums owed under his Loan Agreement.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

- 11.4 Subordination.** Lender will subordinate this Loan to the Umpqua Bank loan in the amount indicated in the Budget or any other loan in similar amount for the Project if (a) the loan meets all material requirements of this Loan Agreement or any subsequent amendments to this Loan Agreement , (b) the loan does not require material changes to any of the Loan Documents, (c) the loan does not require Lender's execution of any agreements that materially change the Loan terms, and (d) the loan does not require Lender's execution of any agreement creating a contractual relationship between Lender and the other lender. Material changes include a change in the Loan Amount, term of the Loan, Loan repayment terms, or conditions for Loan forgiveness. Lender will determine in its sole discretion whether a change is material.
- 11.5. Nature of Representations and Warranties.** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Loan Agreement, in any other Loan Documents, and in any other document delivered to Lender by Borrower will be deemed to have been relied on by Lender, regardless of any investigation, inspection, or inquiry made by Lender or any related disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.
- 11.6. Financial Statements.** Borrower shall provide Financial Statements when requested by Lender, but in any event not more often than quarterly during construction of the Project or annually, thereafter. Borrower shall assure that Financial Statements are prepared in accordance with generally accepted accounting principles. If requested by Lender as reasonably necessary to assure the security of its Loan, Borrower shall provide Financial Statements prepared or reviewed by a licensed Certified Public Accountant or Public Accountant and fully reflecting the assets and liabilities of the party concerning whom they were prepared.

- 11.7. No Waiver.** No failure or delay on the part of Lender in exercising any right or remedy under the Loan Documents will operate as a waiver nor will Lender be estopped to exercise any right or remedy at any future time because of any such failure or delay. No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Loan Agreement will not be construed to waive any subsequent breach of the same covenant, term, or condition.
- 11.8. No Third Parties Benefited.** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other Person will have any right of action or any rights to funds at any time on deposit in the Construction Account or the Impound Account, if established.
- 11.9. No Joint Venture, Partnership, or Other Relationship.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between Lender and Borrower. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between the parties other than that of a lender and a borrower, except with respect to the formation of Borrower’s entity and other existing agreements between the parties.
- 11.10. Notices.** Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents.
- 11.10.1.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 11.10.1. to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 11.10.1.

<p>If to the City: City of Sacramento Economic Development Department 915 I Street, Fourth Floor Sacramento, California 95814 Attention: Leslie Fritzsche</p>	<p>If to the Theatre for Children, Inc.: Bill Blake Managing Director Theatre for Children, Inc. 2711 B Street Sacramento, California 95816</p>
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- 11.10.2. Short Term Notices.** Notices, including requests for approval, requiring action in less than 30 days may only be given by the foregoing overnight courier or hand delivery method, and shall include the following language on its face: “URGENT – TIME SENSITIVE – IMMEDIATE ACTION REQUIRED” and marked for delivery to Economic Development. Such notice shall include the time allowed under this Loan Agreement for action.
- 11.11. Actions.** Lender will have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties, or the disbursement of any funds under this Loan Agreement. In connection with that, Lender may incur and pay costs and expenses, including reasonable attorney fees. Borrower agrees to pay to Lender on demand all these expenses, and Lender is authorized to disburse funds from the Construction Account for that purpose. This Section does not apply to actions or proceedings between the parties.
- 11.12. Signs.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project, which sign shall remain for the duration of construction. If Borrower places a sign on the Property during construction stating the names of the Project participants, it shall also name “City of Sacramento” as a participant in the Project. Lender’s name on the sign shall be in letters not less than size of letters used to name any of the other participants.
- 11.13. Assignment.** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Borrower shall not assign this Loan Agreement or any interest it may have in the monies due or, except as otherwise provided, convey or encumber the Property without the prior written consent of Lender to a party. However, if there is an assignment, conveyance, or encumbrance, Lender may nevertheless at its option continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications. Lender may at any time assign the Loan Documents to any affiliate of Lender or to a national bank or other lender having experience with construction lending, and the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and the assignee will be substituted in the place and stead of Lender, with all rights, obligations, and remedies of Lender, including the right to further assign the Loan Documents. In addition, Lender may at any time assign a participation in the Loan to any other party, provided that Lender continues to be primarily obligated under this Loan Agreement.
- 11.14. Acceleration on Transfer or Refinancing of the Property; Assumption.** Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold, transferred or conveyed to any person, or refinanced by Borrower such that additional debt is added to the Property or the cash flows change without

Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Loan Agreement to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the Loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Agreement and the Note.

