

**Meeting Date:** 1/5/2016

**Report Type:** Public Hearing

**Report ID:** 2015-01032

**Title: (City Council/Sacramento Public Financing Authority) Authorize the Private Placement Refunding of the Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation; and Related Items (Noticed 12/21/2015)**

**Location:** District 4

**Recommendation:** Conduct a Public Hearing and upon conclusion 1) pass a City Council Resolution approving the form of, and authorizing the execution and delivery of, a Site Lease Agreement II, a Sublease Agreement, a Facility Lease Agreement, a Control Agreement, an Amendment and Supplement to Funding Agreement, a Memorandum of Understanding, and other related documents, and authorizing certain other actions in connection therewith; and 2) pass a Sacramento Public Financing Authority Resolution approving the form of, and authorizing the execution and delivery of, two Site Lease Agreements, a Sublease Agreement, an Assignment Agreement, and other related documents, and authorizing certain other actions in connection therewith.

**Contact:** Colin Bettis, Debt Analyst, (916) 808-8292; Brian Wong, Debt Manager, (916) 808-5811, Office of the City Treasurer

**Presenter:** Colin Bettis, Debt Analyst, (916) 808-8292, Office of the City Treasurer

**Department:** City Treasurer

**Division:** City Treasurer

**Dept ID:** 05001011

**Attachments:**

- 01-Description/Analysis
- 02-Background
- 03-City Resolution
- 04-Authority Resolution
- 05-Site Lease I
- 06-Site Lease II
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- 09-Control Agreement
- 10-Memorandum of Understanding
- 11-Amendment and Supplement to Funding Agreement
- 12-Master List of Definitions

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**City Attorney Review**

Approved as to Form

Joseph Cerullo

12/17/2015 10:50:59 AM

**Approvals/Acknowledgements**

Department Director or Designee: John Colville - 12/16/2015 10:02:35 AM

## Description/Analysis

**Issue Detail:** Through this action the City Council will be authorizing the private placement refunding by the Sacramento Public Financing Authority (the “**Authority**”) of the Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 COPs**”), which were used to finance construction of the H Street Theater Complex (Music Circus).

In accordance with the City’s Debt Management Policy, the City Treasurer’s Office monitors outstanding debt to determine whether refunding long-term debt such as certificates of participation (a form of municipal bond that entitles each holder to a specified share of a pledged revenue stream) might yield potential economic savings. Given that long-term interest rates continue to remain near historic lows and are anticipated to remain favorable in the near-term, the 2002 COPs have been identified as a candidate whose refunding through a private-placement refinancing with a lender could yield economic savings. These savings could then be passed on to the California Musical Theater, which currently pays rental fees in an amount sufficient to cover the debt service for the refinancing.

On July 21, 2015, City Council passed a motion approving a conceptual proposal to refund the 2002 COPs and have the City back up 100% of the rental payments that would pay the debt service on the refunding vehicle (a refinancing that use an assignment to the lender of lease payments under new leases and agreements) if all other payment sources have been exhausted.

**Policy Considerations:** In an effort to continue support for invaluable existing arts-related programs and operations in the City, the City desires to have the Authority undertake a refunding that would enable access to the financial market as quickly as possible.

**Economic Impacts:** None

**Environmental Considerations:** None.

**Sustainability:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** Refunding the 2002 COPs will improve CMT’s financial stability by reducing its annual rent for use of the Wells Fargo Pavilion. The savings to be realized from the refunding of the 2002 COPs will allow CMT to increase their reserves as well as provide resources to handle deferred maintenance projects.

**Financial Considerations:** Currently, the 2002 COPs have \$12.01 million in principal outstanding with a final maturity of September 1, 2032. The savings are estimated to be approximately \$200,000 annually, but will not be determined until after we obtain City Council approval to move forward with the refunding and take the necessary steps to lock the interest rate and complete the private placement refinancing.

Through this refunding, the City will be formally incurring an additional \$6 million in long-term liability (previously the County’s 50% portion as the back-stop of the 2002 COPs) if CMT is unable to make timely and full debt-service payments. The City would be required to step in and make contributions toward the rental payments if, and only if, all other avenues for payment have been exhausted. To date, CMT has never missed or been late on making necessary rental payments.

The City and County will each continue to contribute \$66,000 annually to CMT through October 1, 2020, as required by the HTP Funding Agreement dated May 1, 1997, and amended and supplemented as of August, 1, 2002.

**Local Business Enterprise (LBE):** Not Applicable.

## Background

### CMT

Once known as Sacramento Light Opera Association, California Musical Theater (“**CMT**”) is the City’s oldest professional performing-arts organization. CMT is currently the primary tenant of the Wells Fargo Pavilion; it also presents the Broadway Sacramento Series in the Sacramento Community Center Theater.

### 2002 COPs

The 2002 Certificates of Participation (“**2002 COPs**”)\* were issued in August 2002 by the Sacramento Regional Arts Facilities Financing Authority, a joint-powers agency formed by the County of Sacramento and the City (the “**Authority**”). The documents under which the Authority issued the 2002 COPs are complicated, and the following is a greatly simplified summary:

- The City and the County leased the site of the Wells Fargo Pavilion to the Authority, which agreed to pay one-time rent equal to the cost of constructing the Pavilion (the rent coming from the Authority’s sale of the 2002 COPs).
- The Authority simultaneously subleased the site back to the City and the County, which each agreed to pay rent covering 50% of the debt service on the 2002 COPs (subject to CMT’s obligation to pay rent, described in the next bullet).
- The City and the County then subleased the site to CMT, which agreed to construct the Pavilion and to pay rent equal to 100% of debt service on the 2002 COPs. By agreement, the rent is used to pay debt service directly.
- The City’s and the County’s obligation to pay rent to the Authority is offset by CMT’s payment of rent. But if CMT’s payment, together with specified other monies, is inadequate to pay debt service, then the City and the County each pay, as rent, 50% of the deficiency.
- Importantly, the City’s and the County’s obligation to pay rent to the Authority is subject to abatement should the Pavilion become unavailable for use. Abatement is required by the California Constitution.

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\* A *certificate of participation* looks a lot like a municipal bond. It is “[a]n instrument evidencing a pro rata share in a specific pledged revenue stream, usually lease payments by the issuer that are typically subject to annual appropriation. The certificate generally entitles the holder to receive a share, or participation, in the payments from a particular project. The payments are passed through the lessor to the certificate holders. The lessor typically assigns the lease and the payments to a trustee, which then distributes the payments to the certificate holders.” (Municipal Securities Rulemaking Board’s Glossary of Municipal Securities Terms ([www.msrb.org](http://www.msrb.org)).

The 2002 COPs have an overall borrowing cost of approximately 4.85%. As of the date of this report, long-term interest rates are such that refinancing the 2002 COPs would reduce CMT's borrowing cost without extending the term of the debt.

### **Future Theater Operations**

The Music Circus in the Wells Fargo Pavilion will put on 48 performances during the 2016 summer season using the revamped format introduced in 2012, which proved to be popular with patrons and staff alike. Six shows will be produced.

At the conclusion of the 2015 season, subscription sales are 113.59% and contributions are 105.25% of 2014 levels. CMT continues to seek out potential rental opportunities for the Wells Fargo Pavilion.

CMT requested a \$300,000 line of credit from the City in 2011 as a safety net for potential cash-flow shortages. This line of credit was renewed on March 25, 2014, for an additional three years. To date, CMT has never drawn on the line of credit.

### **History of Strong Management**

CMT's history of strong management and good stewardship of financial resources (despite the downturn in the economy in recent years) is shown by the following:

- CMT has made all debt-service payments as required, in full and in a timely manner
- CMT has never had to draw on the \$300,000 line of credit established by City Council in April 2011 and renewed in April 2014 to provide CMT with financial flexibility for handling cash-flow shortfalls
- CMT has complied with all financial-related requirements under the documents for the 2002 COPs, including the requirement that it satisfy cumulative contribution requirements from project-related revenues

### **Motion No. 2015-0199 Supporting the Refunding of the 2002 COPs**

On July 21, 2015, the City Council passed a motion supporting the refunding of the 2002 COPs, including backing the full 100% of rental payments made by CMT. The City will be required to step in and make contributions toward CMT's debt-service payments if, and only if, all other avenues for payment have been exhausted. To date, CMT has never missed or been late on making necessary rental payments.

## RESOLUTION NO. 2016-\_\_\_\_\_

Adopted by the Sacramento City Council

[Date]

### APPROVING THE FORM OF, AND AUTHORIZING THE EXECUTION AND DELIVERY OF, A SITE LEASE AGREEMENT II, A SUBLEASE AGREEMENT, A FACILITY LEASE AGREEMENT, A PURCHASE CONTRACT, A CONTROL AGREEMENT, AN AMENDMENT AND SUPPLEMENT TO FUNDING AGREEMENT, A MEMORANDUM OF UNDERSTANDING, AND OTHER RELATED DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

#### BACKGROUND

- A. The City has entered into a joint-exercise-of-powers agreement with the Housing Authority of the City of Sacramento to create the Sacramento Public Financing Authority (the “**Authority**”).
- B. The City, as a member of the Authority, has determined that the refinancing of the acquisition, construction, improvement, renovation, and equipping of certain theater facilities (the “**Facilities**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California, (the “**G Street Site**”; together with the H Street Site, the “**Sites**”) by prepaying the Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**Certificates**”) will result in significant public benefits (as described below).
- C. The California Musical Theatre, a nonprofit public-benefit corporation organized and existing under California law (“**CMT**”), intends to lease the G Street Site and the portion of the Facilities located at the G Street Site (the “**G Street Premises**”) to the Authority under a site-lease agreement between CMT and the Authority, dated as of January 1, 2016 (the “**Site Lease Agreement I**”).
- D. The City intends to lease the H Street Site and the portion of the Facilities located at the H Street Site (the “**H Street Premises**”) to the Authority under a site-lease agreement between the City and the Authority, dated as of January 1, 2016 (the “**Site Lease Agreement II**”; together with the Site Lease Agreement I, the “**Site Lease Agreements**”).
- E. The Authority intends to lease the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City under a sublease agreement between the City and the Authority, dated as of January 1, 2016 (the “**Sublease Agreement**”).
- F. Under the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments to the Authority for the lease of the Premises by the Authority to the City (the “**Sublease Payments**”).

- G. The City intends to lease the Premises to CMT under a facility-lease agreement between the City and CMT, dated as of January 1, 2016 (the “**Facility Lease Agreement**”).
- H. Under the Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement.
- I. The Base Rental Payments that the Purchaser (defined below) receives from CMT under the Facility Lease Agreement will be credited (subject to the provisions of the Sublease Agreement) against the City’s obligation to pay the Sublease Payments under the Sublease Agreement. The City will pay to the Purchaser any difference between the Sublease Payments and the Base Rental Payments.
- J. The Authority has informed the City that it intends to assign all of its rights under the Site Lease Agreements and the Sublease Agreement to Compass Mortgage Corporation, an Alabama corporation, or such other purchaser selected by the Sacramento City Treasurer (the “**Purchaser**”) under an assignment agreement between the Authority and the Purchaser, dated as of January 1, 2016 (the “**Assignment Agreement**”).
- K. To evidence the parties’ intent that CMT and STC will continue to occupy the H Street Premises after termination of the Facility Lease Agreement, the City, CMT, and the Sacramento Theatre Company, a nonprofit public-benefit corporation organized and existing under California law (“**STC**”), will enter into a memorandum of understanding (the “**Memorandum of Understanding**”).
- L. In connection with the refinancing, the funding agreement between the City, the County, CMT, and STC, dated as of May 1, 1997, must be amended (the “**Amendment and Supplement to Funding Agreement**”).
- M. In connection with the refinancing, the City, CMT, and a custodian selected by the Sacramento City Treasurer will also be required to enter into a control agreement dated as of January 1, 2016 (the “**Control Agreement**”).
- N. All acts, conditions, and things required by the Constitution and laws of the State of California and the City Charter to exist, to have happened, and to have been performed precedent to, and in connection with, the consummation of the transactions authorized by this resolution do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the City is now duly authorized and empowered, under each and every requirement of law, to consummate those transactions for the purposes set forth in this resolution and in the manner and upon the terms provided in this resolution.

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

**Section 1. Declaration of the City Council.** The City Council finds and determines that the statements of fact in the Background are true and hereby finds and declares that the actions authorized by this resolution constitute and are concerned with the public affairs of the City.

**Section 2. Additional Findings.** The City Council hereby finds that the significant public benefits of refinancing the Facilities include but are not limited to the following:

- (a) Refinancing the Facilities will maintain and promote economic development and employment within the City and the Sacramento region.
- (b) Refinancing the Facilities will promote the general welfare, sense of community, and quality of life within the City and the Sacramento region.
- (c) Refinancing the Facilities will contribute to CMT's economic stability and enhance CMT's ability to draw new audiences to the theater facilities, thereby contributing to the revitalization of the City.
- (d) Refinancing the Facilities will maintain and generate increased tax revenues for the City.
- (e) Refinancing the Facilities will generate savings that can be contributed to CMTs "economic safety reserves," which were reduced during the recent economic downturn.
- (f) Refinancing the Facilities will generate savings that will enhance CMT's flexibility and resources to handle deferred maintenance items.
- (g) Refinancing the Facilities will enable CMT and STC to continue providing recreational and entertainment attractions and activities to the people in the City and the Sacramento region.

**Section 3. Site Lease Agreement II.** The form of the Site Lease Agreement II presented at this meeting and on file with the Sacramento City Clerk (the "**City Clerk**") is hereby approved. The Mayor, the City Manager, the City Treasurer, and their designees (each, an "**Authorized Officer**") are each hereby authorized and directed to execute and deliver the Site Lease Agreement II on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 4. Sublease Agreement.** The form of the Sublease Agreement presented at this meeting and on file with the City Clerk is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Sublease Agreement on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery

thereof, except that the maximum City Sublease Payments payable thereunder in any year ending August 31 may not exceed \$870,000.

**Section 5. Facility Lease Agreement.** The form of the Facility Lease Agreement presented at this meeting and on file with the City Clerk is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Facility Lease Agreement on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 6. Memorandum of Understanding.** The form of the Memorandum of Understanding presented at this meeting and on file with the City Clerk is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Memorandum of Understanding on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 7. Amendment and Supplement to Funding Agreement.** The form of the Amendment and Supplement to Funding Agreement presented at this meeting and on file with the City Clerk is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Amendment and Supplement to Funding Agreement on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 8. Control Agreement.** The form of Control Agreement presented at this meeting and on file with the City Clerk is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Control Agreement on the City's behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 9. TEFRA Approval.** The Council hereby approves the delivery of the Sublease Agreement for the purpose of refinancing the acquisition, construction, improvement, renovation, and equipping of the Facilities. This resolution constitutes approval of the execution and delivery of the Sublease Agreement by the applicable elected legislative body and by the governmental unit having jurisdiction over the area in which the project financed by the tax-exempt obligations is located, in accordance with Section 147(f) of the Code.

**Section 10. Attestations.** The City Clerk (or her designee) is hereby authorized and directed to attest the signature of any Authorized Officer and of any other City officers or their designees, as may be required or appropriate in connection with the execution and delivery or approval of the Site Lease Agreement II, the Sublease Agreement, the Facility Lease Agreement, the Purchase Contract, the Control Agreement, the Amendment and Supplement to Funding Agreement, the Memorandum of Understanding, and any related documents.

**Section 11. Other Actions.** The Mayor, the City Manager, the City Treasurer, the City Clerk, and the other officers of the City and their designees are hereby authorized and directed jointly and severally to—

- (a) do any and all things (including but not limited to any actions that are necessary to discharge liens or agreements relating to the Certificates to be refinanced with the proceeds of the Sublease Agreement); and
- (b) execute and deliver any and all documents

that are necessary to carry out, give effect to, and comply with the terms and purpose of this resolution and the financing transaction approved hereby. All such actions previously taken by these officers are hereby ratified, confirmed, and approved.

**Section 12. Future Consents or Amendments.** Each Authorized Officer is hereby authorized, with the concurrence of the City Attorney, to—

- (a) consent or agree to any matter that requires the City's consent or agreement under any of the documents authorized by this resolution to be executed and delivered; and
- (b) execute and deliver any future amendments to the documents authorized by this resolution to be executed and delivered if the amendments are made in accordance with the terms of the documents.

**Section 13. Effective Date.** This resolution takes effect on the date of its passage and adoption.

## RESOLUTION NO. 2016-\_\_\_\_\_

Adopted by the Sacramento Public Financing Authority

[Date]

### APPROVING THE FORM OF, AND AUTHORIZING THE EXECUTION AND DELIVERY OF, TWO SITE LEASE AGREEMENTS, A SUBLEASE AGREEMENT, AN ASSIGNMENT AGREEMENT, AND OTHER RELATED DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

#### BACKGROUND

- A. In accordance with the Joint Exercise of Powers Act (Government Code §§ 6500–6599.3) (the “**Act**”), the City of Sacramento (the “**City**”) has executed and entered into a joint-exercise-of-powers agreement with the Housing Authority of the City of Sacramento under which the Sacramento Public Financing Authority (the “**Authority**”) was created and established.
- B. Article 4 of the Act (the “Marks-Roos Local Bond Pooling Act of 1985”) authorizes and empowers a joint-exercise-of-powers authority created by a joint-exercise-of-powers agreement to exercise common powers and additional powers in furtherance of its purpose.
- C. The City, as a member of the Authority, has determined that refinancing the Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**Certificates**”) used to acquire, construct, improve, renovate, and equip certain theater facilities (the “**Facilities**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California (the “**G Street Site**”; together with the H Street Site, the “**Sites**”) by prepaying the Certificates will result in significant public benefits.
- D. The California Musical Theatre, a nonprofit public-benefit corporation organized and existing under the laws of the State of California (“**CMT**”), intends to lease the G Street Site and the portion of the Facilities located at the G Street Site (the “**G Street Premises**”) to the Authority under a site-lease agreement between CMT and the Authority, dated as of January 1, 2016 (the “**Site Lease Agreement I**”).
- E. The City intends to lease the H Street Site and the portion of the Facilities located at the H Street Site (the “**H Street Premises**”) to the Authority under a site-lease agreement between the City and the Authority, dated as of January 1, 2016 (the “**Site Lease Agreement II**”; together with this Site Lease Agreement I, the “**Site Lease Agreements**”).

- F. The Authority intends to lease the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City under a sublease agreement between the City and the Authority, dated as of January 1, 2016 (the “**Sublease Agreement**”).
- G. Under the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments to the Authority for the lease of the Premises by the Authority to the City (the “**Sublease Payments**”).
- H. The City intends to lease the Premises to CMT under a facility-lease agreement between the City and CMT, dated as of January 1, 2016 (the “**Facility Lease Agreement**”).
- I. Under the Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement.
- J. The Base Rental Payments that the Purchaser (defined below) receives from CMT under the Facility Lease Agreement will be credited (subject to the provisions of the Sublease Agreement) against the City’s obligation to pay the Sublease Payments under the Sublease Agreement. The City will pay to the Purchaser any difference between the Sublease Payments and the Base Rental Payments.
- K. The Authority intends to assign to Compass Mortgage Corporation, an Alabama corporation, or to such other purchaser as the Sacramento City Treasurer may select (the “**Purchaser**”) all of the Authority’s rights under the Site Lease Agreements and the Sublease Agreement, as provided by an Assignment Agreement between the Authority and the Purchaser, dated as of January 1, 2016 (the “**Assignment Agreement**”).
- L. All acts, conditions, and things required by law to exist, to have happened, and to have been performed precedent to, and in connection with, the consummation of the transactions authorized hereby do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Authority is now duly authorized and empowered, under each and every requirement of law, to consummate those transactions for the purposes set forth in this resolution and in the manner and upon the terms provided in this resolution.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE BOARD OF DIRECTORS OF THE SACRAMENTO PUBLIC FINANCING AUTHORITY HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Declaration of the Authority.** The Board of Directors of the Authority (the “**Board**”) finds and determines that the statements of fact in the Background are true and correct.

**Section 2. Site Lease Agreement I.** The form of the Site Lease Agreement I presented at this meeting and on file with the Authority is hereby approved. The Chair of the Board, the Treasurer of the Authority, and their duly authorized designees (each, an “**Authorized Officer**”) are each hereby authorized and directed to execute and deliver the Site Lease Agreement I on the Authority’s behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3. Site Lease Agreement II.** The form of the Site Lease Agreement II presented at this meeting and on file with the Authority is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Site Lease Agreement II on the Authority’s behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 4. Sublease Agreement.** The form of the Sublease Agreement presented at this meeting and on file with the Authority is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Sublease Agreement on the Authority’s behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 5. Assignment Agreement.** The form of the Assignment Agreement presented at this meeting and on file with the Authority is hereby approved. Any Authorized Officer is hereby authorized and directed to execute and deliver the Assignment Agreement on the Authority’s behalf with such changes in the form as the executing Authorized Officer may approve, the approval to be conclusively evidenced by the execution and delivery thereof.

**Section 6. Attestations.** The Secretary of the Authority is hereby authorized and directed to attest the signature of any Authorized Officer as may be required or appropriate in connection with the execution and delivery of the Site Lease Agreements, Sublease Agreement, Assignment Agreement, and related documents.

**Section 7. Other Actions.** The Chair of the Board and the Treasurer and other officers of the Authority are hereby authorized and directed to take all actions and execute any and all documents necessary to do any and all things and to execute and deliver any and all documents they deem necessary or advisable to consummate the sale, execution, and delivery of the Sublease Agreement (including but not limited to any actions necessary to discharge liens or agreements relating to the Certificates to be refinanced with the proceeds of the Sublease Agreement) and otherwise to carry out, give effect to, and comply with the terms and intent of this resolution, the Site Lease Agreements, the Sublease Agreement, and the Assignment Agreement. All actions previously taken by these officers or their designees or by any agent of the Authority with respect to the delivery of the Sublease Agreement are hereby ratified, confirmed, and approved.

**Section 8. Future Consents or Amendments.** Each Authorized Officer is hereby authorized, with the concurrence of legal counsel to the Authority, to (a) consent or agree to any matter that requires the consent or agreement of the Authority under any of the documents authorized by this resolution to be executed and delivered; and (b) execute and deliver any future amendments to the documents authorized by this resolution to be executed and delivered if the amendments are made in accordance with the terms of the documents.

**Section 9. Effective Date.** This resolution takes effect on the date of its passage and adoption.

Recorded Requested By And  
When Recorded Mail To:

OH&S

12/16/15

City of Sacramento  
c/o Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814

Attention: Melissa Warr

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(Space above this line for Recorder's Use)

PURSUANT TO SECTION 27383 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, RECORDING OF THIS DOCUMENT IS EXEMPT FROM ANY FEES CHARGED BY THE RECORDER.

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS \$ -0- (short term lease)

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time to sale.