11.15. Prepayment. Borrower may prepay the Loan only on and subject to the terms and conditions in the Note. Borrower shall have no rights to receive, and under no circumstances will Borrower receive repayment of any fees previously paid to Lender.

11.16. Borrower's Responsibilities. To prevent and avoid construction defects, Borrower shall inspect, review, supervise, and assure the high quality, adequacy, and suitability of: (i) the Plans and Specifications and all changes and amendments; and (ii) architects, contractors, subcontractors, and material suppliers employed or used in the Project, and the workmanship of and the materials used by all of them; and (iii) the progress and course of construction and its conformance with the Plans and Specifications and any amendments, alterations, and changes that may be approved by Lender. Borrower will, at Borrower's expense, defend, indemnify, save, and hold Lender harmless against all claims, demands, losses, expenses, damages (general, punitive, or otherwise), and causes of action (whether legal or equitable) asserted by any Person arising out of the use of the proceeds of the Loan. Borrower will pay Lender on demand all claims, judgments, damages, losses, or expenses (including attorney fees and expenses) incurred by Lender as a result of any legal action arising out of the use of the proceeds of the Loan. The provisions of this Section will survive the termination of this Loan Agreement and the repayment of the Loan.

11.17. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands, and agrees as follows:

11.17.1. The relationship between Borrower and Lender is, and will at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy, or suitability of the Project work, except as to matters which are within the intent and purpose for which Lender has made the Loan.

11.17.2. Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate, or defective building or construction.

11.17.3. Lender will not be responsible or liable to Borrower for any loss or damage of any kind to person or property whether suffered by Borrower or any other Person or group of Persons or for negligent, faulty, inadequate, or defective building or construction, and Borrower will hold Lender harmless from any liability, loss, or damage for these things.

- 11.18. Controlling Law; Venue.** The Loan Documents are to be interpreted and applied in accordance with California law without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A, B, C, and D are part of this agreement. The venue for any legal action or proceeding will be in the County of Sacramento, California.
- 11.19. Consents and Approvals.** All consents and approvals by Lender required or permitted by any provision of this Loan Agreement will be in writing. Lender's consent to or approval of any act by Borrower requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.
- 11.20. Survival of Warranties and Covenants.** The warranties, representations, conditions, covenants, and agreements in this Loan Agreement and in the other Loan Documents will survive the making of the Loan and the execution and delivery of the Note and will continue in full force until the Indebtedness has been paid in full. Nothing in this section is intended to limit any other provision of the Loan Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Loan Document.
- 11.21. Recording and Filing.** Borrower, at its expense, will cause the Security Documents and all supplements to be recorded and filed and re-recorded and re-filed in any manner and in any places as Lender will reasonably request, and will pay all recording, filing, re-recording, and re-filing taxes, fees, and other charges.
- 11.22. Loan Expenses.** In making the first disbursement, Lender may, at its option, deduct from the proceeds of that disbursement a sum equal to the aggregate of the following, to the extent Lender has knowledge of it and demand has been made on Lender at the time of the deposit: all expenses specifically incurred in connection with the Loan or the preparation, execution, and delivery of the Loan Documents, including recording costs and expenses, transfer and other taxes (if any), surveys, appraisal fees, title and hazard insurance premiums, recording, notary, and escrow charges, and all other similar, usual, or customary loan closing charges and expenses; and any other budgeted expenses that have been approved by Lender in writing; and Lender will, for the benefit of Borrower, pay those amounts over to the respective parties on whose behalf the demands will have been received by Lender. Borrower will pay directly any expenses in connection with the Loan not so paid by Lender, including any of the expenses specified above, and will hold Lender free from any cost, liability, or obligation of any nature in connection with it, including reasonable attorney fees incurred by Lender. Borrower further agrees to pay on demand all out-of-pocket costs and expenses reasonably incurred by Lender including the fees and disbursements of Lender's outside counsel, in connection with: (i) the administration of the Loan, including all approvals or consents given or contemplated to be given under the Loan Documents, all amendments to the Loan Documents entered into by Lender or requested by any Loan Party, and all title insurance policies and endorsements required by Lender, and (ii) the enforcement of any rights or remedies under the Loan Documents, whether any action or proceeding is commenced, or the protection of the security, or interests of Lender under the Loan Documents. All costs and expenses, together with

interest at Loan rate, will form a part of the indebtedness and will be secured by the Security Documents.