#### SITE LEASE AGREEMENT I

between the

CALIFORNIA MUSICAL THEATRE,

as lessor,

and the

SACRAMENTO PUBLIC FINANCING AUTHORITY,

as lessee

Dated as of January 1, 2016

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**This Site Lease Agreement I is junior and subordinate to that certain Deed of Trust of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 1, 2016, executed by the California Musical Theatre, as Trustor, for the benefit of the City of Sacramento, as Beneficiary.**

## SITE LEASE AGREEMENT I

This SITE LEASE AGREEMENT I (this “**Site Lease Agreement I**”), dated as of January 1, 2016, between the CALIFORNIA MUSICAL THEATRE, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”), as lessor, and the SACRAMENTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”), as lessee;

### WITNESSETH:

WHEREAS, the Authority intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theater facilities (the “**Project**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California (as more particularly defined herein, the “**G Street Site**,” and together with the H Street Site, and as more particularly described in Exhibit A hereto, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, in order to achieve the foregoing, CMT intends to lease the G Street Premises (as defined in this Site Lease Agreement I) to the Authority pursuant to this Site Lease Agreement I; and

WHEREAS, the City of Sacramento, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**”), intends to lease the H Street Premises (as defined in the Site Lease Agreement II, defined herein) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement II**,” and together with this Site Lease Agreement I, the “**Site Lease Agreements**”), between the City and the Authority; and

WHEREAS, the Authority intends to lease the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City pursuant to that certain sublease agreement, dated as of January 1, 2016 (the “**Sublease Agreement**”), between the City and the Authority; and

WHEREAS, pursuant to the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the City intends to lease the Premises to CMT pursuant to that certain facility lease agreement, dated as of January 1, 2016 (the “**Facility Lease Agreement**”), between the City and CMT; and

WHEREAS, under the Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under the Sublease Agreement will be credited (subject to the provisions of the Sublease Agreement) to the extent that the Purchaser (as defined below) receives Base Rental Payments from CMT under the Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency; and

WHEREAS, pursuant to that certain Assignment Agreement, dated as of January 1, 2016 (the “**Assignment Agreement**”), between the Authority and Compass Mortgage Corporation, an Alabama corporation (the “**Purchaser**”), the Authority has assigned without recourse certain of its rights to the Site Lease Agreements and the Sublease Agreement (including its rights to receive the Sublease Payments scheduled to be paid by the City under and pursuant to the Sublease Agreement) to the Purchaser; and

WHEREAS, in consideration of such assignment, the Purchaser has agreed in the Assignment Agreement to deliver \$\_\_\_\_\_ as directed by the Authority, which the Authority intends to use to provide funds to acquire the Sublease Agreement from the City (including the rights to receive the Sublease Payments due thereunder), which funds will be used by the City to refinance the 2002 Certificates and to pay the costs of entering into this transaction; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Site Lease Agreement I do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease Agreement I;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions.

The terms defined in Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning.

SECTION 2. Lease of Premises.

CMT hereby leases to the Authority and the Authority hereby leases from CMT, on the terms and conditions hereinafter set forth, the real property situated in the County of Sacramento, State of California, and described in Exhibit B attached hereto and by this reference incorporated herein and made a part hereof (the “**G Street Site**”), together with the improvements thereon as described in Exhibit C attached hereto and by this reference incorporated herein and made a part hereof (the “**G Street Project**,” and together with the G Street Site, the “**G Street Premises**”).

SECTION 3. Term.

The term of this Site Lease Agreement I shall commence on the Closing Date and shall end on September 1, 2032 unless such term is extended or sooner terminated as hereinafter provided. If on September 1, 2032, the amounts payable under the Sublease Agreement shall not be fully paid or deemed fully paid in accordance with the Sublease Agreement or the amounts payable under the Facility Lease Agreement shall not be fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Site Lease Agreement I shall continue on a month-to-month basis until the amounts payable under the Sublease Agreement shall be fully paid or deemed fully paid in accordance with the Sublease Agreement and the amounts payable under the Facility Lease Agreement shall be fully paid or deemed fully paid in accordance with the Facility Lease Agreement. If prior to September 1, 2032, the amounts payable under the Sublease Agreement shall be fully paid or deemed fully paid pursuant to the Sublease Agreement and the amounts payable under the Facility Lease Agreement shall be fully paid or deemed fully paid pursuant to the Facility Lease Agreement, the term of this Site Lease Agreement I shall thereafter end and title to the G Street Premises shall be transferred as set forth in Section 10 hereof. In no event shall the term of this Site Lease Agreement I exceed the limits provided by law.

SECTION 4. Rental.

The Authority shall pay to CMT as and for rental hereunder the sum of \$1.00.

SECTION 5. Purpose.

The Authority shall use the G Street Premises solely for the purpose of leasing the G Street Premises to the City pursuant to the Sublease Agreement and for such purposes as may be incidental thereto, and the parties hereto acknowledge and consent that the City shall use the G Street Premises solely for the purpose of leasing the G Street Premises to CMT pursuant to the Facility Lease Agreement, provided, that in the event of default by the City under the Sublease Agreement the Authority may exercise the remedies provided in the Sublease Agreement.

SECTION 6. Warranties of the California Musical Theatre.

CMT covenants and warrants to the Authority that CMT has the power and authority to enter into, execute and deliver each of the Financing Agreements to which it is a party, and to perform all of its duties and obligations thereunder, and has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

SECTION 7. Warranties of the Sacramento Public Financing Authority.

The Authority covenants and warrants to CMT that the Authority has the power and authority to enter into, execute and deliver each of the Financing Agreements to which it is a party, and to perform all of its duties and obligations thereunder, and has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

SECTION 8. Assignments and Subleases.

The Authority may not assign its rights under this Site Lease Agreement I or sublet the G Street Premises, except pursuant to the Sublease Agreement, the Facility Lease Agreement and the Assignment Agreement.

SECTION 9. Right of Entry.

The Authority agrees that CMT shall have the right at all reasonable times to enter upon and to examine and inspect the G Street Premises. The Authority further agrees that CMT shall have such rights of access to the G Street Premises as may be reasonably necessary to cause the proper maintenance of the G Street Premises in the event of failure by the Authority to perform its obligations hereunder.

SECTION 10. Title to Premises During Term; Title to Premises Upon Termination.

So long as this Site Lease Agreement I remains in effect, the Authority shall have leasehold title to the G Street Premises or the applicable portions or items thereof, and any and all improvements, repairs, replacements or modifications thereto. CMT shall not have any right, title or interest in the G Street Premises or any portion or item thereof, in any additions, improvements, repairs, replacements or modifications thereto, except as expressly set forth in this Site Lease Agreement I.

The parties hereto agree, upon the termination of this Site Lease Agreement I (upon expiration of its term or earlier termination in accordance with its terms), that fee title to the G Street Premises shall automatically transfer and vest in the Authority.

SECTION 11. Default.

In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease Agreement I, which default continues for thirty (30) days following written notice and demand for correction thereof to the Authority, CMT may exercise any and all remedies granted by law, except that no merger of this Site Lease Agreement I and of the Sublease Agreement or the Facility Lease Agreement shall be deemed to occur as a result thereof; provided, that CMT shall have no power to terminate this Site Lease Agreement I by reason of any default on the part of the Authority if such termination would affect or impair any assignment or sublease of all or any part of the G Street Premises then in effect between the Authority and any assignee or subtenant of the Authority or its assignees. So long as any such assignee or subtenant of the Authority shall duly perform the terms and conditions of this Site Lease Agreement I and of its then existing sublease (if any), such assignee or subtenant shall be deemed to be and shall become the tenant of CMT hereunder and shall be entitled to all of the rights and privileges granted under any such assignment; provided, that until all Sublease Payments are paid or deemed paid under the Sublease Agreement, the Sublease Payments shall continue to be paid to the Purchaser.

SECTION 12. Quiet Enjoyment.

CMT covenants and agrees that the Authority at all times during the term of this Site Lease Agreement I shall peaceably and quietly have, hold and enjoy all of the G Street Premises.

SECTION 13. Maintenance, Utilities, Taxes, Assessments and Insurance.

The Authority covenants and agrees to: (1) maintain or cause to be maintained the G Street Premises, (2) pay or cause to be paid all utilities and any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the G Street Premises (including both land and improvements) and (3) obtain and maintain, or cause to be obtained and maintained, insurance policies and coverages as described in Section 9.01 of the Facility Lease Agreement.

SECTION 14. Damage and Destruction; Eminent Domain; Title Insurance.

(a) If the G Street Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, the parties hereto agree that the Net Proceeds of any insurance claim (other than business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement) shall constitute the property of the Authority and the Authority hereby agrees to cause apply the Net Proceeds in accordance with Section 10.01 of the Facility Lease Agreement. The parties hereto also agree that the Net Proceeds of any business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement shall constitute the property of the Authority and the Authority hereby agrees to pay all such amounts to the City for payment of Sublease Payments under the Sublease Agreement.

(b) If the G Street Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority (including the City) threatening to exercise the power of eminent domain, the parties hereto agree that the Net Proceeds shall constitute the property of the Authority and the Authority hereby agrees to apply the Net Proceeds in accordance with Section 10.02 of the Facility Lease Agreement.

(c) The parties hereto agree that the Net Proceeds of any title insurance award shall constitute the property of the Authority and the Authority hereby agrees to apply the Net Proceeds in accordance with Section 10.03 of the Facility Lease Agreement.

(d) The parties hereto agree that the Authority shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.

SECTION 15. Partial Invalidity.

If any one or more of the terms, provisions, covenants or conditions of this Site Lease Agreement I shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this

Site Lease Agreement I shall be affected thereby, and each provision of this Site Lease Agreement I shall be valid and enforceable to the fullest extent permitted by law.

SECTION 16. Notices.

All notices herein required (i) shall be given not later than the date required hereunder, (ii) shall be signed by an appropriate officer or other representative, (iii) shall be addressed to the applicable party at its Notice Delivery Address and (iv) shall be considered as properly given (A) if delivered in person, (B) if sent prepaid by a nationally recognized overnight delivery service, (C) if overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid or (D) if sent by prepaid telegram or facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

The Authority and CMT, by notice given to all of the Notice Delivery Addresses, may designate a different Notice Delivery Address to which subsequent notices, certificates or other communications shall be sent.

SECTION 17. Headings.

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease Agreement I.

SECTION 18. Execution.

This Site Lease Agreement I may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Site Lease Agreement I. It is also agreed that separate counterparts of this Site Lease Agreement I may separately be executed by CMT and the Authority, all with the same force and effect as though the same counterpart had been executed by both CMT and the Authority.

SECTION 19. Subordination to Deed of Trust.

The Authority, as lessee under this Site Lease Agreement I, declares, agrees and acknowledges that:

(a) It consents to and approves (i) all provisions of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith encumbering the G Street Premises (the "Deed of Trust") executed by CMT, as trustor, in favor of the City, and (ii) all agreements, including, but not limited to any loan or escrow agreements, between CMT and the City for the disbursement of proceeds in connection with the Deed of Trust;

(b) The City, in making disbursements pursuant to the Deed of Trust is under no obligation or duty to, nor has the City represented that it will, see to the application of such proceeds by the person or persons to whom the City disburses such proceeds and any application

or use of such proceeds for purposes other than those provided for in the Deed of Trust shall not defeat the subordination herein made in whole or part; and

(c) It intentionally and unconditionally waives, relinquishes, subjects and subordinates this Site Lease Agreement I, the leasehold estate created hereby together with all rights and privileges of the Authority under this Site Lease Agreement I in favor of the lien or charge upon said land of the Deed of Trust in favor of the City and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection, and subordination.

IN WITNESS WHEREOF, CMT and the Authority have caused this Site Lease Agreement I to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CALIFORNIA MUSICAL THEATRE

By: \_\_\_\_\_  
Authorized Representative

SACRAMENTO PUBLIC FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Secretary

EXHIBIT A  
MASTER LIST OF DEFINITIONS

EXHIBIT B

DESCRIPTION OF G STREET SITE

The G Street Site is all of that certain real property situated in the County of Sacramento, State of California, described as follows:

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Recorded Requested By And  
When Recorded Mail To:

OH&S

12/16/15

City of Sacramento  
c/o Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814

Attention: Melissa Warr

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(Space above this line for Recorder's Use)

PURSUANT TO SECTION 27383 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, RECORDING OF THIS DOCUMENT IS EXEMPT FROM ANY FEES CHARGED BY THE RECORDER.

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS \$ -0- (short term lease)

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time to sale.

**SITE LEASE AGREEMENT II**

between the

**CITY OF SACRAMENTO,**

as lessor,

and the

**SACRAMENTO PUBLIC FINANCING AUTHORITY,**

as lessee

Dated as of January 1, 2016

## SITE LEASE AGREEMENT II

This SITE LEASE AGREEMENT II (this “**Site Lease Agreement II**”), dated as of January 1, 2016, between the CITY OF SACRAMENTO, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**”), as lessor, and the SACRAMENTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”), as lessee;

### WITNESSETH:

WHEREAS, the Authority intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theater facilities (the “**Project**”) located at 1419 H Street, Sacramento, California (as more particularly defined herein, the “**H Street Site**”) and 1422 G Street, Sacramento, California (the “**G Street Site**,” and together with the H Street Site, and as more particularly described in Exhibit A hereto, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, in furtherance of the foregoing, the California Musical Theatre, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”), intends to lease the G Street Premises (as defined in the Site Lease Agreement I, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement I**,” and together with this Site Lease Agreement II, the “**Site Lease Agreements**”), between CMT and the Authority; and

WHEREAS, the City intends to lease the H Street Premises (as defined in this Site Lease Agreement II) to the Authority pursuant to this Site Lease Agreement II; and

WHEREAS, the Authority intends to lease the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City pursuant to that certain sublease agreement, dated as of January 1, 2016 (the “**Sublease Agreement**”), between the City and the Authority; and

WHEREAS, pursuant to the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the City intends to lease the Premises to CMT pursuant to that certain facility lease agreement, dated as of January 1, 2016 (the “**Facility Lease Agreement**”), between the City and CMT; and

WHEREAS, under the Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under the Sublease Agreement will be credited (subject to the provisions of the Sublease Agreement) to the extent that the Purchaser (as defined below) receives Base Rental Payments from CMT under the

Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency; and

WHEREAS, pursuant to that certain Assignment Agreement, dated as of January 1, 2016 (the “**Assignment Agreement**”), between the Authority and Compass Mortgage Corporation, an Alabama corporation (the “**Purchaser**”), the Authority has assigned without recourse certain of its rights to the Site Lease Agreements and the Sublease Agreement (including its rights to receive the Sublease Payments scheduled to be paid by the City under and pursuant to the Sublease Agreement) to the Purchaser; and

WHEREAS, in consideration of such assignment, the Purchaser has agreed in the Assignment Agreement to deliver \$\_\_\_\_\_ as directed by the Authority, which the Authority intends to use to provide funds to acquire the Sublease Agreement from the City (including the rights to receive the Sublease Payments due thereunder), which funds will be used by the City to refinance the 2002 Certificates and to pay the costs of entering into this transaction; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Site Lease Agreement II do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease Agreement II;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions.

The terms defined in Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning.

SECTION 2. Lease of Premises.

The City hereby leases to the Authority and the Authority hereby leases from the City, on the terms and conditions hereinafter set forth, the real property situated in the County of Sacramento, State of California, and described in Exhibit B attached hereto and by this reference incorporated herein and made a part hereof (the “**H Street Site**”), together with the improvements thereon as described in Exhibit C attached hereto and by this reference incorporated herein and made a part hereof (the “**H Street Project**,” and together with the H Street Site, the “**H Street Premises**”).

SECTION 3. Term.

The term of this Site Lease Agreement II shall commence on the Closing Date and shall end on September 1, 2032 unless such term is extended or sooner terminated as hereinafter provided. If on September 1, 2032, the amounts payable under the Sublease Agreement shall not be fully paid or deemed fully paid in accordance with the Sublease Agreement or the amounts payable under the Facility Lease Agreement shall not be fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Site Lease Agreement II shall continue on a month-to-month basis until the amounts payable under the Sublease Agreement shall be fully paid or deemed fully paid in accordance with the Sublease Agreement and the amounts payable under the Facility Lease Agreement shall be fully paid or deemed fully paid in accordance with the Facility Lease Agreement. If prior to September 1, 2032, the amounts payable under the Sublease Agreement shall be fully paid or deemed fully paid pursuant to the Sublease Agreement and the amounts payable under the Facility Lease Agreement shall be fully paid or deemed fully paid pursuant to the Facility Lease Agreement, the term of this Site Lease Agreement II shall thereafter end and title to the G Street Premises shall be transferred as set forth in Section 10 hereof. In no event shall the term of this Site Lease Agreement II exceed the limits provided by law.

SECTION 4. Rental.

The Authority shall pay to the City as and for rental hereunder the sum of \$1.00.

SECTION 5. Purpose.

The Authority shall use the H Street Premises solely for the purpose of leasing the H Street Premises to the City pursuant to the Sublease Agreement and for such purposes as may be incidental thereto, and the parties hereto acknowledge and consent that the City shall use the H Street Premises solely for the purpose of leasing the H Street Premises to CMT pursuant to the Facility Lease Agreement, provided, that in the event of default by the City under the Sublease Agreement the Authority may exercise the remedies provided in the Sublease Agreement.

SECTION 6. Warranties of the City.

The City covenants and warrants to the Authority that the City has the power and authority to enter into, execute and deliver each of the Financing Agreements to which it is a party, and to perform all of their duties and obligations thereunder, and have duly authorized the execution and delivery of each of the Financing Agreements to which each is a party.

SECTION 7. Warranties of the Sacramento Public Financing Authority.

The Authority covenants and warrants to the City that the Authority has the power and authority to enter into, execute and deliver each of the Financing Agreements to which it is a party, and to perform all of its duties and obligations thereunder, and has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

SECTION 8. Assignments and Subleases.

The Authority may not assign its rights under this Site Lease Agreement II or sublet the H Street Premises, except pursuant to the Sublease Agreement, the Facility Lease Agreement and the Assignment Agreement.

SECTION 9. Right of Entry.

The Authority agrees that the City shall have the right at all reasonable times to enter upon and to examine and inspect the H Street Premises. The Authority further agrees that the City shall have such rights of access to the H Street Premises as may be reasonably necessary to cause the proper maintenance of the H Street Premises in the event of failure by the Authority to perform its obligations hereunder.

SECTION 10. Title to Premises During Term; Title to Premises Upon Termination.

So long as this Site Lease Agreement II remains in effect, the Authority shall have leasehold title to the H Street Premises or the applicable portions or items thereof, and any and all improvements, repairs, replacements or modifications thereto. The City shall not have any right, title or interest in the H Street Premises or any portion or item thereof, in any additions, improvements, repairs, replacements or modifications thereto, except as expressly set forth in this Site Lease Agreement II.

The parties hereto agree, upon the termination of this Site Lease Agreement II (upon expiration of its term or earlier termination in accordance with its terms) that fee title to the H Street Premises shall automatically transfer and vest in the Authority.

SECTION 11. Default.

In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease Agreement II, which default continues for thirty (30) days following written notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease Agreement II and of the Sublease Agreement or the Facility Lease Agreement shall be deemed to occur as a result thereof; provided, that the City shall have no power to terminate this Site Lease Agreement II by reason of any default on the part of the Authority if such termination would affect or impair any assignment or sublease of all or any part of the H Street Premises then in effect between the Authority and any assignee or subtenant of the Authority or its assignees. So long as any such assignee or subtenant of the Authority shall duly perform the terms and conditions of this Site Lease Agreement II and of its then existing sublease (if any), such assignee or subtenant shall be deemed to be and shall become the tenant of the City hereunder and shall be entitled to all of the rights and privileges granted under any such assignment; provided, that that until all Sublease Payments are paid or deemed paid under the Sublease Agreement, the Sublease Payments shall continue to be paid to the Purchaser.

SECTION 12. Quiet Enjoyment.

The City covenants and agrees that the Authority at all times during the term of this Site Lease Agreement II shall peaceably and quietly have, hold and enjoy all of the H Street Premises.

SECTION 13. Maintenance, Utilities, Taxes, Assessments and Insurance.

The Authority covenants and agrees to: (1) maintain or cause to be maintained the H Street Premises, (2) pay or cause to be paid all utilities and any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the H Street Premises (including both land and improvements) and (3) obtain and maintain, or cause to be obtained and maintained, insurance policies and coverages as described in Section 9.01 of the Facility Lease Agreement.

SECTION 14. Damage and Destruction; Eminent Domain; Title Insurance.

(a) If the H Street Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, the parties hereto agree that the Net Proceeds of any insurance claim (other than business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement) shall constitute the property of the Authority and the Authority hereby agrees to cause apply the Net Proceeds in accordance with Section 10.01 of the Facility Lease Agreement. The parties hereto also agree that the Net Proceeds of any business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement shall constitute the property of the Authority and the Authority hereby agrees to pay all such amounts to the City for payment of Sublease Payments under the Sublease Agreement.

(b) If the H Street Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority (including the City) threatening to exercise the power of eminent domain, the parties hereto agree that the Net Proceeds shall constitute the property of the Authority and the Authority hereby agrees to cause apply the Net Proceeds in accordance with Section 10.02 of the Facility Lease Agreement.

(c) The parties hereto agree that the Net Proceeds of any title insurance award shall constitute the property of the Authority and the Authority hereby agrees to cause apply the Net Proceeds in accordance with Section 10.03 of the Facility Lease Agreement.

(d) The parties hereto agree that the Authority shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.

SECTION 15. Partial Invalidity.

If any one or more of the terms, provisions, covenants or conditions of this Site Lease Agreement II shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this

Site Lease Agreement II shall be affected thereby, and each provision of this Site Lease Agreement II shall be valid and enforceable to the fullest extent permitted by law.

SECTION 16. Notices.

All notices herein required (i) shall be given not later than the date required hereunder, (ii) shall be signed by an appropriate officer or other representative, (iii) shall be addressed to the applicable party at its Notice Delivery Address and (iv) shall be considered as properly given (A) if delivered in person, (B) if sent prepaid by a nationally recognized overnight delivery service, (C) if overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid or (D) if sent by prepaid telegram or facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

The Authority and the City, by notice given to all of the Notice Delivery Addresses, may designate a different Notice Delivery Address to which subsequent notices, certificates or other communications shall be sent.

SECTION 17. Headings.

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease Agreement II.

SECTION 18. Execution.

This Site Lease Agreement II may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Site Lease Agreement II. It is also agreed that separate counterparts of this Site Lease Agreement II may separately be executed by the City and the Authority, all with the same force and effect as though the same counterpart had been executed by the City and the Authority.

IN WITNESS WHEREOF, the City and the Authority have caused this Site Lease Agreement II to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Assistant City Attorney

SACRAMENTO PUBLIC FINANCING  
AUTHORITY

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

EXHIBIT A  
MASTER LIST OF DEFINITIONS

A-1

EXHIBIT B

DESCRIPTION OF H STREET SITE

The H Street Site is all of that certain real property situated in the County of Sacramento, State of California, described as follows:

B-1

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OHSUSA:763797263.4

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Recording Requested By and  
When Recorded Mail To:

OH&S

12/16/15

City of Sacramento  
c/o Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814

Attn: Melissa Warr

---

(Space above this line for Recorder's Use)

PURSUANT TO SECTION 27383 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, RECORDING OF THIS DOCUMENT IS EXEMPT FROM ANY FEES CHARGED BY THE RECORDER.

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS \$ -0- (short term lease)

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time to sale.