- 11.23. No Representations by Lender.** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.
- 11.24. Amendment.** The Loan Documents and the terms of each of them may not be modified, waived, discharged, or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge, or termination is asserted.
- 11.25. Termination.** Except as otherwise provided in the Loan Documents, all rights and obligations under this Loan Agreement will terminate except as to any accrued obligations effective on the payment of all Indebtedness owing by Borrower to Lender.
- 11.26. Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- 11.27. Severability.** If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected, impaired, or invalidated.
- 11.28. Captions.** All headings in the Loan Documents are inserted for convenience of reference only and do not constitute a part of the Loan Documents for any other purpose.
- 11.29. Indemnity.** Borrower agrees to defend, indemnify, and hold Lender harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney fees that Lender may reasonably incur as a direct or indirect consequence of the making of the Loan, Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the other Loan Documents, the failure at any time of any of Borrower's representations or warranties to be true and correct, or any act or omission by Borrower, any contractor, subcontractor, engineer, architect, or other Person with respect to the Property, the Project, or any portion of them, except to the extent caused by the negligence or misconduct of Lender. Borrower will pay immediately on Lender's demand any amounts owing under this indemnity, together with interest at the maximum rate permitted by law from the date Lender makes a payment or incurs a loss. Borrower's duty to indemnify Lender will survive the release and cancellation of the Note.

11.30. Further Assurances. At Lender's request and at Borrower's expense, Borrower will execute, acknowledge, and deliver all other instruments and perform all other acts necessary, desirable, or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

11.31. Disclosure of Information. If Lender elects to sell the Loan, Lender may forward to the buyer of the Loan all documents and information related to the Loan in Lender's possession, including all Financial Statements, whether furnished by Borrower or otherwise.

11.32. Lender's Agents. Lender may designate agents or independent contractors to exercise any of Lender's rights under the Loan Documents. Any reference to Lender in any of the Loan Documents will include Lender's employees, agents, and independent contractors.

11.33. Integration and Interpretation. The Loan Documents contain or expressly incorporate by reference the entire agreement between Lender and Borrower with respect to the covered matters and supersede all prior negotiations. Any reference to the Property or Project in any of the Loan Documents will include all or any portion of them. Any reference to the Loan Documents themselves in any of the Loan Documents will include all amendments, renewals, or extensions approved by Lender.

11.34. Number, Identity and Gender. When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. Person means any natural person, corporation, firm, partnership, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

11.35. Counterparts. The parties may sign this agreement in counterparts, each of which is considered an original; but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

BORROWER:

THEATRE FOR CHILDREN, INC

By: 

Bill Blake, Managing Director and CFO

Dated: 12-3-15

By:  Larry Maisel
President, Board of Directors, Theatre for Children, Inc.

Dated: 12-3-15

Approved as to form:

By: _____
Borrower Counsel

LENDER:

CITY OF SACRAMENTO

By: _____
John F. Shirey, City Manager

Dated: _____

APPROVED AS TO FORM:

By:  _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

Exhibit 1: Legal Description

Parcel 1:

The South 40 feet of the West one-half (1/2) of Lot 1 in the Block bounded by "M" and "N", 27'h and 28th Streets of the City of Sacramento, according to the official plat thereof.

APN: 007-0172-001

Parcel 2:

The North 120 feet of the West one-half of Lot 1, in the Block bounded by Capitol Avenue (formerly M Street) and N Street, and 27'h and 28th Streets, of the City of Sacramento, according to the official plat thereof.