SUBLEASE AGREEMENT

by and among the

SACRAMENTO PUBLIC FINANCING AUTHORITY,

as sublessor

and the

CITY OF SACRAMENTO,

as sublessee

Dated as of January 1, 2016

---

**With respect to the G Street Premises, this Sublease Agreement is junior and subordinate to that certain Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 1, 2016, executed by the California Musical Theatre, as Trustor, for the benefit of the City of Sacramento, as Beneficiary.**

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## SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (this “**Sublease Agreement**”), dated as of January 1, 2016, between the SACRAMENTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”), as sublessor and the CITY OF SACRAMENTO, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**”), as sublessee;

### WITNESSETH:

WHEREAS, the Authority intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theater facilities (the “**Project**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California (the “**G Street Site**,” and together with the H Street Site, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, in furtherance of the foregoing, the California Musical Theatre, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”), has leased the G Street Premises (as defined in the Site Lease Agreement I, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement I**”), between CMT and the Authority; and

WHEREAS, the City has leased the H Street Premises (as defined in the Site Lease Agreement II, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement II**,” and together with the Site Lease Agreement I, the “**Site Lease Agreements**”), between the City and the Authority; and

WHEREAS, the Authority has leased the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City pursuant to this Sublease Agreement; and

WHEREAS, pursuant to this Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the City has leased the Premises to CMT pursuant to that certain facility lease agreement, dated as of January 1, 2016 (the “**Facility Lease Agreement**”), between the City and CMT; and

WHEREAS, under the Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to Sublease Payments required under this Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under this Sublease Agreement will be credited (subject to the provisions of this Sublease Agreement) to

the extent that the Purchaser (as defined below) receives Base Rental Payments from CMT under the Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency; and

WHEREAS, pursuant to that certain Assignment Agreement, dated as of January 1, 2016 (the “**Assignment Agreement**”), between the Authority and Compass Mortgage Corporation (the “**Purchaser**”), the Authority has assigned without recourse certain of its rights to the Site Lease Agreements and this Sublease Agreement (including its rights to receive the Sublease Payments scheduled to be paid by the City under and pursuant to this Sublease Agreement) to the Purchaser; and

WHEREAS, in consideration of such assignment, the Purchaser has agreed in the Assignment Agreement to deliver \$\_\_\_\_\_ as directed by the Authority, which the Authority intends to use to provide funds to acquire this Sublease Agreement from the City (including the rights to receive the Sublease Payments due thereunder), which funds will be used by the City to refinance the 2002 Certificates and to pay the costs of entering into this transaction; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Sublease Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Sublease Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS; INTERPRETATION; EXHIBITS

**Section 1.01. Definitions.** The terms defined in Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning.

**Section 1.02. Interpretation.**

(a) Unless the context otherwise indicates, all words expressed in the singular shall include the plural and vice versa, and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) All captions or headings of the articles and sections and subsections hereof and the table of contents hereof are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subsections are to the corresponding Articles, Sections or subsections hereof, and the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Sublease Agreement as a whole and not to any particular Article, Section or subsection hereof.

**Section 1.03. Exhibits.** The following Exhibits are attached hereto and by this reference incorporated herein and made a part hereof:

- Exhibit A: Master List of Definitions
- Exhibit B: Description of Sites
- Exhibit C: Sublease Payment Schedule
- Exhibit D: Form of Investor Letter

## **ARTICLE II**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

**Section 2.01. Representations, Covenants and Warranties of the Authority.** The Authority represents, covenants and warrants to the City as follows:

(a) **Due Organization and Existence.** The Authority is a joint exercise of powers authority organized and existing under the laws of the State, has power to enter into each of the Financing Agreements to which it is a party and is possessed of full power to own, hold, lease, as lessee and sublessor, and sell real and personal property.

(b) **Authorization.** The laws of the State authorize the Authority to enter into each of the Financing Agreements to which it is a party, to enter into the transactions contemplated hereby and thereby and to carry out its obligations under each of the Financing Agreements to which it is a party, and the Authority has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

(c) **Execution and Delivery.** The Authority has duly executed and delivered each of the Financing Agreements to which it is a party in accordance with the laws of the State, and each of the Financing Agreements to which it is a party constitute a legal, valid and binding agreement of the Authority, enforceable against the Authority in accordance with their respective terms, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of these Financing Agreements, except to the extent limited or affected by bankruptcy, insolvency or other laws affecting

creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

(d) No Conflict. To the current actual knowledge of the Authority after reasonable investigation, which did not include the review or search of federal, state or other court records, or the review or search of City or Authority records other than those directly and immediately connected with the 2002 Certificates, except as disclosed in writing to the Purchaser, neither the execution and delivery of each of the Financing Agreements to which it is a party, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority or upon the Premises, except Permitted Encumbrances.

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution and delivery of each of the Financing Agreements to which it is a party or the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.

(f) Title. The Authority holds a valid leasehold estate in the Premises subject to the terms and conditions of the Site Lease Agreements.

**Section 2.02. Representations, Covenants, and Warranties of the City.** The City represents, covenants and warrants to the Authority as follows:

(a) Due Organization and Existence. The City is a municipal corporation and charter city organized and existing under the laws of the State, has power to enter into each of the Financing Agreements to which it is a party and is possessed of full power to own, hold, lease, as lessor, sublessee and sub-lessor, and sell real and personal property.

(b) Authorization. The laws of the State authorize the City to enter into each of the Financing Agreements to which it is a party, to enter into the transactions contemplated hereby and thereby and to carry out its obligations under each of the Financing Agreements to which it is a party and the City has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

(c) Execution and Delivery. The City has duly executed and delivered each of the Financing Agreements to which it is a party in accordance with the laws of the State, and each of the Financing Agreements to which it is a party constitute a legal, valid and binding agreement of the City, enforceable against the City in accordance with their respective terms, and

further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of these Financing Agreements, except to the extent limited or affected by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

(d) No Conflict. To the current actual knowledge of the City after reasonable investigation, which did not include the review or search of federal, state or other court records, or the review or search of City records other than those directly and immediately connected with the 2002 Certificates, except as disclosed in writing to the Purchaser, neither the execution and delivery of each of the Financing Agreements to which it is a party, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City or upon the Premises, except Permitted Encumbrances.

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution and delivery of each of the Financing Agreements to which it is a party or the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.

(f) Seismic. To the current actual knowledge of the City after reasonable investigation, the Premises were built in compliance with seismic building code requirements of the State of California at the time of construction beginning in 2002.

(g) Litigation. To the current, actual knowledge of the officer of the City who executes this Sublease Agreement, as of the Closing Date the City has not been served with process in, and has not been overtly threatened with, any action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, government agency, public board, or public body—

(i) in which an unfavorable decision, ruling, or finding would affect the existence of the City or the titles of its officers to their offices;

(ii) that seeks to prohibit, restrain, or enjoin the execution and delivery of this Sublease Agreement;

(iii) that contests, as to the City, the validity or enforceability of this Sublease Agreement;

(iv) that contests the exclusion from gross income of the interest component of the Sublease Payments for federal income-tax purposes; or

(v) that might result in a material adverse change in the financial condition of the City or might materially adversely affect the ability of the City to make Sublease Payments under this Sublease Agreement.

(h) Financial Statements. The financial statements of the City for the year ended June 30, 2014, supplied to the Purchaser were prepared in accordance with generally accepted accounting principles, consistently applied and fairly present the City's financial condition as of the date of such statements. Other than as disclosed to the Purchaser, there has been no material adverse change in the City's financial condition subsequent to June 30, 2014.

### ARTICLE III

#### AGREEMENT TO SUBLEASE

**Section 3.01. Sublease of Premises.** The Authority hereby leases to the City and the City hereby leases from the Authority, upon the terms and conditions hereinafter set forth, the Premises.

**Section 3.02. Quiet Enjoyment.** The City at all times during the term of this Sublease Agreement shall peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Sublease Agreement. The Purchaser shall not interfere with such quiet use and enjoyment during the term of this Sublease Agreement so long as the City is not in default hereunder.

**Section 3.03. Right of Entry.** The City agrees that the Authority shall have the right at all reasonable times to enter upon and to examine and inspect the Premises. The City further agrees that the Authority shall have such rights of access to the Premises as may be reasonably necessary to cause the proper maintenance by the Authority in the event of failure by the City to perform their obligations hereunder.

### ARTICLE IV

#### TERM

**Section 4.01. Commencement of Term of Sublease Agreement; Commencement of Rental.** The term of this Sublease Agreement shall commence on the Closing Date and shall end on September 1, 2032 unless such term is extended or sooner terminated as hereinafter provided. If on September 1, 2032, the amounts payable under this Sublease Agreement shall not be fully paid or deemed fully paid in accordance with this Sublease Agreement or the amounts payable under the Facility Lease Agreement shall not be fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Sublease Agreement

shall continue on a month-to-month basis until the amounts payable under this Sublease Agreement have been fully paid or deemed fully paid in accordance with this Sublease Agreement and the amounts payable under the Facility Lease Agreement have been fully paid or deemed fully paid in accordance with the Facility Lease Agreement. If prior to September 1, 2032, the amounts payable under this Sublease Agreement have been fully paid or deemed fully paid in accordance with this Sublease Agreement and the amounts payable under the Facility Lease Agreement have been fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Sublease Agreement shall thereafter end and title to the Premises shall be transferred as set forth in Section 12.01 hereof. In no event shall the term of this Sublease Agreement exceed the limits provided by law.

## ARTICLE V

### USE OF PROCEEDS; TAX COVENANTS

**Section 5.01. Use of Proceeds.** The parties hereto agree that the Authority will pay to the City \$\_\_\_\_\_ to acquire this Sublease Agreement and that the City will use such proceeds to prepay the 2002 Certificates and to pay the costs relating to this transaction.

**Section 5.02. Tax Covenants.** The City shall at all times do and perform all acts and things permitted by law and this Sublease Agreement that are necessary or desirable in order to assure that the interest component of the Sublease Payments will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excluded. Without limiting the generality of the foregoing, the City agrees to comply with the provisions of the Tax Certificate to be executed by the City, the Authority and CMT on the Closing Date. This covenant shall survive payment in full or deemed payment of the Sublease Payments.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01. Amount of Sublease Payments.**

(a) Subject to Section 6.11 of this Sublease Agreement, the City agrees to pay as rental hereunder for the term of this Sublease Agreement to the Authority, its successor and assigns, without deduction or offset of any kind, as rental for the right of possession, use and occupancy of the Premises during each Rental Period (as defined below), the sublease payments (the “**Sublease Payments**”), with principal and interest components, the principal being paid annually and the interest being paid semiannually, in accordance with the Sublease Payment Schedule specified in Exhibit C, attached hereto and by this reference incorporated herein and made a part hereof, as the same may be amended from time to time pursuant to Section 6.05 of this Sublease Agreement (collectively, the “**Sublease Payments**”). Sublease Payments shall be calculated on an annual basis, for the twelve-month periods commencing on September 1 and

ending on August 31 of each year (the “**Rental Period**”), and each annual Sublease Payment shall be divided into two interest components, due on March 1 and September 1 of each Rental Period, and one principal component, due on September 1 of each Rental Period. Sublease Payments due on September 1 shall be payable on the preceding August 15, and Sublease Payments due on March 1 shall be payable the preceding February 15, whether or not each such day is a Business Day. The interest components of the Sublease Payments shall be paid by the City as, and constitute interest paid on, the principal components of the Sublease Payments to be paid by the City hereunder computed on the basis of a 360-day year composed of twelve 30-day months. Each annual payment of the Sublease Payment (to be payable in two installments as aforesaid) shall be for the right of possession, use and occupancy of the Premises for the twelve-month period commencing on September 1 of each Rental Period. The Authority and the City agree that the City shall make such Sublease Payments directly to the Purchaser (as assignee of the Authority) and that such payments to the Purchaser (as assignee of the Authority) shall satisfy the City’s obligations to pay scheduled Sublease Payments under this Sublease Agreement.

(i) If an Event of Taxability occurs, the interest component of the Sublease Payments will increase to the Taxable Rate and the City shall prepare (or cause to be prepared) revised Exhibit C to this Sublease Agreement reflecting the change in interest rate to the Taxable Rate.

(ii) If an Event of Default under this Sublease Agreement occurs and is continuing, the interest component of the Sublease Payments will increase to the Default Rate and the City shall prepare (or cause to be prepared) revised Exhibit C to this Sublease Agreement reflecting the change in interest rate to the Default Rate.

(b) The Sublease Payments payable in each Rental Period shall be for the right of possession, use and occupancy of the Premises during such Rental Period.

(c) The obligations of the City to pay Sublease Payments under this Sublease Agreement shall be credited to the extent that the Purchaser receives Base Rental Payments from CMT under the Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency (subject to the provisions of this Sublease Agreement). Notwithstanding the foregoing crediting mechanism set forth in this Section 6.01(c), in the event amounts previously paid to Purchaser are disgorged under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, the Sublease Payments so disgorged will remain due and payable by the City as provided herein.

**Section 6.02. Additional Rental Payments.** Subject to Section 6.11 of this Sublease Agreement, in addition to the Sublease Payments, the City shall pay, when due, any amounts required hereunder, including, without limitation, any amounts required under Article VIII, all costs and expenses incurred by the Authority in complying with the provisions of this Sublease Agreement, including, without limitation, compensation, indemnification and

reimbursable expenses due to the Custodian, all rebate payments and all costs and expenses of counsel, auditors, engineers and accountants, insurance premiums and all other reasonable and necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of this Sublease Agreement (collectively, the “**Additional Rental Payments**”). The foregoing Additional Rental Payments shall be billed to the City from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Authority for one or more of the items above described, or that such amount is then so payable for such items. Amounts so billed shall be paid by the City not later than the latest time as such amounts may be paid without penalty or, if no penalty is associated with a late payment of such amounts, within 30 days after receipt of a bill by the City for such amounts. The obligations of the City set forth in this Section shall be satisfied to the extent the respective payees receive the amount required by this Section in Additional Rental Payments from CMT pursuant to the Facility Lease Agreement.

**Section 6.03. Effect of Prepayment.** If all remaining Sublease Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement) are prepaid in full pursuant to Article XVI of this Sublease Agreement, then the obligations of the City under this Sublease Agreement shall thereupon cease and terminate; subject to the provisions of the second paragraph of Section 16.01 of this Sublease Agreement in the case of prepayment by application of a security deposit. If the Sublease Payments are prepaid in part, but not in whole, pursuant to Section 6.08 of this Sublease Agreement, then such prepayment shall be credited towards the prepayment of the Sublease Payments as follows: (i) the principal components of each remaining Sublease Payment shall be reduced by the aggregate corresponding amount of principal which would otherwise be payable with respect to the Sublease Payment thereby prepaid; and (ii) the interest component of each remaining Sublease Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Sublease Payment thereby prepaid.

Upon partial prepayment of any Sublease Payment, the City shall prepare (or cause to be prepared) revised Exhibit C to this Sublease Agreement.

**Section 6.04. Fair Rental Value.** The Sublease Payments and Additional Rental Payments for each Rental Period during the term of this Sublease Agreement shall constitute the total rental for such Rental Period, and shall be paid by the City in each Rental Period for and in consideration of the right to possession, use and occupancy, and the continued quiet use and enjoyment of the Premises during each such Rental Period for which such rental is paid. The parties hereto have agreed and determined that the total Sublease Payments together with the total Additional Rental Payments represents the fair rental value of the Premises. In making such determination, consideration has been given to the value of the Premises, the cost of constructing the Project, other obligations of the parties under the Site Lease Agreements, this Sublease Agreement and the Facility Lease Agreement, and the uses and purposes which may

be served by the Premises and the benefits therefrom which will accrue to the City and the general public.

**Section 6.05. Annual Budgets.** The City covenants to take such action as may be necessary to include all such Sublease Payments and Additional Rental Payments for which it is obligated to pay hereunder in its general fund budget and to make the necessary annual appropriations for such amounts. The City will furnish to the Purchaser a certification with respect to each annual budget of the City within 120 days after the adoption thereof by the City stating that the annual budget contains the necessary annual appropriations to make the Sublease Payments and the Additional Rental Payments which each is obligated to pay under this Sublease Agreement. Such covenants on the part of the City herein contained shall be deemed to be and shall be construed to be a ministerial duty imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform such covenants in this Sublease Agreement agreed to be carried out and performed by the City.

**Section 6.06. Prepayment of Sublease Payments.**

(a) The City may prepay, from Net Proceeds received by it pursuant to Article IX hereof, all or any portion of the principal components of the Sublease Payments then unpaid, as a whole on any date or in part on any date and shall be as nearly proportional as practicable to the aggregate annual amounts of the principal components of the Sublease Payments then unpaid, at a prepayment price equal to the sum of the principal components prepaid plus accrued interest thereon to the date of prepayment, without a prepayment premium.

(b) The City may prepay, from any source of available funds, all of the principal components of the Sublease Payments due on or after September 1, 2026, on any date on or after March 1, 2026, at a prepayment price equal to the sum of the principal components prepaid plus the unpaid interest component thereof from the previous payment date to the date of prepayment, without premium.

(c) Before making any prepayment pursuant to this section, the City shall give written notice to the Authority and the Purchaser specifying the date on which the prepayment will be made, which date shall be not less than thirty (30) days from the date such notice is given.

**Section 6.07. Obligation of the City.** The obligation of the City to make the Sublease Payments and to perform and observe the other agreements contained herein shall (subject to Section 6.09 of this Sublease Agreement) be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the City or the Authority of any obligation of the City or the Authority or otherwise with respect to the Premises, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority. During the term of this Sublease

Agreement and subject to Section 6.09 of this Sublease Agreement, the City (i) will not suspend, abate or discontinue any Sublease Payments provided for in this section, (ii) will perform and observe all other agreements contained in this Sublease Agreement, and (iii) will not terminate this Sublease Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Premises, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected herewith or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

**Section 6.08. Application of Rental Payments.** All Rental Payments received shall be applied first to the interest components of the Sublease Payment due hereunder, then to the principal components of the Sublease Payment due hereunder and thereafter to all Additional Rental Payments due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

**Section 6.09. Abatement of Rental.** Except to the extent of amounts received in respect of use and occupancy insurance or Base Rental Payments received by the Purchaser, during any period in which, by reason of material damage, destruction, title defect or condemnation there is substantial interference with the use and possession by the City of any portion of the Premises, Rental Payments due hereunder with respect to the Premises shall be abated to the extent that the annual fair rental value of the portion of the Premises in respect of which there is no substantial interference is less than the annual Base Rental Payments and Additional Rental, in which case Rental Payments shall be abated only by an amount equal to the difference. Any abatement of rental payments pursuant to this Section shall not be considered an event of default as defined in Article XV hereof. The City waives the benefits of California Civil Code Sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease Agreement by virtue of any such interference and this Sublease Agreement shall continue in full force and effect. Such abatement shall continue for the period commencing with the date of such damage, destruction, title defect or condemnation and ending with the substantial completion of the work of repair or replacement of the portions of the Premises so damaged, destroyed, defective or condemned.

## **ARTICLE VII**

### **TITLE TO PREMISES DURING TERM; NO MERGER**

**Section 7.01. Title to the Premises During Term.** So long as this Sublease Agreement remains in effect, the City shall have leasehold title to the Premises or the applicable portions or items thereof, and any and all improvements, repairs, replacements or modifications thereto. The Authority shall not have any right, title or interest in the Premises or any portion or item thereof, in any additions, improvements, repairs, replacements or modifications thereto except as expressly set forth in this Sublease Agreement.

**Section 7.02. No Merger.** It is the express intention of the parties hereto that this Sublease Agreement and the obligations of the parties hereunder shall be and remain separate and distinct from the Site Lease Agreements and the Facility Lease Agreement and the obligations of the parties thereunder, and that, during the term of this Sublease Agreement, no merger of title or interest shall occur or be deemed to occur.

## ARTICLE VIII

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

**Section 8.01. Maintenance, Utilities, Taxes and Assessments.** During the term of this Sublease Agreement, the City shall maintain or cause to be maintained the Premises and shall pay or cause to be paid all utilities, taxes and assessments as described in Sections 7.02 and 7.05 of the Facility Lease Agreement and shall otherwise comply or cause compliance with the provisions of such sections.

**Section 8.02. Insurance.** During the term of this Sublease Agreement, the City shall obtain and maintain, or cause to be obtained and maintained, insurance policies and coverages as described in Section 9.01 of the Facility Lease Agreement and shall otherwise comply or cause compliance with the provisions of such section.

**Section 8.03. Advances.** If the City shall fail to perform any of its obligations under this Article, the Authority may, but shall not be obligated to, take such action as may be necessary to cure such failure or cure the performance thereof within the time period required therefor, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at a rate equal to the City's Pool A Rate as of the date of advancement.

**Section 8.04. Liens.** The City shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to all or any portion of the Premises, other than Permitted Encumbrances.

**Section 8.05. Reporting Requirements; Notices.** The City agrees to provide the Purchaser with the following:

- (a) annual audited financial statements within 9 months of each Fiscal Year end;

(b) annual approved operating budgets within 120 days of each Fiscal Year end; and

(c) notices of (i) an “event of default” as defined in any indebtedness as defined by GAAP, (ii) any Material Litigation or Material Governmental Proceedings or (iii) any other event that would cause a Material Adverse Effect.

The City may provide the Purchaser with any of the above via EMMA or the City’s website.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

**Section 9.01. Damage and Destruction.** If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, the parties hereto agree that the Net Proceeds of any insurance claim (other than business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement) shall constitute the property of the City and the City hereby agrees to apply the Net Proceeds in accordance with Section 10.01 of the Facility Lease Agreement. The parties hereto also agree that the Net Proceeds of any business interruption insurance pursuant to Section 9.01(b) of the Facility Lease Agreement shall constitute the property of the City and the City hereby agrees to use such amounts for payment of Sublease Payments under the Sublease Agreement.

**Section 9.02. Eminent Domain.** If the Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority (including the Authority or the City) threatening to exercise the power of eminent domain, the parties hereto agree that the Net Proceeds shall constitute the property of the City and the City hereby agrees to apply the Net Proceeds in accordance with Section 10.02 of the Facility Lease Agreement.

**Section 9.03. Title Insurance.** The parties hereto agree that the Net Proceeds of any title insurance award shall constitute the property of the City and the City hereby agrees to apply the Net Proceeds in accordance with Section 10.03 of the Facility Lease Agreement.

**Section 9.04. Prosecution of Claims for Net Proceeds.** The parties hereto agree that the City shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.

## ARTICLE X

### DISCLAIMER OF WARRANTIES; USE OF THE PREMISES

**Section 10.01. Disclaimer of Warranties.** THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED,

AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PREMISES OR ANY PORTION OR ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF THE PREMISES, OR A DEALER THEREIN, THAT THE CITY LEASES THE PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. IN NO EVENT SHALL THE AUTHORITY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE LEASE AGREEMENTS, THIS SUBLEASE AGREEMENT, THE FACILITY LEASE AGREEMENT OR THE ASSIGNMENT AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PREMISES OR ANY ITEM OR PRODUCTS OR SERVICES PROVIDED FOR IN THIS SUBLEASE AGREEMENT.

**Section 10.02. Use of the Premises.** The City may use the Premises for any lawful purpose. The City will not acquire, construct, install, use, operate or maintain the Premises or any portion or item thereof in violation of any Applicable Law or in a manner contrary to that contemplated by this Sublease Agreement.

## **ARTICLE XI**

**[RESERVED]**

## **ARTICLE XII**

### **TRANSFER OF TITLE AT END OF TERM OF SUBLEASE AGREEMENT**

**Section 12.01. Transfer of Title Upon Termination.** The parties hereto agree, upon termination of this Sublease Agreement pursuant to Section 4.01, this Sublease Agreement shall terminate and the Authority's interest in and title to the Premises (including all of its right, title and interest in and to the Premises under the Site Lease Agreements) will be automatically transferred, conveyed and assigned to the City.

## **ARTICLE XIII**

### **ASSIGNMENT; INDEMNIFICATION**

**Section 13.01. Assignment by the Authority.** This Sublease Agreement, and the obligations of the City to make Sublease Payments hereunder, shall be assigned by the Authority to the Purchaser pursuant to an Assignment Agreement, and the City hereby consents to such assignment. The City agrees to make all payments to the Purchaser (as assignee of the Authority), notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Sublease Agreement or otherwise) that the City may from time to time have against the Authority or any assignee thereof. The City agrees to execute all

documents, including notices of assignment or financing statements which may be reasonably requested by the Authority or any assignee thereof to protect their interests in the Premises and in this Sublease Agreement during the term of this Sublease Agreement.

**Section 13.02. Assignment by the City.** Except as provided herein and in the Facility Lease Agreement, this Sublease Agreement and the interest of the City in the Premises may not be assigned or encumbered by the City.

**Section 13.03. Role of the Purchaser.** The City acknowledges that (i) the Purchaser is acting solely as Purchaser of the Authority's right, title and interest in this Sublease Agreement for its own account and not as a fiduciary for the City or in the capacity of broker, dealer, municipal securities underwriter, placement agent, or municipal advisor, (ii) the Purchaser has not provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of the City with respect to its purchase of the Authority's right, title and interest in this Sublease Agreement, and (iii) the City has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through this Sublease Agreement and the Site Lease Agreements from its financial, legal and other advisors (and not the Purchaser) to the extent that the City desired to obtain such advice.

**Section 13.04. Restrictions on Assignments.** The Authority hereby acknowledges and agrees that certain rights under the Site Lease Agreements and this Sublease Agreement (including assignments of Sublease Payments) may only be assigned in whole and not in part. Such an assignment in whole may include an assignment in whole to a trust, partnership, custodial arrangement or similar entity, participation interests in which may be offered and sold. No such transfer of the Authority's rights hereunder shall require the City to make Sublease Payments, send notices, or otherwise deal with respect to matters arising under this Sublease Agreement with any party other than the single assignee. Nor shall any such transfer subject the City to any information disclosure requirements other than those included in this Sublease Agreement. Other than for the initial assignment to the Purchaser, the assignor must provide notice to the City within thirty (30) days of any assignment performed in accordance with this Section and an executed investor letter in the form attached as Exhibit D. The City hereby consents to any assignment of the Site Lease Agreements and Sublease Agreement done in accordance with this Section.

**Section 13.05. Indemnification Covenants.** The City shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and its assignees (including the Purchaser) (the "**Indemnified Parties**") from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Sublease Agreement, the ownership of the Premises, or the use, operation, condition, purchase, delivery, rejection, storage or return of the Premises or any portion or item of the Premises or any accident in connection therewith resulting in damage to property or injury to or death to any

person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the City or the Authority; any claim for patent, trademark or copyright infringement; and any claim arising out of strict liability in tort; provided, however, that such indemnification of the Indemnified Parties shall not include indemnification of any Indemnified Party for liabilities caused by the gross negligence or willful misconduct of such Indemnified Party.

**Section 13.06. Term of Indemnification.** The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Sublease Agreement or the termination of the term of this Sublease Agreement for any reason. The City and the Authority mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following learning thereof.

## ARTICLE XIV

### TERMINATION

**Section 14.01. No Early Termination.** Except as provided in Section 4.01 of this Sublease Agreement, this Sublease Agreement shall not terminate for any reason including, without limitation, (a) any casualty to or condemnation of all or any part of the Premises, (b) the occurrence of any Event of Default or any other default by the City under this Sublease Agreement or (c) any other cause whether similar or dissimilar to the foregoing, any existing or future law to the contrary notwithstanding; provided, however, that this Section shall not abrogate any right the Authority may have to recover damages or seek an injunction pursuant to Section 15.02 of this Sublease Agreement. It is the intention of the parties hereto that the obligations of the Authority hereunder shall be separate and independent of the covenants and agreements of the City.

## ARTICLE XV

### DEFAULT AND REMEDIES

**Section 15.01. Events of Default Defined.** The following shall be “Events of Default” hereunder and the term “Event of Default” shall mean, whenever it is used herein, any one or more of the following events:

(a) Default shall be made in the due and punctual payment of any Sublease Payments when and as the same shall become due and payable and such default shall have continued for a period of ten (10) days after the City shall have been given notice in writing of such default by the Purchaser; provided that the failure to deposit any Sublease Payments abated pursuant to Section 6.11 hereof shall not constitute an Event of Default; or

(b) Default shall be made by the City in the performance of any of the other agreements or covenants contained herein required to be performed by it, and such default shall

have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Authority or the Purchaser, except that, if such failure or breach can be remedied but not within such sixty (60) day period and if the City has taken all action reasonably possible to remedy such failure or breach within such sixty (60) day period, such failure or breach shall not become an Event of Default for so long as the City shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the Authority or the Purchaser.

**Section 15.02. Remedies on Event of Default.** Whenever any Event of Default shall have happened, the Authority or the Purchaser may sue the City for the collection of any amount due under this Sublease Agreement or to enjoin the continuation of the Event of Default; provided, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. In the event of such Event of Default, the City shall continue to remain liable for the full amount of the Sublease Payments to the end of the term hereof, but such Sublease Payments shall be payable at the Default Rate at the same time and in the same manner as hereinabove provided for the payment of Sublease Payments hereunder. Such remedies are the sole and exclusive remedies of the Authority and the Purchaser hereunder. Neither the Authority nor the Purchaser shall terminate this Sublease Agreement or the right of possession of the City under this Sublease Agreement except as provided in Section 4.01 of this Sublease Agreement.

**Section 15.03. Agreement to Pay Attorneys' Fees and Expenses.** If either party hereto should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of money or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, then the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party.

**Section 15.04. No Additional Waiver Implied by One Waiver.** If any agreement contained herein should be breached by either party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 15.05. Application of Proceeds.** All amounts derived hereunder shall be transferred to the Purchaser promptly upon receipt thereof and shall be applied to the payment of the Sublease Payments.

## ARTICLE XVI

### DISCHARGE

**Section 16.01. Security Deposit.** Notwithstanding any other provision hereof, on any date the payment of all or a portion of the Sublease Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement) remaining due may be secured by a deposit with an escrow bank, as escrow holder under an escrow agreement of: (a) in the case of a security deposit relating to all Sublease Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement), either (i) an amount which is sufficient to pay all unpaid Sublease Payments, including the principal and interest components thereof, in accordance with the Sublease Payment Schedules set forth in Exhibit C, all Additional Rental Payments and the interest thereon, and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement), or (ii) Defeasance Obligations in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon, be fully sufficient to pay or repay all unpaid Sublease Payments on or before their respective payment dates, all Additional Rental Payments and the interest thereon and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement); or (b) in the case of a security deposit relating to a portion of the Sublease Payments, a certificate of the City designating the portion of the Sublease Payments to which the deposit pertains, and either (i) an amount which is sufficient to pay the portion of the Sublease Payments designated in such certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the opinion of an Independent Accountant, be fully sufficient to pay the portion of the Sublease Payments designated in the aforesaid certificate.

In the event of a deposit pursuant to this section to secure the payment of all Sublease Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all amounts payable under the Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under the Facility Lease Agreement), all obligations of the City hereunder shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all payments from the deposit made by the City pursuant to this section and title to the Premises shall be transferred as set forth in Section 12.01 herein.

## ARTICLE XVII

### MISCELLANEOUS

**Section 17.01. Notices.** All notices herein required (i) shall be given not later than the date required hereunder, (ii) shall be signed by an appropriate officer or other representative, (iii) shall be addressed to the applicable party at its Notice Delivery Address and (iv) shall be considered as properly given (A) if delivered in person, (B) if sent prepaid by a nationally recognized overnight delivery service, (C) if overnight delivery services are not

readily available, if mailed by first class United States mail, postage prepaid or (D) if sent by prepaid telegram or facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

The Authority and the City, by notice given to all of the Notice Delivery Addresses, may designate a different Notice Delivery Address to which subsequent notices, certificates or other communications will be sent.

**Section 17.02. Binding Effect.** This Sublease Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

**Section 17.03. Severability.** In the event any provision of this Sublease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

**Section 17.04. Amendments.** The Authority and the City will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Sublease Agreement without the prior written consent of the Purchaser.

**Section 17.05. Triple Net Lease.** This Sublease Agreement shall be deemed and construed to be a “triple-net lease” and the City hereby agrees, that the Rental Payments provided for herein shall be an absolute net return to the Authority, free and clear of all expenses, charges or set-off whatsoever, and notwithstanding any dispute between the Authority and the City shall not withhold any rental payments pending the final resolution of such dispute.

**Section 17.06. Further Assurances and Corrective Instruments.** The Authority, and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Premises hereby leased or intended so to be, evidencing the transfer of title to the Premises pursuant to Section 12.01 of this Sublease Agreement, or for carrying out the expressed intentions hereof.

**Section 17.07. Execution in Counterparts.** This Sublease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 17.08. Applicable Law; Venue.** This Sublease Agreement shall be governed by and construed in accordance with the laws of the State. Any action or proceeding to enforce or interpret any provision in this Sublease Agreement shall be brought, commenced or prosecuted in Sacramento County, California.

**Section 17.09. Third Party Beneficiary.** The Purchaser is an express and intended third party beneficiary under this Sublease Agreement.

**Section 17.10. Waiver of Personal Liability.** No officer, agent or employee of the City shall be individually or personally liable for the payment of Sublease Payments or Additional Rental Payments hereunder; but nothing herein contained shall relieve any such person from the performance of any official duty provided herein.

**Section 17.11. Subordination to Deed of Trust.** The City, as sublessee under this Sublease Agreement, declare, agree and acknowledge that:

(a) They consent to and approve (i) all provisions of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith encumbering the G Street Premises (the “**Deed of Trust**”) executed by CMT, as trustor, in favor of the City, and (ii) all agreements, including, but not limited to any loan or escrow agreements, between CMT and the City for the disbursement of the proceeds in connection with the Deed of Trust;

(b) The City, in making disbursements pursuant to the Deed of Trust is under no obligation or duty to, nor has the City represented that it will, see to the application of such proceeds by the person or persons to whom the City disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in the Deed of Trust shall not defeat the subordination herein made in whole or part; and

(c) They intentionally and unconditionally waive, relinquish, subject and subordinate this Sublease Agreement, the leasehold estate created hereby together with all rights and privileges of the City under this Sublease Agreement as to the G Street Premises in favor of the lien or charge upon said land of the Deed of Trust and understand that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection, and subordination.

IN WITNESS WHEREOF, the Authority and the City have caused this Sublease Agreement to be executed in its respective names all as of the date first above written.

SACRAMENTO PUBLIC FINANCING  
AUTHORITY

By \_\_\_\_\_  
Authorized Representative

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Assistant City Attorney

**EXHIBIT A**  
**MASTER LIST OF DEFINITIONS**

A-1

## **EXHIBIT B**

### **DESCRIPTION OF SITES**

The Sites are all of that certain real property situated in the County of Sacramento, State of California, described as follows:

B-1

**EXHIBIT C**

**SUBLEASE PAYMENT SCHEDULE**

<u>Due Date<sup>(1)</sup></u>	<u>Total Sublease Payment</u>	<u>Amount Attributable to Principal</u>	<u>Amount Attributable to Interest</u>
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TOTAL

- 
- (1) Pursuant to Section 6.01, City Sublease Payments are payable on February 15 and August 15 next preceding their respective due dates.

**EXHIBIT D**  
**FORM OF INVESTOR LETTER**

C-3

Recorded Requested By And  
When Recorded Mail To:

OH&S

12/16/15

City of Sacramento  
c/o Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, California 95814

Attention: Melissa Warr

---

(Space above this line for Recorder's Use)

PURSUANT TO SECTION 27383 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, RECORDING OF THIS DOCUMENT IS EXEMPT FROM ANY FEES CHARGED BY THE RECORDER.

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS \$ -0- (short term lease)

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time to sale.

FACILITY LEASE AGREEMENT

by and among the

CITY OF SACRAMENTO,  
as sub-lessor,

and the

CALIFORNIA MUSICAL THEATRE,  
as sub-lessee

Dated as of January 1, 2016

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**With respect to the G Street Premises, this Facility Lease Agreement is junior and subordinate to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 1, 2016, executed by the California Musical Theatre, as Trustor, for the benefit of the City of Sacramento, as Beneficiary.**

## FACILITY LEASE AGREEMENT

This FACILITY LEASE AGREEMENT (this “**Facility Lease Agreement**”), dated as of January 1, 2016, by and among the CITY OF SACRAMENTO, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**”), as sub-lessor, and the CALIFORNIA MUSICAL THEATRE, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”), as sub-lessee;

### WITNESSETH:

WHEREAS, the Sacramento Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”) intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theater facilities (the “**Project**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California (the “**G Street Site**,” and together with the H Street Site, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, in furtherance of the foregoing, CMT has leased the G Street Premises (as defined in the Site Lease Agreement I, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement I**”), between CMT and the Authority; and

WHEREAS, the City has leased the H Street Premises (as defined in the Site Lease Agreement II, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement II**,” and together with the Site Lease Agreement I, the “**Site Lease Agreements**”), between the City and the Authority; and

WHEREAS, the Authority has leased the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City pursuant to the certain sublease agreement, dated as of January 1, 2016 (the “**Sublease Agreement**”) between the Authority and the City; and

WHEREAS, pursuant to the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the City has leased the Premises to CMT pursuant to this Facility Lease Agreement; and

WHEREAS, under this Facility Lease Agreement, CMT will be obligated to make, among other payments, Base Rental Payments (as defined in this Facility Lease Agreement) in an amount equal to Sublease Payments required under the Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under the Sublease Agreement will be credited (subject to the provisions of the Sublease Agreement) to the

extent that the Purchaser (as defined below) receives Base Rental Payments from CMT under this Facility Lease Agreement, and to the extent that Base Rental Payments received under this Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency; and

WHEREAS, pursuant to that certain Assignment Agreement, dated as of January 1, 2016 (the “**Assignment Agreement**”), between the Authority and Compass Mortgage Corporation, an Alabama corporation (the “**Purchaser**”), the Authority has assigned without recourse certain of its rights to the Site Lease Agreements and the Sublease Agreement (including its rights to receive the Sublease Payments scheduled to be paid by the City under and pursuant to the Sublease Agreement) to the Purchaser; and

WHEREAS, in consideration of such assignment, the Purchaser has agreed in the Assignment Agreement to deliver \$\_\_\_\_\_ as directed by the Authority, which the Authority intends to use to provide funds to acquire the Sublease Agreement from the City (including the rights to receive the Sublease Payments due thereunder), which funds will be used by the City to refinance the 2002 Certificates and to pay the costs of entering into this transaction; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Facility Lease Agreement, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facility Lease Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

## **ARTICLE I**

### **DEFINITIONS; INTERPRETATION; EXHIBITS**

**Section 1.01** Definitions. The terms defined in Exhibit A, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning.

**Section 1.02** Interpretation.

(a) Unless the context otherwise indicates, all words expressed in the singular shall include the plural and vice versa, and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) All captions or headings of the sections and subsections hereof and the table of contents hereof are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subsections are to the corresponding Articles, Sections or subsections hereof, and the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Facility Lease Agreement as a whole and not to any particular Article, Section or subsection hereof.

**Section 1.03 Exhibits.** The following Exhibits are attached to and by this reference incorporated herein and made a part hereof:

- Exhibit A: Master List of Definitions
- Exhibit B: Description of Sites
- Exhibit C: Base Rental Payment Schedule
- Exhibit D: Memorandum of Understanding

## **ARTICLE II**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

**Section 2.01 Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants to CMT as follows:

(a) **Due Organization and Existence.** The City is a municipal corporation and charter city organized and existing under the laws of the State, has power to enter into each of the Financing Agreements to which it is a party and is possessed of full power to own, hold, lease, as lessor, sublessee and sub-lessor, and sell real and personal property.

(b) **Authorization.** The laws of the State authorize the City to enter into each of the Financing Agreements to which it is a party and to enter into the transactions contemplated hereby and thereby and to carry out its obligations under each of the Financing Agreements to which it is a party, and the City has duly authorized the execution and delivery of each of the Financing Agreements to which it is a party.

(c) **Execution and Delivery.** The City has duly executed and delivered each of the Financing Agreements to which it is a party in accordance with the laws of the State, and each of the Financing Agreements to which it is a party constitutes a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of these Financing Agreements, except to the extent limited or affected by bankruptcy, insolvency or other laws affecting creditors’ rights generally and by the application of equitable principles if equitable remedies are sought.

(d) **No Conflict.** To the current actual knowledge of the City after reasonable investigation, which did not include the review or search of federal, state or other court records,

or the review or search of City records other than those directly and immediately connected with the 2002 Certificates, except as disclosed in writing to the Purchaser, neither the execution and delivery of each of the Financing Agreements to which it is a party, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City or upon the Premises, except Permitted Encumbrances.

(e) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution and delivery of each of the Financing Agreements to which it is a party or the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.

(f) Title. The City holds a valid leasehold estate in the Premises subject to the terms and conditions of the Site Lease Agreements and the Sublease Agreement.

**Section 2.02** Representations, Covenants and Warranties of CMT. CMT represents, covenants and warrants to the City as follows:

(a) Due Organization and Existence. CMT is a nonprofit public benefit corporation organized and existing under the laws of the State, has power to enter into each of the Financing Agreements to which CMT is a party and is possessed of full power to own, hold, lease and sell real and personal property.

(b) Authorization. The laws of the State authorize CMT to enter into each of the Financing Agreements to which CMT is a party, and to enter into the transactions contemplated hereby and thereby and to carry out its obligations under each of the Financing Agreements to which CMT is a party, and CMT has duly authorized the execution and delivery of each of the Financing Agreements to which CMT is a party.

(c) Execution and Delivery. CMT has duly executed and delivered each of the Financing Agreements to which CMT is a party in accordance with the laws of the State, and each of the Financing Agreements to which CMT is a party constitutes a legal, valid and binding agreement of CMT, enforceable against CMT in accordance with its terms, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of these Financing Agreements, except to the extent limited or affected by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

(d) No Conflict. Neither the execution and delivery of each of the Financing Agreements to which CMT is a party, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or

thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which CMT is now a party or by which CMT is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of CMT or upon the Premises, except Permitted Encumbrances.

(e) Approvals. No consent or approval of any holder of indebtedness of CMT, and no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution and delivery of each of the Financing Agreements to which CMT is a party or the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.

(f) No Litigation. There is no action, suit, arbitration, mediation or other proceeding, at law or in equity, before or by any court or Governmental Authority, pending or, to the best knowledge of CMT after reasonable inquiry, threatened against CMT or any Affiliate of CMT that is likely to result in an unfavorable decision, ruling or finding that would have a Material Adverse Effect.

(g) Patents and Licenses. CMT or Affiliates of CMT own or possess, or will own or possess in a timely manner, all patents, rights to patents, trademarks and/or copyrights necessary for the performance by CMT of its obligations under the Financing Agreements to which CMT is a party, without any known material conflict with the rights of others. CMT has obtained or will obtain in a timely manner all licenses, permits, franchises and other governmental authorizations material to the conduct of their business, all of which are or will be in full force and effect.

(h) Information Supplied by CMT.

(1) To the best of CMT's knowledge, after reasonable investigation, the information heretofore supplied by CMT to the City with respect to CMT, its ownership structure, its relationships with Affiliates of CMT, and the experience, financial condition and contractual rights and obligations of CMT and its principals was correct and complete in all material respects as of the date or dates submitted, and did not fail to omit a material fact necessary to make the statements made therein not misleading, or if such information was not correct and complete as of the date of submittal, CMT subsequently provided the City with corrected and complete materials; and in the meanwhile there has been no material change with respect to such matters that has not been disclosed by CMT to the City.

(2) The financial statements of CMT as of and for the year ended December 31, 2014 (copies of which, audited by Gilbert & Associates, have been furnished to the City), present fairly in all material respects the financial position of CMT as of December 31, 2014 and the results of its operations and cash flows for the year ended on such date, in conformity with generally accepted accounting principles, with such exceptions as may be disclosed in such accountant's report, and since December 31, 2014, there has been no material adverse change in the financial condition or results of operations of CMT.

(i) Defaults. CMT (including any principal, Affiliate or member of CMT) is not in default under any Contractual Obligation, or in violation of any Applicable Law, which default or violation would have a Material Adverse Effect.

(j) 501(c)(3) Status. CMT is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and exempt from federal income tax under Section 501(a) of said Code, except for unrelated business income under Section 511(a) of the Code.

(k) Events of Default. As of the Closing Date, no condition or event exists which constitutes or with notice, the lapse of time or both, would constitute an Event of Default under any of the Financing Agreements to which CMT is a party.

(l) ERISA. The execution and delivery of each of the Financing Agreements to which CMT is a party and the consummation of the transactions contemplated hereby and thereby and the compliance by CMT with the provisions of each of the Financing Agreements to which CMT is a party will not involve any prohibited transaction within the meaning of Section 503 of the Code. All employee pension benefit plans maintained by CMT are in compliance with all applicable provisions of the Code.

(m) Location. The chief executive office (as defined in the Uniform Commercial Code) of CMT and principal place of business, and the place where substantially all of its corporate records concerning the Financing Agreements to which CMT is a party are kept, is in Sacramento, California.

(n) No Agreement to Sell Assets, Etc. CMT has no legal obligation, absolute or contingent, to any Person to sell the assets of CMT, or to effect any merger, consolidation or other reorganization of CMT or to enter into any agreement with respect thereto.

(o) Government Charges. CMT has filed or caused to be filed all tax returns, which are required to be filed by them. CMT has paid, or made provision for the payment of, all taxes and other Governmental Charges which have or may have become due pursuant to said returns or otherwise and all other indebtedness, except such Governmental Charges or indebtedness, if any, which are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided or which are not reasonably likely to have a Material Adverse Effect if unpaid.

(p) Insolvency, Etc. CMT is not Insolvent and, after the execution and delivery of each of the Financing Agreements to which CMT is a party and the consummation of the transactions contemplated hereby and thereby, CMT will not be Insolvent.

(q) Formation Documents. CMT's Formation Documents are in full force and effect, and there has been no breach by any of the parties thereto or event or condition that would otherwise give rise to a breach thereof. The Formation Documents delivered to the City are true, correct, and complete and there has been no amendments thereto except as contemplated by the Financing Agreements to which CMT is a party.

(r) Affiliate Transactions. Except for the Contractual Obligations reflected in the Financing Agreements to which CMT is a party or the Formation Documents, CMT has no Contractual Obligations with any of its Affiliates.

(s) Fee Title to G Street Site. CMT holds a fee interest in the G Street Site, subject to the terms and conditions of the Site Lease Agreement I, the Sublease Agreement and this Facility Lease Agreement and other easements and encumbrances of record.

(t) Seismic. The Premises were built in compliance with seismic building code requirements of the State of California at the time of construction beginning in 2002.

### ARTICLE III

#### AGREEMENT TO SUB-SUBLEASE

**Section 3.01** Lease of Premises. The City hereby leases to CMT, and CMT hereby leases from the City, upon the terms and conditions hereinafter set forth, the Premises.

**Section 3.02** Quiet Enjoyment. CMT at all times during the term of this Facility Lease Agreement shall peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from the City, except as expressly set forth in this Facility Lease Agreement. The Purchaser shall not interfere with such quiet use and enjoyment during the term of this Facility Lease Agreement so long as CMT is not in default hereunder.

**Section 3.03** Right of Entry. CMT agrees that the City shall have the right at all reasonable times to enter upon and to examine and inspect the Premises. CMT further agrees that the City shall have such rights of access to the Premises as may be reasonably necessary to cause the proper maintenance by the City in the event of failure by CMT to perform its obligations hereunder.

### ARTICLE IV

#### TERM

**Section 4.01** Commencement of Term of Facility Lease Agreement; Commencement of Rental. The term of this Facility Lease Agreement shall commence on the Closing Date and shall end on September 1, 2032 unless such term is extended or sooner terminated as hereinafter provided. If on September 1, 2032, the amounts payable under the Sublease Agreement shall not be fully paid or deemed fully paid in accordance with the Sublease Agreement or the amounts payable under the Facility Lease Agreement shall not be fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Facility Lease Agreement shall continue on a month-to-month basis until the amounts payable under the Sublease Agreement have been fully paid or deemed fully paid in accordance with the Sublease Agreement and the amounts payable under the Facility Lease Agreement have been fully paid or deemed fully paid in accordance with the Facility Lease Agreement. If prior to September 1,

2032, the amounts payable under the Sublease Agreement have been fully paid or deemed fully paid in accordance with the Sublease Agreement and the amounts payable under the Facility Lease Agreement have been fully paid or deemed fully paid in accordance with the Facility Lease Agreement, then the term of this Facility Lease Agreement shall thereafter end and title to the Premises shall be transferred as set forth in Section 13.01 hereof. In no event shall the term of this Facility Lease Agreement exceed the limits provided by law.