APN: 007-0172-002

Parcel 3:

The East one-half (1/2) of Lot 1 in the block bounded by Capitol Avenue, formerly M Street, and N, 27'h and 28th Streets of the City of Sacramento, according to the official plat thereof.

APN: 007-0172-003

Parcel 4:

Lot 2, in bounded by 27'h and 28th Street, Capitol Avenue (formerly M Street) and N Street, according to the official plat thereof.

APN: 007-0172-004

Parcel 5:

Lot 3, in Block bounded by "M" and "N", 27'h and 28th Street of the City of Sacramento, according to the official plat thereof.

APN: 007-0172-005

Exhibit 2: Scope of Development

The Project is the construction of a new theatre complex at 2710 Capitol Avenue which would include two theatre spaces – an approximately 364 seat children’s theatre, an approximately 250 seat theatre, and a 3,000 sq. ft restaurant

Exhibit 3: Note Form

PROMISSORY NOTE

\$2,500,000.00

Sacramento, California

Date: As of _____, 2015

1. **Promise to Pay.** For value received, the **Theatre for Children, Inc. (“Borrower”)**, a California corporation, promises to pay to the **City of Sacramento (“Lender”)**, a California municipal corporation, or order, at the office of its Economic Development Department at 915 I Street, 4th Floor, Sacramento, CA 95814, the principal sum of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), or so much as is disbursed.
2. **Loan Agreement.** This note is the “Note” referred to in the forgivable loan agreement (the “**Loan Agreement**”) between Lender and Borrower dated December 15, 2015, for purposes of identification only, as the Loan Agreement may be amended from time to time. All capitalized terms used in this note but not expressly defined in this note shall have the meanings ascribed to them in the Loan Agreement. This note is subject to the terms of the Loan Agreement; however, in the event of a conflict between the terms of this note and the Loan Agreement, the terms of this note shall prevail.
3. **Interest Rate.** This is a non-interest bearing note.
4. **Maturity Date.** The term “**Maturity Date**” means Loan Maturity Date.
5. **Payments.** The first day of the 12th calendar month following the date of the issuance of the final certificate of occupancy for the Theatre Facility or June 30, 2019, whichever is earlier, is the “**Payment Start Date.**” On the Payment Start Date, and on every one-year anniversary date of the Payment Start Date including the Loan Maturity Date, Borrower shall make an annual loan payment of \$125,000 unless the annual loan payment is forgiven in accordance with Section 5.1. of this note. Borrower shall pay a late charge of 5.0% of any payment not paid within five days of the due date of that payment in addition to any other amounts due under this note. Each payment under this note will be credited in the following order: first, to any late charges and costs or expenses Lender incurs in collecting the payment; second, to the unpaid principal.
 - 5.1. Lender shall forgive an annual loan payment of \$125,000 if (a) Borrower provides Lender with a written report at least 14 days before the payment due date that contains sufficient information for Lender to determine if Borrower has satisfied all of the Performance Targets described in Sections 5.1.1. – 5.1.4. during the 12 months preceding the payment due date, and (b) Lender determines that Borrower has satisfied all of the Performance Targets described in Sections 5.1.1. – 5.1.4. during the 12 months preceding the payment due date. The following are the Performance Targets:

- 5.1.1. Borrower maintains the Property in a clean and safe condition.
- 5.1.2. Borrower provides a minimum of 18 free school performances through the B Street's School Tour program at schools in the City of Sacramento as follows: (a) two schools per council district, and (b) two schools at-large selected by the City.
- 5.1.3. Borrower makes 540 half-price student matinee tickets available to schools in the City of Sacramento as follows: (a) 60 tickets per council district, and (b) 60 tickets for one or more schools at-large selected by the City.
- 5.1.4. Borrower makes the Theatre Facility available to Lender on an as available basis for up to four meetings (including employee meetings), luncheons, banquets, seminars, community events, and other similar events (each, a "Lender Event" and collectively, the "Lender Events") each calendar year. As between Lender and Borrower, Borrower has the first priority for scheduling events as set forth in this Section 5.1.4. On the first business day of each quarter, Borrower shall deliver a current and updated schedule of events for the Theatre Facility (the "Event Schedule") to the City for each calendar year for which any events have been scheduled or reserved. For the purposes of this note, the four quarters that make up the year are January, February, and March (first quarter); April, May, and June (second quarter); July, August, and September (third quarter); and, October, November, and December (fourth quarter). At all times, Borrower shall cause the Event Schedule to cover at least the succeeding 365 days. Lender may schedule Lender Events by delivering written notice to Borrower (which notice will include the Lender's reasonable and good faith estimate of the number of attendees of the Lender Event) at least seven days in advance of the Lender Event, subject to availability of desired space within the Theatre Facility. Borrower shall not charge Lender rent or any kind of use fee with respect to the use of the Theatre Facility for Lender Event; however, Borrower may charge Lender for all out-of-pocket costs (without markup) and direct staffing costs actually incurred by Borrower in connection with hosting a Lender Event that would not have been incurred by Borrower but for the Lender Event.

6. Immediately Due and Payable. At Lender's option, this note will become immediately due and payable upon the occurrence at any time of any of the following events:

- 6.1. Borrower defaults in the payment of any installment due under this note and does not cure the default within 30 days after receiving Lender's written demand for cure.
- 6.2. Borrower files a voluntary petition for bankruptcy or is named as a debtor in an

- involuntary petition for bankruptcy.
- 6.3. Borrower institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.
 - 6.4. Borrower makes an assignment for the benefit of its creditors.
 - 6.5. The refinancing of any loan secured by a mortgage or deed of trust on the Property without the prior written consent of Lender.
 - 6.6. The receipt of a loan secured by a mortgage or deed of trust on the Property without the prior written consent of Lender.
 - 6.7. The sale of any portion of the Property without the prior written consent of Lender.
 - 6.8. Entry of a court order that enjoins, restrains, or in any way prevents Borrower from conducting all or any part of its affairs in the ordinary course, excluding, however, any such order preventing the promotion or production of a show or event unrelated to any action or omission of Borrower.
 - 6.9. Borrower fails to pay any federal, state, or local tax or other debt unless Borrower is contesting the same in good faith.
 - 6.10. Borrower stops organizing, promoting, offering, or presenting theatrical events during the term of the Loan Agreement.
- 7. Prepayment.** This note may be prepaid at any time without penalty.
- 8. Deed of Trust.** The indebtedness evidenced by this note is secured by a deed of trust on the Property of even date herewith (the “**Deed of Trust**”). The Deed of Trust also secures all indebtedness evidenced by any extension or renewal of this note. Lender acknowledges that the Deed of Trust is subject to all existing agreements, easements, covenants and restrictions encumbering and/or recorded against the Property.

- 9. Collection Costs.** If this note is not paid when due, whether at the Maturity Date or by acceleration, Borrower, and every guarantor and endorser of this note, and every person who assumes the obligations of this note, agrees to pay all costs of collection when incurred, including reasonable attorney's fees, whether or not suit is filed. Additionally, the holder of this note will be entitled to reimbursement for all attorney's fees and costs incurred in enforcing any judgment arising from or out of this note. These fees and costs do not merge into the judgment and may be added to the judgment and substantiated by supplemental cost bill.
- 10. Presentment; Demand, Protest; Notice.** Borrower, every guarantor and endorser of this note, and every person who assumes the obligations of this note, waives presentment, demand, protest, and notice of dishonor, notice of protest, notice of nonpayment, and notice of any kind with respect to this note or any guarantee of it.
- 11. Other Obligations.** Borrower agrees to perform all of its obligations under the Loan Agreement.
- 12. Modification and Waiver.** This note may not be changed or terminated orally, but only by an agreement in writing signed by the party against who enforcement of the change or termination is sought. No alteration, amendment or waiver of any provision of this note, the Loan Agreement, or the Deed of Trust, made by agreement of the holder of this note or any other person or party, shall constitute a waiver of any other term of this note, or otherwise release or discharge the liability of Borrower under this note.
- 13. Acceleration.** If an Event of Default occurs, Lender may, in its sole discretion, declare the entire unpaid principal balance of this note, together with all accrued and unpaid interest, and all other amounts due under this note, immediately due and payable without notice or demand.
- 14. Interpretation.** This note is to be interpreted and applied in accordance with California law.

BORROWER:

By: _____

Its: _____