## ARTICLE V

### USE OF PROCEEDS; TAX COVENANTS

**Section 5.01** Use of Proceeds. The parties hereto agree that the Authority will pay to the City \$\_\_\_\_\_ to acquire the Sublease Agreement and that the City will use such proceeds to prepay the 2002 Certificates and to pay the costs relating to this transaction.

**Section 5.02** Tax Covenants. CMT shall at all times do and perform all acts and things permitted by law and this Facility Lease Agreement that are necessary or desirable in order to assure that the interest component of the Sublease Payments will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excluded. Without limiting the generality of the foregoing, CMT agrees to comply with the provisions of the Tax Certificate to be executed by the City, the Authority and CMT on the Closing Date. This covenant shall survive payment in full or defeasance of the Sublease Payments.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01** Amount of Base Rental Payments.

(a) CMT agrees to pay as rental hereunder for the term of this Facility Lease Agreement to the City, its successors or assigns, without deduction or offset of any kind, the Base Rental Payments, with principal and interest components, in accordance with the Base Rental Payment Schedule specified in Exhibit C, attached hereto and by this reference incorporated herein and made a part hereof, as the same may be amended from time to time pursuant to Section 6.06 of this Facility Lease Agreement (collectively, the “**Base Rental Payments**”). The Base Rental Payments due on March 1 shall be payable on the preceding January 15, and the Base Rental Payments due on September 1 shall be payable on the preceding July 15.

(i) If an Event of Taxability occurs, the interest component of the Base Rental Payments will increase to the Taxable Rate and the City shall prepare (or cause to be prepared) and deliver to CMT a revised Exhibit C to this Facility Lease Agreement reflecting the change in interest rate to the Taxable Rate.

(ii) If an Event of Default under this Facility Lease Agreement occurs and is continuing, the interest component of the Base Rental Payments will increase to the Default Rate and the City shall prepare (or cause to be prepared) and deliver to CMT a revised Exhibit C to this Facility Agreement reflecting the change in interest rate to the Default Rate.

(b) The parties hereto agree that CMT shall make such Base Rental Payments in installments by transferring Theatre Revenues to the Custodian for deposit in accordance with the provisions of the Control Agreement, all or a portion of which Theatre Revenues shall be transferred to the Purchaser in accordance with the provisions of the Control Agreement, and that such amounts that are transferred to the Purchaser shall be credited against the obligations of CMT to pay the Base Rental Payments under Section 6.01(a) of this Facility Lease Agreement.

**Section 6.02 Additional Rental Payments.** In addition to the Base Rental Payments, CMT shall also pay to the City, the Authority, the Custodian or other Person, as the case may be, “**Additional Rental Payments,**” as follows:

(a) All taxes and assessments of any type or character charged to the City or the Authority affecting the amount available to the City or the Authority from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments); provided, that CMT shall have the right to protest any such taxes or assessments and to require the City or the Authority, at CMT’s expense, to protest and contest any such taxes or assessments levied upon them and that CMT shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the City or the Authority;

(b) All reasonable fees, charges and expenses of the Custodian for services rendered under the Control Agreement, as and when the same become due and payable;

(c) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the City, the Authority or the Custodian to prepare audits, financial statements, reports, opinions or provide such other services required under the Financing Agreements;

(d) The reasonable fees and expenses of the City, including any and all expenses incurred in connection with the assignment of the Sublease Payments or by the City Attorney in connection with any litigation which may at any time be instituted involving the Financing Agreements or any of the other documents contemplated thereby, or in connection with the supervision or inspection of CMT, its properties, assets or operations or otherwise in connection with the administration of the Financing Agreements;

(e) All amounts required for rebate payments with respect to the Sublease Payments under the Tax Certificate;

(f) All amounts payable by the City as Additional Rental Payments under the Sublease Agreement; and

(g) All other reasonable and necessary fees and expenses of the City attributable to the Financing Agreements.

Such Additional Rental Payments shall be billed to CMT by the City, the Authority or the Custodian from time to time, together with a statement certifying that the amount billed has been incurred or paid by the City, the Authority or the Custodian for one or more of the above items. After such a demand, amounts so billed shall be paid by CMT within thirty (30) days after receipt of the bill by CMT.

**Section 6.03** [Reserved].

**Section 6.04** Advances of Base Rental Payments or Additional Rental Payments. If CMT fails to pay any Base Rental Payments or Additional Rental Payments (and all interest thereon and expenses with respect thereto) when due and the City is required to expend its own funds to pay Sublease Payments or Additional Rental Payments (and all interest thereon and expenses with respect thereto) under the Sublease Agreement (i.e., to the extent that the City did not receive a credit of its obligations under the Sublease Agreement), the amounts so paid by the City shall constitute an advance of the Base Rental Payments or Additional Rental Payments (and all interest thereon and expenses with respect thereto) to CMT and CMT agrees to repay all such advances as soon as possible to the City with interest on such advances from the date amounts are advanced at an interest rate equal to the Default Rate; provided, that nothing in this Section shall be deemed to constitute a waiver of any Event of Default hereunder. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement.

**Section 6.05** Rate on Overdue Payments. If CMT should fail to make any of the payments required to be made by this Facility Lease Agreement, then the payment in default shall continue as an obligation of CMT until the amount in default shall have been fully paid, and CMT agrees to pay such defaulted amounts as soon as possible to the City with interest on such defaulted amounts from the date of default at a rate equal to the Default Rate; provided, that nothing in this Section shall be deemed to constitute a waiver of any Event of Default hereunder. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement.

**Section 6.06** Effect of Prepayment. If CMT prepays or cause the prepayment of all remaining Base Rental Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all other payments under this Facility Lease Agreement and the interest thereon in full pursuant to Article XVI of this Facility Lease Agreement, and if the amounts payable under the Sublease Agreement shall have been fully paid or deemed fully paid in accordance with the Sublease Agreement, then the obligations of CMT under this Facility Lease Agreement shall thereupon cease and terminate except for the obligation of CMT related to indemnification pursuant to Section 7.11 of this Facility Lease Agreement; subject to the provisions of the second paragraph of Section 16.01 of this Facility Lease Agreement in the case of prepayment by application of a security deposit. If CMT prepays or causes the prepayment of the Base Rental Payments in part, but not in whole, pursuant to Section 16.02 of this Facility

Lease Agreement, then such prepayment shall be credited towards the prepayment of the Base Rental Payments as follows: (i) the principal components of each remaining Base Rental Payment shall be reduced by the aggregate corresponding amount of principal which would otherwise be payable with respect to the Base Rental Payment thereby paid; and (ii) the interest component of each remaining Base Rental Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Base Rental Payment thereby paid.

Upon partial prepayment of any Base Rental Payment, CMT shall prepare (or cause to be prepared) a revised Exhibit C to this Facility Lease Agreement.

**Section 6.07 Application of Rental Payments.** All Rental Payments (other than prepayments of Rental Payments) received shall be applied first to the interest components of the Base Rental Payment due hereunder, then to the principal components of the Base Rental Payment due hereunder and thereafter to all Additional Rental Payment due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

**Section 6.08 Prepayment of Base Rental Payments.**

(a) CMT may prepay, from Net Proceeds received by it pursuant to Article X hereof, all or any portion of the principal components of the Base Rental Payments then unpaid, as a whole on any date or in part on any date and shall be as nearly proportional as practicable to the aggregate annual amounts of the principal components of the Base Rental Payments then unpaid, at a prepayment price equal to the sum of the principal components prepaid plus accrued interest thereon to the date of prepayment, without a prepayment premium.

(b) CMT may prepay, from any source of available funds, all of the principal components of the Base Rental Payments due on or after September 1, 2026, on any date on or after March 1, 2026, at a prepayment price equal to the sum of the principal components prepaid plus the unpaid interest component thereof from the previous payment date to the date of prepayment, without premium.

(c) Before making any prepayment pursuant to this section, CMT shall give written notice to the Authority and the Purchaser specifying the date on which the prepayment will be made, which date shall be not less than thirty (30) days from the date such notice is given.

**Section 6.09 Net Lease.** This Facility Lease Agreement is a “triple net lease,” and all Rental Payments due and payable hereunder shall be absolute and unconditional and shall be paid without notice or demand and without setoff or deduction. The obligations of CMT and of the City hereunder shall be separate and independent covenants and agreements and the Rental Payments shall commence at the times provided herein and shall continue to be payable in all events during the term of this Facility Lease Agreement. Any present or future law to the contrary notwithstanding, this Facility Lease Agreement shall not terminate, nor shall CMT be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with

respect to the Rental Payments, nor shall the obligations of CMT hereunder be excused or delayed for any cause including, without limiting the generality of the foregoing: (i) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Premises or any part thereof, or the failure of the Premises to comply with all requirements of law, including any inability to occupy or use the Premises by reason of such non-compliance; (ii) any damage to, removal, abandonment, salvage, loss, contamination of or release from, scrapping or destruction of any requisition or taking of the Premises or any part thereof; (iii) any restriction, prevention or curtailment of or interference with any use of the Premises or any part thereof, including lawful eviction or constructive eviction; (iv) any defect in title to or rights to the Premises or any lien on such title or rights or on the Premises or any part thereof; (v) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by the City; (vi) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to CMT, the City, the Authority or any other person, or any action taken with respect to this Facility Lease Agreement by any trustee or receiver of CMT, the City, the Authority or any other person, or by any court, in any such proceeding; (vii) any claim that CMT has or might have against any person, including, without limitation, the City, any vendor, manufacturer, contractor of or for the Premises, the Authority or any other person; (viii) any failure on the part of the City to perform or comply with any of the terms of this Facility Lease Agreement or of any other Financing Agreements; (ix) any invalidity or unenforceability or illegality or disaffirmance of this Facility Lease Agreement against or by CMT or any provision hereof or any of the Financing Agreements or any provision thereof; (x) the impossibility or illegality of performance by CMT, the City, the Authority or all of them; (xi) any action by any court, administrative agency or other Governmental Authority; (xii) any restriction, prevention or curtailment of or interference with the construction on or any use of the Premises or any part thereof; (xiii) any change in the tax or other laws of the United States of America or of the State or any political subdivision of either; (xiv) any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of Governmental Authorities; or (xv) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not CMT shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of CMT hereunder shall be covenants and agreements that are separate and independent from any obligations of the City hereunder or under any Financing Agreements and the obligations of CMT shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Facility Lease Agreement.

**Section 6.10 No Termination or Abatement.** CMT shall remain obligated under this Facility Lease Agreement in accordance with its terms and shall not take any action to terminate, rescind or avoid this Facility Lease Agreement, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, composition, adjustment, dissolution, or other like proceeding relating to the City, the Authority or any other person or any action with respect to this Facility Lease Agreement which may be taken by any trustee, receiver or liquidator of the City, the Authority or any other person, or by any court with respect to the City, the Authority or any other person. CMT hereby waives all right (i) to terminate or surrender this

Facility Lease Agreement or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rental Payments. CMT shall remain obligated under this Facility Lease Agreement in accordance with its terms, and CMT hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with their obligations under this Facility Lease Agreement. Notwithstanding any such statute or otherwise, CMT shall be bound by all of the terms and conditions contained in this Facility Lease Agreement.

## ARTICLE VII

### PARTICULAR COVENANTS OF CMT

**Section 7.01 Maintenance of Corporate Existence of CMT; Affiliation; Consolidation, Merger, Sale or Transfer Under Certain Conditions.** (a) CMT shall maintain its existence as a California nonprofit public benefit corporation, operating a theatre facility and meeting the requirements of Section 501(c)(3) of the Code, and shall not dissolve, sell or otherwise dispose of all or substantially all of its assets or become an Affiliate with, or consolidate with or merge into another Person or permit one or more other Persons to become an Affiliate with, consolidate with or merge into it; provided, that CMT may, without violating the covenants contained in this Section, become an Affiliate with, consolidate with or merge into another Person, or permit one or more other Persons to become an Affiliate with, consolidate with or merge into it, or sell or otherwise transfer to another Person such assets if:

- (1) CMT obtains the written consent of the City to such transaction;
- (2) The City shall have received an Opinion of Bond Counsel to the effect that such affiliation, merger, consolidation, sale or other transfer will not, in and of itself, cause the interest components of the Sublease Payments to be included in gross income for federal income tax purposes under Section 103 of the Code;
- (3) The surviving, resulting or transferee Person:
  - (i) assumes in writing, if such Person is not CMT, all of the obligations of CMT, under the Financing Agreements to which it is a party, and agrees to fulfill and comply with the terms, covenants and conditions thereof;
  - (ii) is not, after such transaction, otherwise in default under any provision of the Financing Agreements to which it is a party;
  - (iii) is an organization meeting the requirements of Section 501(c)(3) of the Code, or a corresponding provision of the federal income tax laws then in effect; and
  - (iv) shall have fund balances at least equal to the fund balances of CMT, prior to such transaction;
- (4) The City shall have received an Opinion of Counsel to the effect that the Financing Agreements to which CMT, is a party constitute the legal, valid and binding

obligations of the surviving, resulting or transferee Person, as the case may be, enforceable against such Person in accordance with their respective terms.

(b) Notwithstanding the foregoing, CMT may, without complying with the provisions of subsection (a) of this Section, transfer substantially all of its assets to an Affiliate provided that:

(1) CMT obtains the written consent of the City to such transaction;

(2) The City shall have received an Opinion of Bond Counsel to the effect that such proposed transfer(s) will not, in and of itself, cause the interest components of the Sublease Payments to be included in the gross income for federal income tax purposes under Section 103 of the Code;

(3) Such Affiliate agrees to become a co-obligor and jointly and severally liable with CMT, under the Financing Agreements to which it is a party; and

(4) After such transaction, CMT, and the Affiliate are in compliance with the provisions of the Financing Agreements to which CMT, is a party.

In the event of such a transfer to an Affiliate, references in this Facility Lease Agreement to indebtedness of CMT shall apply to the combined indebtedness of CMT and the Affiliate, and references to the financial condition or forecasted results of operations of CMT shall apply to the consolidated financial condition or results of operations of CMT and the Affiliate.

(c) If an affiliation, merger, consolidation, sale or other transfer is effected, as provided in this Section, the provisions of this Section shall continue in full force and effect, and no further affiliation, merger, consolidation, sale or transfer shall be effected except in accordance with the provisions of this Section.

**Section 7.02 Repair and Maintain the Premises.** (a) CMT shall maintain and repair, at the sole expense of CMT, at no cost to the City, the Premises and all improvements located thereon in first-class condition and repair and in compliance with all Applicable Laws and consistent with other similar modern facilities. CMT shall promptly make (or cause others to make) all necessary or appropriate repairs, alterations, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted.

(b) CMT shall also procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Premises and for the use, operation, maintenance, repair and restoration thereof.

(c) CMT shall pay for all electricity, water, sewer, natural gas, and other utilities serving the Premises.

(d) CMT shall be solely responsible for the provision and cost of trash disposal services.

(e) If CMT fails to perform its obligations under this Section 7.02 in a manner which, in the aggregate, has a material adverse effect on the Premises, with ninety (90) days' advance notice to CMT and failure by CMT to cure such failure within such ninety (90) days, the City (and their agents, contractors or subcontractors) may perform such maintenance or repair to the Premises. The City, however, shall not be required to give such notice if such delay could affect public health or safety. The City shall be entitled to prompt reimbursement of any expense incurred by it to make any maintenance or repair in accordance with the provisions of this Section 7.02, together with interest on such sums expended from the date incurred at an interest rate equal to the Default Rate as of the date the expense was incurred. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement. Notwithstanding the above, the City shall not have any duty or obligation to make or perform any maintenance or repair relating to the Premises.

**Section 7.03 Modifications to Premises.** (a) CMT shall not make any modifications to the Premises that would result in (i) a material diminution of the quality of the Premises or (ii) which would have a Material Adverse Effect, without the prior written consent of the City.

(b) All work relating to any modifications to the Premises shall be done in a good and workmanlike manner, using new materials equivalent in quality to those used in the construction of the initial construction and renovation of the Premises. All work shall be diligently prosecuted to completion. Before beginning construction of any modification, CMT shall obtain any building and other permits that may be required by Applicable Laws.

(c) CMT shall promptly pay all charges and costs incurred in connection with any modifications to the Premises, as and when required by the terms of any agreements with contractors, designers or suppliers. At least ten (10) Business Days before beginning construction of any modification to the Premises, CMT shall give the City written notice of the expected commencement date of that construction to permit the City to post and record a notice of nonresponsibility.

(d) CMT shall not suffer or permit any lien of mechanics or material suppliers to be placed against the Premises with respect to work or services performed or claimed to have been performed for CMT or materials furnished or claimed to have been furnished to CMT or to the Premises on behalf of or for the benefit of CMT. The City have the right at all times to post and keep posted on the Premises any notice that they consider necessary for protection from such liens. If any such lien attaches or CMT receives notice of any such lien, CMT shall cause the lien to be released and removed of record within ten (10) days after receipt of the written demand of the City.

**Section 7.04 Compliance With Environmental Laws.** (a) CMT shall comply with, and cause its contractors, agents, servants and employees and each tenant and other occupant and user of the Premises, and the contractors, agents, servants and employees of such

tenants, occupants and users, to comply with, each and every Environmental Law applicable to the Premises. Specifically, but without limitation:

(1) CMT shall obtain and maintain (and cause each occupant and user to obtain and maintain) all permits, certificates, licenses and other consents and approvals required by each Environmental Law from time to time applicable to CMT, each and every part of the Premises and/or the conduct of any business there at or related thereto;

(2) CMT shall not cause any Release on or off the Premises and will not suffer or permit any Release, or the presence of Hazardous Substances, on the Premises (except in compliance with all applicable Environmental Laws);

(3) If CMT causes a Release on or off the Premises, or if a Release occurs on the Premises, CMT shall promptly effect the clean-up of any resulting Contamination in accordance with and as required by the provisions of all applicable Environmental Laws; and

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

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

**Section 7.05** Covenants as to Corporate Existence and Certain Other Matters.  
CMT hereby covenants and warrants that:

(a) except as otherwise expressly provided herein, to preserve its corporate or other separate legal existence and all its rights and licenses to the extent necessary or desirable in the operation of its business and affairs and to be qualified to do business in the City and the State;

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

(c) promptly to pay all lawful real property and personal property taxes, general and special assessments and other charges of every description at any time levied or assessed upon or against CMT or the Premises prior to the date upon which fines, interest or penalties accrue thereon; provided, that it shall have the right to contest in good faith any such taxes, general or special assessments or other charges or the collection of any such sums, and pending such contest may delay or defer payment thereof to the extent the contest thereof will not have a Material Adverse Effect;

(d) promptly to pay or otherwise satisfy and discharge all of its obligations and Indebtedness and all demands and claims against it as and when the same become due and payable, other than any thereof whose validity, amount or collectability is being contested in good faith; provided, however, that the contest thereof will not have a Material Adverse Effect; and

(e) to consent to the jurisdiction of the courts of Sacramento County of the State for causes of action arising under the terms of this Facility Lease Agreement or any of the other Financing Agreements to which CMT is a party.

**Section 7.06 Additional Negative Covenants.** During the term of this Facility Lease Agreement, CMT will comply, and will cause compliance, with the following negative covenants, unless the City shall otherwise consent in writing:

(a) Change in Business. CMT shall not engage in any business substantially unrelated to its present business at the Premises that could have a Material Adverse Effect.

(b) ERISA. Neither CMT nor any ERISA Affiliate shall (i) adopt or institute any Employee Benefit Plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA, (ii) take any action which will result in the partial or complete withdrawal, within the meanings of sections 4203 and 4205 of ERISA, from a Multiemployer Plan, (iii) engage or permit any Person to engage in any transaction prohibited by section 406 of ERISA or section 4975 of the Code involving any Employee Benefit Plan or Multiemployer Plan which would subject either CMT or any ERISA Affiliate to any tax, penalty or other liability including a liability to indemnify, (iv) incur or allow to exist any accumulated funding deficiency (within the meaning of section 412 of the Code or section 302 of ERISA), (v) fail to make full payment when due of all amounts due as contributions to any Employee Benefit Plan or Multiemployer Plan, (vi) fail to comply with the requirements of section 4980B of the Code or Part 6 of Title I (B) of ERISA, or (vii) adopt any amendment to any Employee Benefit Plan which would require the posting of security pursuant to section 401(a)(29) of the Code, where singly or cumulatively, the above would have a Material Adverse Effect.

(c) Liens. CMT shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Premises, other than Permitted Encumbrances.

(d) Amendment of Formation Documents. CMT shall not amend any of the Formation Documents in any material respect.

(e) Transactions With Affiliates. CMT shall not enter into any Contractual Obligation (including, without limitation, the purchase from, sale to or exchange of property with, or the rendering of any service by or for any Affiliate) with any Affiliate or engage in any other transaction with any Affiliate except in the ordinary course of business and pursuant to the reasonable requirement of the business of CMT and upon fair and reasonable terms no less favorable to CMT than would be obtained in a comparable arms-length transaction with a Person other than an Affiliate.

(f) Assignment or Subleasing. CMT shall not, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any portion of its interest in or rights with respect to the Premises on the leasehold estate of CMT hereunder, or permit all or any portion of the Premises to be occupied by anyone other than CMT or sublet all or any portion of the Premises or transfer a portion of its interest in or rights with respect to CMT's leasehold estate hereunder, except as provided in the Facility Sublease Agreement.

**Section 7.07** Accounting Records, Financial Statements and Budget. (a) CMT shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions of or in relation to the business, properties and operations CMT. Such books of record and account shall be available for inspection by the City at reasonable hours and under reasonable circumstances.

(b) CMT shall furnish the City, within thirty (30) days of receipt by CMT, of its audited financial statements, and in any event within one hundred eighty (180) days after the end of each Fiscal Year, with copies of its complete financial statements (including a statement of financial position, a statement of activities, a statement of cash flow and such other financial reports and schedules as may have been delivered to CMT in connection with such financial statements), together with (1) the report and opinion of an Independent Accountant stating that the financial statements have been prepared in accordance with generally accepted accounting principles (with such exceptions as are not objected to by the City) and that such Independent Accountant's audit was performed in accordance with generally accepted auditing standards, and (2) a Certificate of the chief financial officer of CMT stating that no event which constitutes an Event of Default under this Facility Lease Agreement or which with the giving of notice or the passage of time or both would constitute an Event of Default under this Facility Lease Agreement has occurred and is continuing as of the end of such Fiscal Year, or specifying the nature of such event and the actions taken and proposed to be taken by CMT, to cure such default. CMT shall also furnish the City (upon request) with unaudited quarterly financial statements within ninety (90) days of the end of each fiscal quarter.

**Section 7.08** Limitations on Indebtedness. Excluding any Indebtedness incurred by CMT for guarantees of Broadway Sacramento Shows, CMT covenants that it shall not incur any Indebtedness in an amount, which together with all Outstanding Indebtedness, exceeds \$100,000, without the prior written consent of the City. The City agrees to decline or accept CMT's request to incur Indebtedness within sixty (60) days of receipt of a written request from CMT.

**Section 7.09 Prohibited Guaranties.** CMT shall not guarantee the payment of Indebtedness of any other Person, except to the extent the Indebtedness guaranteed could be incurred as Indebtedness under Section 7.08.

**Section 7.10 Covenants Regarding Project Related Revenues.**

(a) CMT shall collect the CMT Facilities Fee until the amounts payable under the Sublease Agreement have been fully paid or deemed fully paid in accordance with the Sublease Agreement and until the amounts payable under this Facility Lease Agreement have been fully paid or deemed fully paid in accordance with this Facility Lease Agreement. CMT shall transfer the CMT Facilities Fee to the Custodian for deposit in accordance with the Control Agreement.

(b) CMT shall collect the STC Facilities Fee from STC and transfer the STC Facilities Fee to the Custodian for deposit in accordance with the Control Agreement.

(c) CMT shall transfer the CMT Supplemental Contribution to the Custodian for deposit in accordance with the Control Agreement.

**Section 7.11 Indemnity.**

(a) CMT agrees to pay and shall indemnify, defend and hold the Authority and the City (including any person at any time serving as a member, official, director, officer, employee, volunteer, attorney, agent or consultant of the Authority or the City) and the Purchaser (any such person is hereinafter referred to as an “**Indemnified Party**” and collectively as “**Indemnified Parties**”) harmless from and against any and all claims, liabilities, fines, losses, damages, costs, expenses (including attorneys’ fees and/or costs, litigation and court costs, amounts paid in settlement, and amounts paid to discharge defendants), suits and judgments of any kind whatsoever, whether in contract, tort or strict liability, brought, claimed or rendered against any Indemnified Party, including, but not limited to, claims, liabilities, fines, losses, damages, costs, expenses, suits and judgments arising out of or in connection with the (i) the design, construction, installation, improvement or modification of the Premises; (ii) any misrepresentation or misstatement or omission of fact regarding any warranty, representation or statement made or given by CMT in connection with the transactions contemplated hereby; (iii) injury to or death of any person or damage to property in or upon the Premises, (iv) any violation of any Applicable Law affecting the Premises or the ownership, occupation, use, possession, condition, operation or maintenance thereof, or (v) Hazardous Substances in any way affecting the Premises, or any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, or any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or any violation of laws, orders, regulations, requirements, or demands of government authorities, that are based upon or in any way related to such Hazardous Substances, including, without limitation, the costs and expenses of any clean-up or other remedial action or monitoring, attorney’s fees, consultant fees, investigation and laboratory fees, court costs and litigation; provided, however, that such indemnification of the Indemnified Parties shall not include

indemnification of any Indemnified Party for liabilities caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) Any Indemnified Party seeking indemnification hereunder shall promptly, upon receipt of notice of the existence of a claim or the commencement of a proceeding regarding which indemnity under this Section may be sought, notify CMT in writing thereof. If such a proceeding is commenced against any of the Indemnified Parties, CMT may participate in the proceeding and, to the extent it elects to do so, may assume the defense thereof with counsel satisfactory to the affected Indemnified Parties. If, however, the Indemnified Party is advised by counsel that there may be legal defenses available to them that are different from or in addition to those available to CMT, or if CMT fails to assume the defense of such proceeding or to employ such counsel for that purpose within a reasonable time after notice of commencement of the proceeding, CMT shall not be entitled to assume the defense of the proceeding on behalf of the affected Indemnified Party with respect to the legal defenses unavailable to CMT, but shall be responsible for the reasonable fees, costs and expenses of such Indemnified Party in conducting their defense. Affected Indemnified Parties shall retain the option to represent themselves with either in-house or outside counsel and the exercise of this prerogative in no way diminishes or relieves CMT of its duty to defend and indemnify the affected Indemnified Parties.

(c) The obligations of CMT pursuant to this Section shall survive termination or expiration of this Facility Lease Agreement.

**Section 7.12 Memorandum of Understanding.** The City, CMT and STC have entered into that certain memorandum of understanding attached hereto as Exhibit D.

## ARTICLE VIII

### TITLE TO PREMISES DURING TERM; SECURITY INTERESTS

**Section 8.01 Title to the Premises During Term.** So long as this Facility Lease Agreement remains in effect, CMT shall have leasehold title to the Premises or the applicable portions or items thereof, and any and all improvements, repairs, replacements or modifications thereto. The City shall not have any right, title or interest in the Premises or any portion or item thereof, in any additions, improvements, repairs, replacements or modifications thereto except as expressly set forth in this Facility Lease Agreement (including, without limitation the right to all Net Proceeds described in Article X hereof).

**Section 8.02 Security Interest.**

(a) In order to secure the obligations of CMT to pay the Base Rental Payments under this Facility Lease Agreement and the performance of its other obligations hereunder, CMT has entered into the Deed of Trust. CMT agrees, as long as any of the Base Rental Payments, Additional Rental Payments and other payments under this Facility Lease Agreement remain unpaid, to supplement the Deed of Trust or to execute and deliver such other deeds of trust in substantially the form of the Deed of Trust as may be necessary from time to time to grant the City a first priority lien on the G Street Premises, subject to Permitted

Encumbrances. CMT shall obtain, at its own cost and expense, an CLTA loan policy of title insurance in favor of the City as its interests may appear, dated as of the date of delivery of the Sublease Payments, in an aggregate amount not less than the aggregate principal amount of the Sublease Payments to be outstanding, insuring the title of CMT to the G Street Premises owned by CMT in fee, subject only to Permitted Encumbrances, issued by a title insurance company qualified to do business in the State and reasonably acceptable to the City. CMT shall execute and cause to be filed Uniform Commercial Code financing statements, and shall execute and deliver such other documents (including, but not limited to, continuation statements) as may be necessary or reasonably requested by the City in order to perfect or maintain as perfected such security interest or give public notice thereof.

(b) In order to secure the obligations of CMT to pay the Base Rental Payments under this Facility Lease Agreement and the performance of its other respective obligations hereunder, CMT has entered into the Control Agreement.

(c) CMT agrees to execute, acknowledge, deliver, file or perform all other acts, assignments, notices, agreements or other instruments, in form satisfactory to the City, as may be necessary or reasonably required in order to establish, perfect or maintain as perfected such security interest and the security interest of any assignees of the City in the Premises or give public notice thereof.

**Section 8.03 No Merger.** It is the express intention of the parties hereto that this Facility Lease Agreement and the obligations of the parties hereunder shall be and remain separate and distinct from the Site Lease Agreements and the Sublease Agreement and the obligations of the parties thereunder, and that, during the term of this Facility Lease Agreement, no merger of title or interest shall occur or be deemed to occur.

## **ARTICLE IX**

### **INSURANCE**

**Section 9.01 Insurance.** CMT shall procure and maintain throughout the term of this Facility Lease Agreement insurance against the following risks in the following respective amounts:

(a) insurance against loss or damage to the Premises on an “All Risk” coverage form, including fire, flood, lightning (and earthquake, to the extent commercially available and economically practicable, and only unless waived in writing by the Authority), with an extended coverage endorsement (which extended coverage endorsement shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance) and vandalism and malicious mischief insurance and sprinkler system leakage insurance and boiler insurance, which such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost (without deduction for depreciation) of the Premises (excluding the cost of excavations, of grading and filling and of the land and provided the earthquake coverage, shall be in an amount equal to ten percent (10%) of the replacement cost) and which such insurance may be subject to

deductible clauses similar in amount and type to the deductible clauses applicable to insurance maintained by the City for other real property owned by it and which such insurance shall explicitly waive any co-insurance penalty; provided, that such insurance (excluding the earthquake coverage as described above) shall in any event be in an amount sufficient, in the event of total or partial loss, to enable the City to restore the Premises to the condition existing before such loss or to permit the City to prepay the principal amount of all then unpaid Base Rental Payments;

(b) business interruption insurance against loss, total or partial, of the use and occupancy of the Premises as a result of any of the hazards covered by the insurance required by paragraph (a) hereof, in an amount sufficient to pay the Base Rental Payments for a twenty-four (24)-month period;

(c) workers' compensation insurance covering all employees working on the Premises, in the same amount and type as other workers' compensation insurance maintained by the City for similar employees doing similar work (and CMT shall also require any other person or entity working on the Premises to carry the foregoing amount of workers' compensation insurance); and

(d) a standard comprehensive public entity liability insurance policy or policies in protection of the City, the Authority and its members, officers and employees, indemnifying and defending such parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the possession, operation or use of the Premises, with minimum liability limits of one million dollars (\$1,000,000) for personal injury or death of each person and three million dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of two hundred thousand dollars (\$200,000) (subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000)) for damage to property resulting from each accident or event; provided, that such public liability and property damage insurance may be in the form of a single limit policy in the amount of three million dollars (\$3,000,000) covering all such risks and may be maintained as part of or in conjunction with any other liability insurance carried by CMT.

Any insurance policy issued pursuant to this section shall be issued by a commercial insurer and shall be written or endorsed to list the Authority, the City and the Purchaser as additional named insureds and to make losses, if any, payable to the Authority, the City and the Purchaser as their respective interests may appear, except that the Net Proceeds, if any, of the insurance policy described in paragraph (b) of this section shall be deposited with the City and applied to the payment of the Sublease Payments in the order in which such Sublease Payments become due and payable, and each insurance policy provided for in this section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Authority or the City or fail to renew such policy without first giving written notice thereof to the Authority and the City at least sixty (60) days in advance of such intended cancellation or modification or failure to renew; provided, that the Trustee shall not be responsible for the sufficiency of any insurance herein

required and shall be fully protected in accepting payment on account of such insurance or any adjustments, compromise or settlement of any loss agreed to by it.

CMT shall file a certificate with the Purchaser not later than July 15 of each Fiscal Year certifying that the insurance required by this section is in full force and effect for such Fiscal Year and that the Purchaser is named as a loss payee on each insurance policy which this section requires to be so endorsed. CMT shall provide the Purchaser with copies of such insurance policies upon request.

**Section 9.02** Advances. If CMT shall fail to perform any of its obligations under this Article, the City may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and CMT shall be obligated to repay all such advances as soon as possible, with interest at a rate equal to the Default Rate as of the date of advancement. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement.

## ARTICLE X

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

#### **Section 10.01** Damage and Destruction.

(a) If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, the parties hereto agree that the Net Proceeds of any insurance claim (other than business interruption insurance pursuant to Section 9.01(b) of this Facility Lease Agreement) shall constitute the property of the City and the City hereby agrees to deposit the Net Proceeds into a special fund at the City called the Insurance and Condemnation Proceeds Fund.

(b) The City, after consultation with CMT, shall give written notice to the Purchaser within 60 days following the deposit of funds in the Insurance and Condemnation Proceeds Fund that the City, after consultation with CMT, elects either to use such proceeds to prepay the Sublease Payments or to repair or replace the damaged or lost property. If the City, after consultation with CMT, elects to repair or replace such property, the City shall proceed reasonably promptly to repair or replace such property. In the event the City, after consultation with CMT, elects to repair or replace the property damaged, destroyed or taken, the City shall furnish to the Purchaser (if requested by the Purchaser) plans of the contemplated repair or replacement, accompanied by a certificate of an architect or other qualified expert estimating the reasonable cost of such repair or replacement and a Statement of the City stating that amounts in the Insurance and Condemnation Proceeds Fund, together with investment income reasonably expected to be received with respect thereto and any other funds available or reasonably expected to become available therefor (and which the City shall agree to deposit in said fund when so available), shall be sufficient to repair or replace the property damaged, destroyed or taken in accordance with said plans. Moneys in the Insurance and Condemnation Proceeds Fund shall be disbursed by the City for the purpose of repairing or replacing the property damaged, destroyed or taken.

(c) In the event the City shall elect to apply the proceeds to the prepayment of the Sublease Payments and Base Rental Payments, the City shall use all amounts in the Insurance and Condemnation Proceeds Fund on account of such damage, destruction or condemnation to prepay the Sublease Payments pursuant to the Sublease Agreement and the Base Rental Payments pursuant to Section 6.08(a) hereof.

(d) The parties hereto also agree that the Net Proceeds of any business interruption insurance pursuant to Section 9.01(b) of this Facility Lease Agreement shall constitute the property of the City and the City hereby agrees to pay all such amounts to the payment of Sublease Payments and the Base Rental Payments.

**Section 10.02 Eminent Domain.** If the Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority (including the City) threatening to exercise the power of eminent domain, the parties hereto agree that the Net Proceeds shall constitute the property of the City and the City hereby agrees to cause said proceeds to be used for the prepayment of such portion of the unpaid principal components of Sublease Payments pursuant to the Sublease Agreement and the Base Rental Payments pursuant to Section 6.08(a) hereof.

**Section 10.03 Title Insurance.** The parties hereto agree that the Net Proceeds of any title insurance award shall constitute the property of the City and the City hereby agrees to cause said proceeds to be used for the prepayment of such portion of the unpaid principal components of Sublease Payments pursuant to the Sublease Agreement and the Base Rental Payments pursuant to Section 6.08(a) hereof.

**Section 10.04 Prosecution of Claims for Net Proceeds.** The parties hereto agree that the City shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.

## ARTICLE XI

### DISCLAIMER OF WARRANTIES; USE OF THE PREMISES

**Section 11.01 Disclaimer of Warranties.** THE CITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PREMISES OR ANY PORTION OR ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO. CMT ACKNOWLEDGES THAT THE CITY IS NOT MANUFACTURERS OF THE PREMISES, OR DEALERS THEREIN, THAT CMT LEASES THE PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY CMT. IN NO EVENT SHALL THE CITY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE LEASE AGREEMENTS, THE SUBLEASE AGREEMENT, THIS FACILITY LEASE AGREEMENT OR THE ASSIGNMENT AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR

USE OF THE PREMISES BY CMT OR ANY ITEM OR PRODUCTS OR SERVICES PROVIDED FOR IN THIS FACILITY LEASE AGREEMENT.

**Section 11.02** Use of the Premises. CMT may use the Premises for theatre activities and theatre related activities only. CMT will not acquire, construct, install, use, operate or maintain the Premises or any portion or item thereof in violation of any Applicable Law or in a manner contrary to that contemplated by this Facility Lease Agreement. CMT shall obtain and provide all permits and licenses, if any, necessary for the planning, design, engineering, testing, acquisition, construction, installation and operation of the Premises. In addition, CMT agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Premises and each portion or item thereof) with all laws of the jurisdictions in which its operations involving any portion or item of the Premises may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any portion or item of the Premises; provided, that CMT may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the City, adversely affect the estate of the City in and to any portion or item of the Premises or its interest or rights under this Facility Lease Agreement.

**ARTICLE XII**

**[RESERVED]**

**ARTICLE XIII**

**TRANSFER OF TITLE AT END OF TERM OF  
FACILITY LEASE AGREEMENT**

**Section 13.01** Transfer of Title. The parties hereto agree, upon payment in full of all Rental Payments required to be paid (whether currently due or to become due in the future) under this Facility Lease Agreement, this Facility Lease Agreement shall terminate and (a) the City's interests in and title to the G Street Premises (including all of its right, title and interest in and to the G Street Premises under the Sublease Agreement) will be automatically transferred, conveyed and assigned to CMT, and (b) the City's interests in and title to the H Street Premises (including all of their rights, titles and interests in and to the H Street Premises under the Sublease Agreement) will revert back to the City.

**ARTICLE XIV**

**[RESERVED]**

**ARTICLE XV**

**DEFAULT AND REMEDIES**

**Section 15.01 Events of Default Defined.** The following shall be “Events of Default” hereunder and the term “Event of Default” shall mean, whenever it is used herein, any one or more of the following events:

(a) Default shall be made in the due and punctual payment of any Base Rental Payments required hereunder when and as the same shall become due and payable; or

(b) Default shall be made by CMT in the performance of any of the agreements or covenants contained herein required to be performed by it other than referred to in subsection (a), and such default shall have continued for a period of sixty (60) days after CMT shall have been given notice in writing of such default by the City, except that, if such failure or breach can be remedied but not within such sixty (60) day period and if CMT has taken all action reasonably possible to remedy such failure or breach within such sixty (60) day period, such failure or breach shall not become an Event of Default for so long as CMT shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City; or

(c) Any representation or warranty made by CMT in Section 2.03 of this Facility Lease Agreement is determined to have been false or misleading in any material respect at the time made; or

(d) CMT shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of CMT seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of CMT or of the whole or any substantial part of its property.

**Section 15.02 Remedies on Event of Default.** Upon an Event of Default under this Facility Lease Agreement, the City may, at its option, to the fullest extent permitted by law, exercise any or all of the following rights and remedies:

(a) Termination. Following the occurrence of any Event of Default, the City shall have the right, so long as the default continues, to terminate this Facility Lease Agreement by written notice to CMT setting forth: (i) the default; (ii) the requirements to cure it; and (iii) a demand for possession, which shall be effective three (3) days after it is given. The City shall not be deemed to have terminated this Facility Lease Agreement other than by delivering written notice of termination to CMT.

(b) Possession. Following termination of this Facility Lease Agreement, without prejudice to any other remedies the City may have by reason of CMT’s default or of such termination, the City may then or at any time thereafter (i) peaceably reenter the Premises, or any part thereof, upon voluntary surrender by CMT, or, expel or remove CMT and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess and enjoy the Premises, or relet the Premises or any part thereof for such term or terms (which

may be for a term extending beyond the term of this Facility Lease Agreement), at such rental or rentals and upon such other terms and conditions as the City in the reasonable discretion of the City shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property from the Premises.

(c) Recovery. Following termination of this Facility Lease Agreement, the City shall have all the right to recover from CMT the following: (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that CMT proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term of this Facility Lease Agreement after the time of award exceeds the amount of such rental loss that CMT proves could be reasonably avoided; and (iv) any other amount necessary to compensate the City for all detriment proximately caused by CMT's failure to perform CMT's obligations under this Facility Lease Agreement or which in the ordinary course of things would be likely to result therefrom. For purposes of this Section, the "worth at the time of award" of the amounts referred to in (i) and (ii) of this subsection, shall be computed by allowing interest at the Default Rate as of the date of termination; the "worth at the time of the award" of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(d) Right to Continue Facility Lease Agreement in Effect. Even though CMT has breached this Facility Lease Agreement, this Facility Lease Agreement shall continue in effect for so long as the City does not terminate CMT's right to possession, and the City may enforce all its rights and remedies under this Facility Lease Agreement and under Section 1951.4 of the California Civil Code, including the right to recover the Rent as it becomes due under this Facility Lease Agreement; provided, if the City elects to exercise its remedies described in this Section and the City does not terminate this Facility Lease Agreement, and if CMT requests the consent of the City to an assignment of this Facility Lease Agreement or a subletting of the Premises at such time as CMT is in default, the City shall not unreasonably withhold their consent to such assignment or subletting as provided below. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of the City to protect the interest of the City under this Facility Lease Agreement shall not constitute a termination of CMT's rights to possession unless written notice of termination is given by the City to CMT pursuant to Section 15.02(a) above. It is expressly agreed that for purposes of this Section, it shall not be unreasonable for the City to withhold their consent to a proposed assignment of this Facility Lease Agreement or a subletting of the Premises if such proposed assignment or sublease is (i) for any use other than the use permitted under this Facility Lease Agreement, (ii) to any party which, in the reasonable business judgment of the City, may impair the quality of the business operations at the Premises, (iii) to any party whose financial worth at the time of any proposed assignment or subletting is less than the financial worth of CMT as of the date of this Facility Lease Agreement, or (iv) to any party whose proposed use would be in conflict or incompatible with the intended uses of the Premises or would cause a diminution in the reputation of the Premises. Any such purported assignment or subletting

without the written consent of the City shall be void and of no force or effect and shall not confer any benefit or estate on any person.

(e) Cumulative. Except as expressly provided otherwise in this Facility Lease Agreement, each right and remedy of the City provided for in this Facility Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for now or hereafter existing at law, in equity, by statute or otherwise. The exercise or beginning of the exercise by the City of any one or more of the rights or remedies provided for in this Facility Lease Agreement, or now or hereafter existing at law, in equity, by statute, or otherwise, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Facility Lease Agreement or now or hereafter existing at law, in equity, by statute, or otherwise. In the event of a breach or threatened breach by CMT of any of its obligations under this Facility Lease Agreement, the City shall also have the right to obtain an injunction and any other appropriate equitable relief.

(f) No Waiver. No failure by the City to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. Efforts by the City to mitigate the damages caused by CMT's breach of this Facility Lease Agreement shall not be construed to be a waiver of the right of the City to recover damages under this Section.

(g) Right of the City to Perform. Upon CMT's failure to perform any obligation of CMT hereunder (including, without limitation, CMT's obligation to pay CMT's insurance premiums and charges of contractors who have supplied materials or labor to the Premises), the City shall have the right, but not the obligation, to perform such obligations of CMT on behalf of CMT and/or to make payment on behalf of CMT to such parties. Upon demand, CMT shall reimburse the City for the reasonable cost of the City performing such obligations on CMT's behalf, including, without limitation, reimbursement of any amounts that may be expended by the City and the reasonable attorneys' fees of the City, plus interest at a rate equal to the Default Rate as of the date the expense was incurred from the date of any such expenditure until the same is repaid. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement.

(h) Additional Rent. For purposes of any unlawful detainer action by the City against CMT pursuant to the applicable law of the State, the City shall be entitled to recover as Rent not only such sums of Base Rental Payments and Additional Rental Payments, which may then be overdue, but also any and all additional sums of money as may then be overdue. Such amounts shall constitute Additional Rental Payments under this Facility Lease Agreement.

(i) Indemnification. The exercise of the City of any one or more of the remedies set forth in this Section shall not affect the rights of the City or the obligations of CMT under the indemnification set forth in Section 7.11 hereof.

**Section 15.03 No Remedy Exclusive**. No remedy herein conferred upon or reserved to the City is intended to be exclusive and every such remedy shall be cumulative and

shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this article it shall not be necessary to give any notice, other than such notice as may be required in this article or by law.

**Section 15.04 Agreement to Pay Attorneys' Fees and Expenses.** If either party hereto should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of money or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, then the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party.

**Section 15.05 No Additional Waiver Implied By One Waiver.** If any agreement contained herein should be breached by either party and thereafter waived by the other party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 15.06 Application of Proceeds.** All amounts derived by the City as a result of an Event of Default hereunder shall be deemed for all purposes under this Facility Lease Agreement and the Sublease Agreement to be Base Rental Payments to be paid to the Purchaser once such amounts are transferred to the Purchaser.

**Section 15.07 Notice of Default.** CMT agrees that, as soon as is practicable, and in any event within ten (10) days after such event, CMT will furnish the City and the Purchaser notice of any event which is an Event of Default under this Facility Lease Agreement, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Facility Lease Agreement, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which CMT proposes to take with respect thereto.

## ARTICLE XVI

### DISCHARGE

**Section 16.01 Security Deposit.** Notwithstanding any other provision hereof, CMT may on any date secure the payment of all or a portion of the Base Rental Payments and the interest thereon and all Additional Rental Payments and the interest thereon, by a deposit with an escrow bank, as escrow holder under an escrow agreement, of: (a) in the case of a security deposit relating to all the Base Rental Payments and the interest thereon and all Additional Rental Payments and the interest thereon, either (i) an amount which is sufficient to pay all unpaid Base Rental Payments, including the principal and interest components thereof, in accordance with the Base Rental Payment Schedule set forth in Exhibit C and all Additional

Rental Payments and the interest thereon or (ii) Defeasance Obligations in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon, be fully sufficient to pay or repay all unpaid Base Rental Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and on or before their respective payment dates; or (b) in the case of a security deposit relating to a portion of the Base Rental Payments, a certificate of CMT designating the portion of the Base Rental Payments to which the deposit pertains, and either (i) an amount which is sufficient to pay the portion of the Base Rental Payments designated in such certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations, together with cash, if required, in such amount as will, together with interest to be received thereon, if any, in the opinion of an Independent Accountant, be fully sufficient to pay the portion of the Base Rental Payments designated in the aforesaid certificate.

In the event of a deposit pursuant to this section to secure the payment of all Sublease Payments and the interest thereon, all Additional Rental Payments and the interest thereon, and all amounts payable under this Facility Lease Agreement and the interest thereon (including any advances of Base Rental Payments under this Facility Lease Agreement), all obligations of CMT hereunder shall cease and terminate, excepting only the obligation of the CMT to make, or cause to be made, all payments from the deposit made by CMT pursuant to this section.

## ARTICLE XVII

### MISCELLANEOUS

**Section 17.01 Notices.** All notices herein required (i) shall be given not later than the date required hereunder, (ii) shall be signed by an appropriate officer or other representative, (iii) shall be addressed to the applicable party at its Notice Delivery Address and (iv) shall be considered as properly given (A) if delivered in person, (B) if sent prepaid by a nationally recognized overnight delivery service, (C) if overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid or (D) if sent by prepaid telegram or facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

The City and CMT by notice given to all of the Notice Delivery Addresses, may designate a different Notice Delivery Address to which subsequent notices, certificates or other communications will be sent.

**Section 17.02 Binding Effect.** This Facility Lease Agreement shall inure to the benefit of and shall be binding upon the City and CMT and their respective successors and assigns.

**Section 17.03 Severability.** In the event any provision of this Facility Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

**Section 17.04 Amendments.** The City and CMT will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facility Lease Agreement without the prior written consent of the Purchaser.

**Section 17.05 Further Assurances and Corrective Instruments.** The City and CMT agrees that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Premises hereby leased or intended so to be or for evidencing the transfer of title to the Premises pursuant to Section 13.01 of this Facility Lease Agreement, or for carrying out the expressed intentions hereof.

**Section 17.06 Execution in Counterparts.** This Facility Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 17.07 Applicable Law; Venue.** This Facility Lease Agreement shall be governed by and construed in accordance with the laws of the State. Any action or proceeding to enforce or interpret any provision in this Facility Lease Agreement shall be brought, commenced or prosecuted in Sacramento County, California.

**Section 17.08 Third Party Beneficiary.** The Purchaser is an express and intended third party beneficiary under this Facility Lease Agreement.

**Section 17.09 City Representatives.** Whenever under the provisions hereof the approval or consent of the City is required, or the City is required to take some action at the request of CMT, such approval or consent or such request shall be given for the City by its City Treasurer, and each party hereto shall be authorized to rely upon any such approval or request.

**Section 17.10 Waiver of Personal Liability.** No officer, agent or employee of CMT shall be individually or personally liable for the payment of Base Rental Payments or Additional Rental Payments hereunder; or for the payment of any other sum or for the performance of any obligation hereunder.

**Section 17.11 Assignment by the City.** This Facility Lease Agreement, and the obligations of CMT to make payments hereunder, may be assigned by the City to the Authority pursuant to the Sublease Agreement. CMT agrees to make all payments to the City or its assignees, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Facility Lease Agreement or otherwise) that CMT may from time to time have against the City or any assignee thereof. CMT agrees to execute all documents, including notices of assignment or financing statements which may be reasonably requested by the City or any assignee thereof to protect their interests in the Premises and in this Facility Lease Agreement during the term of this Facility Lease Agreement.

**Section 17.12 Subordination to Deed of Trust.** CMT, as sub-sublessee under this Facility Lease Agreement, declares, agrees and acknowledges that:

(a) It consents to and approves (i) all provisions of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith encumbering the G Street Premises (the “**Deed of Trust**”) executed by CMT, as trustor, in favor of the City, and (ii) all agreements, including, but not limited to any loan or escrow agreements, between CMT and the City for the disbursement of proceeds in connection with the Deed of Trust;

(b) The City, in making disbursements pursuant to the Deed of Trust is under no obligation or duty to, nor has the City represented that they will, see to the application of such proceeds by the person or persons to whom the City disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in the Deed of Trust shall not defeat the subordination herein made in whole or part; and

(c) It intentionally and unconditionally waives, relinquishes, subjects and subordinates this Facility Lease Agreement as to the G Street Premises, the leasehold estate created hereby together with all rights and privileges of CMT under this Facility Lease Agreement in favor of the lien or charge upon said land of the Deed of Trust in favor of the City and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection, and subordination.

IN WITNESS WHEREOF, the City has executed this Facility Lease Agreement in its name and CMT has caused this Facility Lease Agreement to be executed in its name all as of the date first above written.

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Assistant City Attorney

CALIFORNIA MUSICAL THEATRE

By \_\_\_\_\_  
Authorized Representative

**EXHIBIT A**  
**MASTER LIST OF DEFINITIONS**

A-1

## **EXHIBIT B**

### **DESCRIPTION OF SITES**

The Sites are all of that certain real property situated in the County of Sacramento, State of California, described as follows:

B-1

**EXHIBIT C**

**BASE RENTAL PAYMENT SCHEDULE**

<u>Due Date</u> <sup>(1)</sup>	<u>Total Base Rental Payment</u> <sup>(2) (3)</sup>	<u>Due Date</u> <sup>(1)</sup>	<u>Total Base Rental Payment</u> <sup>(2) (3)</sup>
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<sup>(1)</sup> Pursuant to Section 6.01, Base Rental Payments are payable on January 15 and July 15 next preceding their respective date.

<sup>(2)</sup> CMT's obligation to pay the Base Rental Payments set forth in this Exhibit C shall be reduced by the amount of the City/County HTP Contribution.

**EXHIBIT D**  
**MEMORANDUM OF UNDERSTANDING**

D-1

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An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

CONTROL AGREEMENT

between

[CUSTODIAN], as Custodian,

the CITY OF SACRAMENTO

and the

CALIFORNIA MUSICAL THEATRE

Dated as of January 1, 2016

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## CONTROL AGREEMENT

This CONTROL AGREEMENT (this “**Control Agreement**”), dated as of January 1, 2016, between [CUSTODIAN], a national banking association duly organized and existing under the laws of the United States of America, as custodian hereunder (the “**Custodian**”), the CITY OF SACRAMENTO, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**” or the “**Secured Party**”), and the CALIFORNIA MUSICAL THEATRE, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”);

### WITNESSETH:

WHEREAS, the Sacramento Public Finance Authority (the “**Authority**”) intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theater facilities (the “**Project**”) located at 1419 H Street, Sacramento, California (the “**H Street Site**”) and 1422 G Street, Sacramento, California (as more particularly defined herein, the “**G Street Site**,” and together with the H Street Site, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, in connection with the 2002 Certificates, that certain Control Agreement, dated as of August 1, 2002, was executed and delivered by the City, the County of Sacramento, CMT, the Custodian and the trustee for the 2002 Certificates; and

WHEREAS, in order to achieve the foregoing, CMT has leased the G Street Premises (as defined in the Site Lease Agreement I, defined herein) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement I**”), between CMT and the Authority; and

WHEREAS, the Secured Party has leased the H Street Premises (as defined in the Site Lease Agreement II, defined herein) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement II**,” and together with the Site Lease Agreement I, the “**Site Lease Agreements**”), between the Secured Party and the Authority; and

WHEREAS, the Authority has leased the G Street Premises and the H Street Premises (together, the “**Premises**”) to the Secured Party pursuant to that certain sublease agreement, dated as of January 1, 2016 (the “**Sublease Agreement**”), between the Secured Party and the Authority; and

WHEREAS, pursuant to the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the Secured Party has leased the Premises to CMT pursuant to that certain facility lease agreement, dated as of January 1, 2016 (the “**Facility Lease Agreement**”), between the Secured Party and CMT; and

WHEREAS, under the Facility Lease Agreement, CMT is obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under the Sublease Agreement will be credited (subject to the provisions of the Sublease Agreement) to the extent that the Purchaser receives Base Rental Payments from CMT under the Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay the Sublease Payments, the City will pay any deficiency; and

WHEREAS, the parties hereto intend to establish three (3) deposit accounts under this Control Agreement to be referred to as the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account, to set forth the terms and conditions upon which the Theatre Revenues will be deposited and maintained in, and withdrawn from, the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account for the purpose of satisfying the obligations of CMT to pay Rent to the Secured Party under the Facility Lease Agreement, and that CMT grants to the Secured Party a security interest in the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account, and the proceeds thereof; and

WHEREAS, the parties hereto intend that the Secured Party has control of the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account within the meaning of California Commercial Code Section 9104 so that the Secured Party has a perfected security interest in the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account; and

WHEREAS, the Secured Party also intend to establish a fourth (4th) deposit account under this Control Agreement to be referred to as the City/County HTP Contribution Account and to set forth the term and conditions upon which the City/County HTP Contributions will be deposited and maintained in, and withdrawn from, the City/County HTP Contribution Account; and

WHEREAS, the parties hereto intend to establish three (3) securities accounts under this Control Agreement to be referred to as the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account, to set forth the terms and conditions upon which Permitted Investments will be credited to and transferred from the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account for the purpose of satisfying the obligations of CMT to pay Rent to the Secured Party under the Facility Lease Agreement, and that CMT grants to the Secured Party a security interest in the Clearing Investment Account, the Project Related Revenue Investment Account, the Non-Project Related Revenue Investment Account, and the proceeds thereof; and

WHEREAS, the parties hereto intend that the Secured Party has control of the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account within the meaning of California Commercial Code Section 9106 so that the Secured Party has a perfected security interest in the Clearing

Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Control Agreement, do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Control Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

SECTION 1. Defined Terms; Interpretation. Capitalized terms defined in this Control Agreement shall have the meanings set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings given in Exhibit A, attached hereto and incorporated herein by this reference.

Unless the context otherwise indicates, all words expressed in the singular shall include the plural and vice versa, and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All captions or headings of the articles and sections and subsections hereof and the table of contents hereof are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

All references herein to “Articles,” “Sections” and other subsections are to the corresponding Articles, Sections or subsections hereof, and the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Control Agreement as a whole and not to any particular Article, Section or subsection hereof.

SECTION 2. The Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account.

(a) Establishment of the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account. CMT shall cause the Custodian to transfer from the 2002 Control Agreement a deposit account currently numbered 12559000 and continue to maintain with itself such deposit account in the name of the Secured Party but shall rename such account the “City of Sacramento Clearing Account” (as such deposit account may be renumbered or retitled, the “**Clearing Account**”). CMT shall cause the Custodian to transfer from the 2002 Control Agreement a deposit account currently numbered 12559100 and continue to maintain with itself such deposit account in the name of the Secured Party but shall rename such account the “City of Sacramento Project Related Revenue Account” (as such deposit account may be renumbered or retitled, the “**Project Related Revenue Account**”). CMT shall cause the Custodian to transfer from the 2002 Control Agreement a deposit account currently numbered 12559200 and continue to maintain with itself such deposit account in the name of the

Secured Party but shall rename such account the “City of Sacramento Non-Project Related Revenue Account” (as such deposit account may be renumbered or retitled, the “**Non-Project Related Revenue Account**”). All parties agree that the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account are each a “deposit account” within the meaning of Division 9 of the California Commercial Code. The Custodian and CMT represent, warrant and covenant that the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account are not now, and will not at any time be, evidenced by a certificate of deposit, passbook or instrument. The tax identification number for the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account is [[95-1744392.]]

(b) Investment of the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account. The Secured Party instructs the Custodian to invest amounts held in the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account as provided in Section 4.

(c) Disbursement from the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account. The Custodian shall disburse funds from the Clearing Account in accordance with Section 6(d). The Custodian shall disburse funds from the Project Related Revenue Account and the Non-Project Related Revenue Account in accordance with Sections 7(b) and (d).

### SECTION 3. The City/County HTP Contribution Account.

(a) Establishment of the City/County HTP Contribution Account. The Secured Party shall cause the Custodian to transfer from the 2002 Control Agreement a deposit account currently numbered 12615500 and continue to maintain with itself such deposit account in the name of the Secured Party but rename such account the “Contribution Account” (as such deposit account may be renumbered or retitled, the “**City/County HTP Contribution Account**”). All parties agree that the City/County HTP Contribution Account is a “deposit account” within the meaning of Division 9 of the California Commercial Code.

(b) Investment of the City/County HTP Contribution Account. Amounts held in the City/County HTP Contribution Account shall be invested in Permitted Investments as directed by the Secured Party. In the absence of such directions, the Custodian shall invest in Permitted Investments described in clause (6) of the definition of Permitted Investments. All interest or gain derived from the investment of amounts in the City/County HTP Contribution Account shall be deposited in the Project Related Revenue Account.

(c) Disbursement from the City/County HTP Contribution Account. The Custodian shall disburse funds from the City/County HTP Contribution Account in accordance with Section 7(d).

### SECTION 4. The Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account.

(a) Establishment of the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account. CMT shall

cause the Custodian to transfer from the 2002 Control Agreement a securities account currently numbered 12559000 and continue to maintain with itself such securities account in the name of the Secured Party but rename such account the “City of Sacramento Clearing Investment Account” (as such securities account may be renumbered or retitled, the “**Clearing Investment Account**”). CMT shall cause the Custodian to transfer from the 2002 Control Agreement a securities account currently numbered 12559100 and continue to maintain with itself such securities account in the name of the Secured Party but rename such account the “City of Sacramento Project Related Revenue Investment Account” (as such securities account may be renumbered or retitled, the “**Project Related Revenue Investment Account**”). CMT shall cause the Custodian to transfer from the 2002 Control Agreement a securities account currently numbered 12559200 and continue to maintain with itself such securities account in the name of the Secured Party but rename such account the “City of Sacramento Non-Project Related Revenue Investment Account” (as such securities account may be renumbered or retitled, the “**Non-Project Related Revenue Investment Account**”). The tax identification number for the Clearing Investment Account, the Project Related Investment Account and the Non-Project Related Investment Account is [[95-1744392.]]

(b) Investment of the Clearing Investment Account. Amounts held in the Clearing Account shall be invested by the Custodian in Permitted Investments (except that the \$100,000 deposit limitation set forth in the Permitted Investments described in clause (8) shall not apply to amounts held under this Control Agreement) as directed by the Secured Party. In the absence of such directions, the Custodian shall invest such amounts in Permitted Investments described in clause (6) of the definition of Permitted Investments. Any Permitted Investment purchased pursuant to this paragraph shall be a financial asset and shall be credited by the Custodian to the Clearing Investment Account. The Secured Party hereby directs the Custodian to deposit in the Project Related Revenue Account all interest or gain derived from any such Permitted Investment. The Secured Party hereby directs the Custodian to deposit in the Clearing Account all other proceeds of any such Permitted Investment, whether upon maturity or disposition. Any Permitted Investment purchased pursuant to this paragraph shall mature at such a time as will permit funds to be available to make the transfers required by Section 6(d).

(c) Investment of the Project Related Revenue Account. Amounts held in the Project Related Revenue Account shall be invested by the Custodian in Permitted Investments as directed by the Secured Party. In the absence of such directions, the Custodian shall invest such amounts in Permitted Investments described in clause (6) of the definition of Permitted Investments. Any Permitted Investment purchased pursuant to this paragraph shall be a financial asset and shall be credited by the Custodian to the Project Related Revenue Investment Account. The Secured Party hereby directs the Custodian to deposit in the Project Related Revenue Account all interest or gain derived from any such Permitted Investment. The Secured Party hereby directs the Custodian to deposit in the Project Related Revenue Account all other proceeds of any such Permitted Investment, whether upon maturity or disposition. Any Permitted Investment purchased pursuant to this paragraph shall mature at such a time as will permit funds to be available to make the transfers required by Section 7(d).

(d) Investment of the Non-Project Related Revenue Account. Amounts held in the Non-Project Related Revenue Account shall be invested by the Custodian in Permitted Investments as directed by the Secured Party. In the absence of such directions, the Custodian shall invest such

amounts in Permitted Investments described in clause (6) of the definition of Permitted Investments. Any Permitted Investment purchased pursuant to this paragraph shall be a financial asset and shall be credited by the Custodian to the Non-Project Related Revenue Investment Account. The Secured Party hereby directs the Custodian to deposit in the Project Related Revenue Account all interest or gain derived from any such Permitted Investment. The Secured Party hereby directs the Custodian to deposit in the Non-Project Related Revenue Account all other proceeds of any such Permitted Investment, whether upon maturity or disposition. Any Permitted Investment purchased pursuant to this paragraph shall mature at such a time as will permit funds to be available to make the transfers required by Sections 7(b) and (d).

(e) Securities Intermediary. The Custodian represents and warrants that it is as of the date hereof and shall be for so long as it is the Custodian hereunder, a corporation or national bank that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity hereunder with respect to the Clearing Investment Account, the Project Related Revenue Investment Account, the Non-Project Related Revenue Investment Account, and Permitted Investments. The Custodian agrees with the parties hereto that each of the Clearing Investment Account, the Project Related Revenue Investment Account, and the Non-Project Related Revenue Investment Account is an account to which financial assets may be credited, and undertakes to treat the Secured Party as entitled to exercise the rights that comprise such financial assets. The Custodian agrees with the parties hereto that each item of property credited to the Clearing Investment Account, the Project Related Revenue Investment Account, or the Non-Project Related Revenue Investment Account shall be treated as a financial asset. The Custodian represents and covenants that it is not and will not be a party to any agreement that is inconsistent with the provisions of this Control Agreement. The Custodian covenants that it will not take any action inconsistent with the provisions of this Control Agreement applicable to it.

(f) Control of Clearing Investment Account, Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account. It is the intent of the Secured Party and CMT that each of the Clearing Investment Account, the Project Related Revenue Investment Account, and the Non-Project Related Revenue Investment Account shall be a securities account of the Secured Party and not an account of CMT. Nonetheless, the Custodian agrees that, notwithstanding any other provision of this Control Agreement, it will comply with entitlement orders originated by the Secured Party without further consent by the CMT or any other person or entity. The Custodian covenants that it has not and will not agree with any person or entity other than the Secured Party that it will comply with entitlement orders originated by any person or entity other than the Secured Party.

#### SECTION 5. Control of Accounts; Powers of the Custodian.

(a) Control of Collateral Accounts and City/County HTP Contribution Account. Each Collateral Account and the City/County HTP Contribution Account shall be subject to the sole and exclusive dominion, control and discretion of the Secured Party, subject to the terms, covenants and conditions of this Control Agreement.

(b) Right to Withdraw Amounts from the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account. The Custodian shall have the right to make withdrawals from the Clearing Account to

make disbursements in accordance with Section 6(d). The Custodian shall have the right to make withdrawals from the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account to make disbursements in accordance with Sections 7(b) and (d).

(c) No Rights of CMT to Withdraw, Transfer or Give Instructions or Entitlement Orders. Neither CMT nor any other Person claiming on behalf of or through CMT or otherwise shall have any right or authority, whether express or implied, to make use of, or withdraw or transfer any Theatre Revenues or any other moneys or security entitlements on deposit or credited to any Collateral Account or the City/County HTP Contribution Account, or to give any instructions or entitlement orders with respect to any Collateral Account, the City/County HTP Contribution Account, or money, security entitlements, or other property on deposit therein or credited thereto.

(d) Obligation of Custodian to Comply with Certain Instructions. Notwithstanding any other provision of this Control Agreement, the Custodian will comply with the instructions of the Secured Party, directing disposition of funds in the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account without further consent by CMT or any other Person. The Custodian has not and will not agree with any Person other than the Secured Party to comply with instructions or other directions concerning the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account or the disposition of funds on deposit therein originated by any Person other than the Secured Party. The Custodian agrees to accept any instructions given by the Secured Party to the Custodian with respect to disposition of funds or the deposit of funds in the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account in accordance with Sections 7(b) and (d). The Secured Party instructs the Custodian to make transfers from the Clearing Account in accordance with Section 6(d).

(e) Powers of Custodian. The Custodian is authorized and empowered to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out the custodianship duties and powers.

## SECTION 6. Deposit and Reconciliation of Funds.

(a) Initial Deposit of Theatre Revenues to Clearing Account and City/County HTP Contributions to City/County HTP Contribution Account. CMT hereby covenants to deposit to the Clearing Account, as soon as practicable but in no event later than five (5) Business Days following receipt, all Theatre Revenues received directly by CMT from whatever source. The Custodian will deposit to the City/County HTP Contribution Account all City/County HTP Contributions received from the Secured Party.

(b) Deposit of Theatre Revenues From Credit Card Companies. CMT shall establish and maintain merchant's accounts or similar agreements with each bank, issuer, processor or other Person (each, a "**Credit Card Company**"), with respect to the processing of charge card, debit card or comparable forms of payment constituting Theatre Revenues (separate from its other

receipts which are not or have not become Theatre Revenues), that require each such Credit Card Company to remit on behalf of CMT by wire transfer such Theatre Revenues directly to the Custodian for deposit into the Clearing Account. For purposes of this Section 6(b), CMT shall use the form of instruction letter set forth in Exhibit B attached hereto and incorporated herein by this reference.

(c) Deposit of Contractually Obligated Revenues. CMT shall immediately instruct each Person obligated to pay Contractually Obligated Revenues that such Contractually Obligated Revenues shall be transferred when due directly to the Custodian for deposit into the Clearing Account. For purposes of this Section 6(c), CMT shall use the form of instruction letter set forth in Exhibit B attached hereto.

(d) Reconciliation of Amounts in Clearing Account. No later than 3:00 p.m. California Time on the fifth (5th) Business Day following the last Business Day of each month, CMT shall provide the Custodian and the Secured Party with a written reconciliation of the funds on deposit in the Clearing Account as of the last Business Day of such month for the purpose of identifying those funds on deposit in the Clearing Account which may be properly characterized as Project Related Revenues and those funds on deposit in the Clearing Account which may be properly characterized as Non-Project Related Revenues. The Secured Party instruct the Custodian to accept the written reconciliation from CMT to the Custodian for this purpose. Upon receipt of such reconciliation, the Custodian shall transfer all amounts on deposit in the Clearing Account which have been characterized as Project Related Revenues to the Project Related Revenue Account and the Custodian shall transfer all amounts on deposit in the Clearing Account which have been characterized as Non-Project Related Revenues to the Non-Project Related Revenue Account. If no written reconciliation is provided by CMT to the Custodian and the Secured Party as specified above, the Custodian will provide written notice to CMT that funds held in the Clearing Account will be held on deposit in the Clearing Account and will not be transferred to the Project Related Revenue Account or the Non-Project Related Revenue Account as provided in this Section 6(d) nor shall amounts be disbursed pursuant to Section 6(d) until a written reconciliation is received by the Custodian.

(e) Notice of Amounts Paid By CMT For Additional Rental Payments and Other Amounts Due Under the Facility Lease Agreement. No later than 3:00 p.m. California time on the fifth (5th) Business Day following the last Business Day of each month, CMT shall provide the Custodian and the Secured Party with written notice of whether any Additional Rental Payments and/or other amounts are due under the Facility Lease Agreement (other than the payment of Base Rental Payments under the Facility Lease Agreement) and whether any amounts on deposit in the Non-Project Related Revenue Account or the Non-Project Related Revenue Investment Account are to be used for the payment of such amounts (such amount to be referred to as the “Retained Amount For Fees”).

(f) Reconciliation of Project Related Revenues. No later than 3:00 p.m. California time on the fifth (5th) Business Day following the last Business Day of each month, CMT shall provide the Secured Party with a written reconciliation of the Project Related Revenues contributed by CMT by the following categories – STC Facilities Fee, CMT Facilities Fee and CMT Supplemental Contribution (which shall be in the amount set forth in the definition thereof in Exhibit A) – for the period (a) starting from the first day since the last written reconciliation to

the date indicated in such reconciliation and (b) starting from the Closing Date to the date indicated on such reconciliation.

(g) Calculation of Cumulative Contributed Amount. The Custodian shall keep track of the amount of all Project Related Revenues that have been contributed by CMT and transferred to the Project Related Revenue Account from and after the Closing Date (the “**Cumulative Contributed Amount**”).

(h) No Change to Instruction Letters Without Custodian and City Prior Written Consent. Without the prior written consent of the Custodian and the Secured, no party hereto shall (i) terminate, amend, revoke, modify or contradict any instruction letter delivered hereunder in any manner or (ii) cause any tenant, debtor or Credit Card Company or payor of Contractually Obligated Revenues to pay any amount of Theatre Revenues in any manner other than as provided specifically in the applicable instruction letter.

#### SECTION 7. Disbursement of Funds.

(a) Disbursement of Project Related Revenue Account. All amounts on deposit in the Project Related Revenue Account shall be disbursed to the Purchaser pursuant to Section 7(d).

(b) Disbursement of Non-Project Related Revenue Account and Non-Project Related Revenue Investment Account. On the first (1st) Business Day of each month following the Business Day on which the Custodian has received a written reconciliation from CMT in accordance with Section 6(d), the Custodian shall disburse amounts on deposit in the Non-Project Related Account as follows in this Section 7(b). If, in any month, the Cumulative Contributed Amount in the Project Related Revenue Account and the Project Related Revenue Investment Account equals or exceeds the Cumulative Contribution Requirement for such month as indicated on Exhibit D attached hereto and incorporated by this reference, all amounts on deposit in the Non-Project Related Revenue Account and the Non-Project Related Revenue Investment Account (less any Retained Amount For Fees pursuant to Section 6(e)) shall be withdrawn by the Custodian from the Non-Project Related Revenue Account and the Non-Project Related Revenue Investment Account and paid to CMT by wire transfer in accordance with the wire instructions set forth in Exhibit C attached hereto and incorporated by this reference. If, in any month, the Cumulative Contributed Amount in the Project Related Revenue Account and the Project Related Revenue Investment Account is less than the Cumulative Contribution Requirement for such month as indicated on Exhibit D attached hereto, an amount equal to the amount of the deficiency (i.e. the amount of Cumulative Contribution Requirement less Cumulative Contributed Amount) in the Project Related Revenue Account and the Project Related Revenue Investment Account will be retained in the Non-Project Related Revenue Account and the Non-Project Related Revenue Investment Account and any amounts in excess of such deficiency shall be withdrawn by the Custodian from the Non-Project Related Revenue Account and the Non-Project Related Revenue Investment Account (less any Retained Amount For Fees pursuant to Section 6(e)) and paid to CMT by wire transfer in accordance with the wire instructions set forth in Exhibit C attached hereto.

(c) Disbursement of City/County HTP Contribution Account. All amounts on deposit in the City/County HTP Contribution Account shall be disbursed to the Purchaser pursuant to Section 7(d).

(d) (i) City Notify Custodian of Amount of Next Payment Due. On February 1 and August 1 of each year, commencing July 1, 2016, the City shall notify the Custodian in writing of the amount that will be required to be paid to the Purchaser on the next succeeding March 1 and September 1, as applicable, pursuant to the Sublease Agreement.

(ii) Custodian Notify City of Amount Available Under Control Agreement for Next Payment. [On January 15 and July 15 of each year, commencing July 15, 2016], the Custodian will notify the City as to whether there are sufficient amounts on deposit in the City/County HTP Contribution Account, the Project Related Revenue Account, the Project Related Revenue Investment Account, the Non-Project Related Revenue Account and the Non-Project Related Revenue Investment Account (in that order) to make such payment.

(iii) Custodian Transfer Available Amount to City. On February 1 and August 1 of each year, commencing August 1, 2016, the Custodian will transfer to the City first, from the City/County HTP Contribution Account, second, from the Project Related Revenue Account, third, from and the Non-Project Related Revenue Account for transfer to the Purchaser of the Sublease Payments required to be paid to the Purchaser on such March 1 and September 1 pursuant to the Sublease Agreement.

(iv) Additional Rental Payments and Other Amounts Due Under Facility Lease Agreement. Upon request of the City, the Custodian shall transfer amounts on deposit in the Non-Project Related Revenue Account and/or the Project Related Revenue Account (with the prior written consent of the Secured Party) for the payment of Additional Rental Payments and/or other amounts due and owing under the Facility Lease Agreement (other than the payment of Base Rental payments under the Facility Lease Agreement) provided that there are sufficient amounts on deposit in such accounts to make such payments.

SECTION 8. Fees. CMT agrees to pay (or to cause the payment of) the fees of the Custodian in accordance with the customary fees charged by the Custodian for the services described herein, as such fees are established from time to time.

SECTION 9. Reports. The Custodian shall furnish to CMT and the Secured Party a monthly statement of account reflecting the balance in the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account and all activity during the previous month. The Custodian shall furnish to CMT and the Secured Party a monthly statement of account reflecting the investments in the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account and all activity during the previous month. The Custodian will furnish such other reports as CMT or the Secured Party may reasonably request, including reports to CMT's and the Secured Party's accountant or their examiners as may be necessary.

SECTION 10. Replacement/Resignation of Custodian. As long as CMT is not in default under the Financing Agreements to which it is a party, CMT may replace the Custodian with a successor Custodian by providing written notice to the Custodian and the Secured Party thirty (30) days prior to the effective date of such replacement; provided, that this Control Agreement has been amended to effect such replacement and the successor Custodian has accepted its duties hereunder. CMT shall appoint a successor Custodian, acceptable to all the parties hereunder. Notwithstanding the foregoing, upon the occurrence and during the continuance of a default by CMT in the payment of any Base Rental Payments due from CMT under Section 15.01(a) of the Facility Lease Agreement, either Secured Party may replace the Custodian with a successor Custodian in its sole and absolute discretion. The Custodian shall have the right to resign by providing each of the Secured Party and CMT with written notice of such resignation not later than thirty (30) days prior to the effective date of such resignation. CMT shall appoint a successor Custodian, acceptable to the Secured Party who shall confirm to each of the Secured Party and CMT that it agrees to be bound by the terms hereunder. No such resignation or replacement shall be effective and the responsibilities and duties of the retiring Custodian hereunder shall remain in effect until all of the Collateral shall have been transferred to such successor Custodian provided, however, that if no appointment of a successor Custodian has been made within sixty (60) days from the Custodian's resignation, the Custodian may interplead all money, security entitlements and other security held by it, and petition a court of competent jurisdiction to appoint such successor, and upon deposit of the money, security entitlements and other security held by it with the court all of Custodian's obligations hereunder shall terminate immediately. Any corporation into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which the Custodian shall be a party, shall be the successor of the Custodian hereunder, without the execution or filing of any further act on the part of the parties hereto or such Custodian or such successor corporation. CMT hereby agrees that it shall take all reasonable action necessary to (i) facilitate the transfer of the respective obligations, duties and rights of the Custodian to any successor Custodian, or (ii) maintain, in connection with the appointment of a successor Custodian, the perfection and priority of the security interest granted pursuant to Section 11 hereof.

SECTION 11. Grant of Security Interest. As security for the payment and performance of its obligations under the Facility Lease Agreement, CMT hereby pledges, transfers and assigns to the Secured Party, and grants to the Secured Party a first priority perfected security interest in, all of its right, title and interest, whether now owned or hereafter acquired, in, to and under (i) the Theatre Revenues, and its rights to receive the Theatre Revenues, (ii) the Clearing Account, the Project Related Revenue Account and the Non-Project Related Revenue Account, all money on deposit in such accounts from time to time, and all interest and earnings thereon, (iii) the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account, and all security entitlements carried therein, and (iv) any and all proceeds of the foregoing (collectively, the "**Collateral**"). Upon termination of this Control Agreement pursuant to Section 18 hereof, such security interest shall be released and any money, security entitlements, or other property remaining on deposit in or credited to any Collateral Account shall be transferred to CMT. The parties each agree to execute, acknowledge, deliver, file or perform all other acts, assignments, notices, agreements or other instruments, including financing statements, amendments thereto and continuation statements, as either Secured Party may reasonably require in order to effectuate, assure, convey, secure,

assign, transfer and convey unto the Secured Party any of the rights granted by this section and to perfect and maintain the perfection of the security interest granted hereby.

SECTION 12. Authority Attorney-in-Fact. CMT hereby irrevocably appoints the Secured Party as its attorney-in-fact (coupled with an interest) with full authority to take any or all action in the name of CMT which CMT is permitted to take under this Control Agreement.

SECTION 13. Successors and Assigns; Assignments.

(a) This Control Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

(b) The Custodian shall not assign or transfer rights and obligations under this Control Agreement except in accordance with the provisions of Section 10 hereof.

SECTION 14. Notices. Notices required hereunder shall be deemed given if sent to the Secured Party and CMT at their respective Notice Delivery Addresses.

SECTION 15. Protection of the Custodian. The Custodian shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, e-mail or other electronic transmission, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been adopted, executed or delivered by the proper party or pursuant to any of the provisions of this Control Agreement, and the Custodian shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Custodian may consult with counsel, who may be counsel to the Secured Party, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

The Custodian shall not be accountable for the use or application by CMT or any other party of any funds which the Custodian has released in accordance with the terms of this Control Agreement.

SECTION 16. Indemnification. CMT shall indemnify the Custodian and hold the Custodian harmless from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of (i) any breach or default on the part of CMT in the performance of any of its obligations under this Control Agreement, (ii) any act of negligence of CMT or of any of its agents, contractors, servants, employees or licensees with respect to this Control Agreement, or (iii) the exercise and performance by the Custodian of its powers and duties hereunder or any related document.

SECTION 17. Rights and Obligations of the Custodian.

(a) The Custodian hereby subordinates all security interests, encumbrances, claims and rights of setoff it may have, now or in the future, against the Collateral Accounts, the City/County HTP Contribution Account, or any money, security entitlements, or other property

on deposit therein or credited thereto, other than in connection with the payment of the Custodian's customary fees and charges and for the reversal of provisional credits.

(b) The Custodian has not and will not enter into any agreement with CMT relating to any Collateral Account or the City/County HTP Contribution Account other than this Control Agreement.

(c) Upon receipt of written notice of any lien, encumbrance, or adverse claim against any Collateral Account, the City/County HTP Contribution Account, or any money, security entitlements, or other property on deposit therein or credited thereto, the Custodian will make reasonable efforts promptly to notify the Secured Party and CMT thereof.

(d) The Custodian shall have no responsibility or liability to CMT for complying with instructions concerning the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account and the City/County HTP Contribution Account originated by either Secured Party, and shall have no responsibility to investigate the appropriateness of any such instruction, even if CMT notifies the Custodian that such Secured Party is not legally entitled to originate any such instruction.

(e) The Custodian shall have no responsibility or liability to CMT for complying with any entitlement order concerning the Clearing Investment Account, the Project Related Revenue Investment Account, the Non-Project Related Revenue Investment Account, or any security entitlement credited thereto originated by either Secured Party, and shall have no responsibility to investigate the appropriateness of any such entitlement order, even if CMT notifies the Custodian that such Secured Party is not legally entitled to originate any such entitlement order.

SECTION 18. Term of Control Agreement. This Control Agreement shall remain in full force and effect until such time as the Sublease Payments are paid or deemed paid and amounts under the Facility Lease Agreement are paid or deemed paid and thereafter, any money, security entitlements, or other property remaining on deposit in or credited to any Collateral Account shall be transferred to CMT in accordance with Section 10 and all amounts in the City/County HTP Contribution Account shall be remitted to the City and the County in the proportion each contributed.

SECTION 19. Amendment. This Control Agreement may be amended by written agreement of all parties at any time.

SECTION 20. Governing Law. This Control Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws rules of such state. The parties agree that the State of California is the "bank's jurisdiction" for purposes of the California Commercial Code and the "securities intermediary's jurisdiction" for purposes of the California Commercial Code. Any action or proceeding to enforce or interpret any provision of this Control Agreement shall be brought, commenced or prosecuted in Sacramento County, California.

SECTION 21. Execution in Counterparts. This Control Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Control Agreement in several counterparts (each of which shall be deemed an original) as of the date first above written.

[CUSTODIAN] as Custodian

By \_\_\_\_\_  
Authorized Representative

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Assistant City Attorney

CALIFORNIA MUSICAL THEATRE

By \_\_\_\_\_  
Authorized Representative

**EXHIBIT A**  
**MASTER LIST OF DEFINITIONS**

**EXHIBIT B**

**FORM OF PAYMENT DIRECTION LETTER**

[CALIFORNIA MUSICAL THEATRE LETTERHEAD]

[Date]

[Addressee]

Re: Payment Direction Letter [California Musical Theatre]  
Sacramento, California

Dear [ ]:

The California Musical Theatre (“**CMT**”) has agreed that all funds, revenues and income received with respect to the above-captioned theatre (the “**Theatre**”) will be paid directly to \_\_\_\_\_. Therefore, from and after [ ], please remit all payments, rents or other amounts due to CMT in connection with the Theatre, as follows:

(1) If paying by check, money order or other instrument, please mail such items to the following address:

\_\_\_\_\_  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, CA 958\_\_  
Re: Account No. \_\_\_\_\_

All checks or other instruments should be made out to the name of the \_\_\_\_\_”;  
or

(2) Transfer such amounts by wire transfer to the following account:

\_\_\_\_\_  
ABA#  
Attn:  
Fax:  
Account of:  
Account # \_\_\_\_\_

These payment instructions cannot be withdrawn or modified without the prior written consent of the City of Sacramento or its assignees. Until you receive written instructions from the City or its assignees, continue to send all payments due to CMT to \_\_\_\_\_.

If you have any questions concerning this letter, please contact [\_\_\_\_\_] at [\_\_\_\_\_].  
We appreciate your cooperation in this matter.

Sincerely,

[California Musical Theatre]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT C**

**TRANSFER INSTRUCTIONS**

Funds disbursed by the Custodian pursuant to Section 6 of the Control Agreement shall be sent by wire transfer to the party entitled thereto in accordance with the following wire instructions or such other wire instructions as the party may provide to the Custodian in writing from time to time:

**[CITY]**

**[CALIFORNIA MUSICAL THEATRE]**

**EXHIBIT D**

**SCHEDULE OF CUMULATIVE CONTRIBUTION REQUIREMENTS**

<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>
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<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>
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<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>	<u>Date</u>	<u>Cumulative Contribution Requirement</u>
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An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

## EXHIBIT E

### MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is entered into between the **CALIFORNIA MUSIC THEATRE**, a California nonprofit public benefit corporation (“**CMT**”) and **SACRAMENTO THEATRE COMPANY**, a California nonprofit public benefit corporation (“**STC**”) as potential future lessees of the H Street Property, and the **CITY OF SACRAMENTO**, a charter municipal corporation (“**CITY**”), as potential future lessor of the H Street Property.

### RECITALS

1. Prior to the execution and delivery of those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”), **CITY** and the County of Sacramento leased to **CMT** and **STC** (“**Prior Leases**”), certain real property and improvements located at 15th and H Streets, Sacramento, California (“**H Street Property**”), as described in Exhibit AA, attached hereto and incorporated herein by this reference.
2. The 2002 Certificates were delivered in 2002 to finance the acquisition construction, improvements, renovation and equipping of the facilities located on the H Street Property and the adjacent property owned by **CMT** (the “**Project**”).
3. A public financing by **CITY** is contemplated for the purpose of providing funds to refinance the Project by prepaying the 2002 Certificates. The financing is known as the City of Sacramento Sublease Payments (“**Obligations**”).
4. As part of the financing structure for the Obligations: (i) existing leases on the H Street Property and the adjacent property owned by **CMT** will be terminated; (ii) **CMT** will become a sublessee of the H Street Property, with **CITY** as sublessor under a Facility Lease Agreement, which has a term coinciding with the amortization period for the Obligations; and (iii) **STC** will become a sublessee of the H Street Property under a Facility Sublease Agreement with **CMT**.
5. The Facility Lease Agreement term will end upon full payment of the Obligations, or upon reimbursement to **CITY** for amounts paid therefor, whichever is longer. It is the parties’ mutual intent that **CMT** and **STC**, as long-term occupants of the H Street Property, providing service and benefit to the citizens of the **CITY**, should continue to occupy the H Street Property upon termination of the Facility Lease Agreement.
6. It is also the intent of the parties that, at least six months prior to termination of the Facility Lease Agreement, and provided that the City has not had to make rental payments during the term of the Obligations, they will meet and confer and negotiate in good faith in an effort to reach agreement on the terms and conditions of a successor lease or leases of the H Street

Property to CMT and STC, upon commercially reasonable terms and conditions which are substantially similar to those of the Prior Leases.

## **AGREEMENT**

### **NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

1. **Recitals accurate.** The recitals set forth above are an accurate statement of the facts and circumstances upon which this Agreement is based, and are made a part of this Agreement for all purposes.
2. **Negotiations for successor lease.** At least six months before termination of the Facility Lease Agreement, but not earlier than twelve months before termination, and provided that the City has not had to make rental payments during the term of the Obligations, the parties shall meet and confer and negotiate in good faith in an effort to mutually agree upon the terms and conditions for a successor lease agreement, to take effect upon the termination of the Facility Lease Agreement. The parties shall consider, as part of the negotiations, terms and conditions that are commercially reasonable and substantially similar to those in the Prior Leases.
3. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
4. **Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
5. **Execution of Agreement.** This Agreement may be signed in counterparts, each of which shall be deemed an original.
6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto, and supersedes any prior oral or written agreement.
7. **Warranties and Representations.** The persons signing this Agreement each warrant and represent that each has the capacity and legal authority to execute this Agreement on behalf of the respective entity and to bind that entity to the obligations as stated herein.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on this date first set forth above.

**CITY:**

**CITY OF SACRAMENTO,**  
a charter municipal corporation

By: \_\_\_\_\_  
John F. Shirey

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

**COUNTY:**

**CALIFORNIA MUSIC THEATRE**, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SACRAMENTO THEATRE COMPANY**, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SECOND AMENDMENT AND SUPPLEMENT TO FUNDING AGREEMENT

This Second Amendment and Supplement to Funding Agreement, dated as of January 1, 2016 (this “**Supplement Agreement**”), between the CITY OF SACRAMENTO, a municipal corporation and charter city organized and existing under the laws of the State of California (the “**City**”), the COUNTY OF SACRAMENTO, a political subdivision organized and existing under the laws of the State of California (the “**County**”), the SACRAMENTO THEATRE COMPANY, a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**STC**”) and the CALIFORNIA MUSICAL THEATRE (as successor to the Sacramento Light Opera Association), a nonprofit public benefit corporation organized and existing under the laws of the State of California (“**CMT**”) amends and supplements the Original Funding Agreement (as defined herein),

W I T N E S S E T H:

WHEREAS, the City, the County, STC and CMT (STC and CMT are collectively sometimes referred to herein as the “Arts Partnership”) previously entered into that certain Funding Agreement, dated as of May 1, 1997, as amended and supplemented by that certain Amendment and Supplement to Funding Agreement, dated as of August 1, 2002 (together, the “**Original Funding Agreement**”), pursuant to which the parties set forth the terms of continued funding from the City and the County to the Arts Partnership, the conditions under which such funding may be used by the Arts Partnership and the purposes for which such funding may be used; and

WHEREAS, the Sacramento Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”), intends to assist in the refinancing of the acquisition, construction, improvement, renovation and equipping of certain theatre facilities (the “**Project**”) located at the H Street Site and 1422 G Street, Sacramento, California (the “**G Street Site**,” and together with the H Street Site, the “**Sites**”) by prepaying those certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 Certificates**”); and

WHEREAS, all existing leases on the Sites executed in connection with the 2002 Certificates will be terminated simultaneously with the execution and delivery of the Site Lease Agreements, the Sublease Agreement, the Facility Lease Agreement and the Sub-Facility Lease Agreement (as each are defined below); and

WHEREAS, in order to achieve the foregoing, CMT intends to lease the G Street Premises (as defined in the Site Lease Agreement I, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement I**”), between CMT and the Authority; and

WHEREAS, the City intends to lease the H Street Premises (as defined in the Site Lease Agreement II, defined below) to the Authority pursuant to that certain site lease agreement, dated as of January 1, 2016 (the “**Site Lease Agreement II**,” and together with the Site Lease Agreement I, the “**Site Lease Agreements**”), between the City and the Authority; and

WHEREAS, the Authority intends to lease the G Street Premises and the H Street Premises (together, the “**Premises**”) to the City pursuant to that certain sublease agreement, dated as of January 1, 2016 (the “**Sublease Agreement**”), between the City and the Authority; and

WHEREAS, pursuant to the Sublease Agreement, the City will be obligated to make, among other payments, scheduled rental payments (the “**Sublease Payments**”) to the Authority for the lease of the Premises by the Authority to the City; and

WHEREAS, the City intends to lease the Premises to CMT pursuant to that certain facility lease agreement, dated as of January 1, 2016 (the “**Facility Lease Agreement**”), between the City and CMT; and

WHEREAS, under the Facility Lease Agreement, CMT is obligated to make, among other payments, Base Rental Payments (as defined in the Facility Lease Agreement) in an amount equal to the Sublease Payments required under the Sublease Agreement; and

WHEREAS, the obligations of the City to pay the Sublease Payments under the Sublease Agreement will be credited (subject to the provisions of the Sublease Agreement) to the extent that the Purchaser (as defined in the Sublease Agreement) receives Base Rental Payments from CMT under the Facility Lease Agreement, and to the extent that Base Rental Payments received under the Facility Lease Agreement are insufficient to pay Sublease Payments, the City will pay any deficiency; and

WHEREAS, CMT intends to lease the H Street Premises to STC pursuant to that certain sub-facility lease agreement, dated as of January 1, 2016 (the “**Sub-Facility Lease Agreement**”), between CMT and STC; and

WHEREAS, the parties have agreed that the funds from the HTP FUND (as defined in the Original Funding Agreement) shall be used for (1) the payment of Sublease Payments required under the Sublease Agreement, and (2) the payment of costs of delivery of the Sublease Payments; and

WHEREAS, the parties intend that the Sublease Payments be repaid by, among other amounts, the City’s and the County’s contributions to the HTP FUND as provided herein; and

WHEREAS, the City, the County and the Arts Partnership desire to set forth certain of the terms and conditions upon which the prepayment of the 2002 Certificates (and thereby refinancing of the Project) will occur in this Supplement Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Supplement Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Supplement Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. All capitalized terms used but not defined in this Supplement Agreement (including the recitals hereof) shall have the meanings given in the Original Funding Agreement.

Section 2. Supplement to Original Funding Agreement. The parties hereby agree that this Supplement Agreement supplements and amends the Original Funding Agreement (as so supplemented and amended, the “Funding Agreement”). The terms and provisions of the Original Funding Agreement are incorporated herein by this reference and the terms and provisions of this Supplement Agreement and the Original Funding Agreement shall be read and construed as one instrument. To the extent of any irreconcilable conflict between the terms or provisions of this Supplement Agreement and the Original Funding Agreement, the terms and provisions of this Supplement Agreement shall control.

Section 3. Payments from HTP FUND. The parties hereto agree to allow the use of all the funds of the HTP FUND for (1) the payment of Sublease Payments required under the Sublease Agreement and (2) the payment of costs of delivery of the Sublease Payments.

(a) Payment for Sublease Payments. (1) The City shall, subject to annual appropriation, deposit directly with the Custodian, instead of into the HTP Fund on each October 1, commencing October 1, 2016, sixty-six thousand dollars and no cents (\$66,000.00) until 2020 or the Sublease Payments are paid in full, whichever is earlier.

(2) The County shall, subject to annual appropriation, deposit directly with the Custodian, instead of into the HTP Fund on each October 1, commencing October 1, 2016, sixty-six thousand dollars and no cents (\$66,000.00) until 2020 or the Sublease Payments are paid in full, whichever is earlier.

(b) Payment of Costs of Delivery of the Sublease Payments. The City may use amounts in the HTP Fund to pay costs of delivery of the Sublease Payments.

Section 4. [Reserved].

Section 5. Capital Reserve Account. STC shall annually, on or before June 30, 2016, and annually thereafter, deposit into a special interest-bearing capital reserve account (the “**Capital Reserve Account**”) controlled by the City the sum of \$15,000. CMT shall annually deposit \$5,000 into the Capital Reserve Account. The Capital Reserve Account shall be used toward STC’s and CMT’s contribution to extraordinary and substantial repairs and replacements of the facilities used by both STC and CMT in excess of \$5,000 per event (as defined below) above and beyond regularly scheduled maintenance of the premises and the structures thereon and for roof and HVAC replacement, maintenance and repairs in excess of \$5,000 but less than \$25,000.

STC shall submit to City a written request for the use of funds held in the Capital Reserve Account. The request shall be deemed approved unless City disapproves the request in writing within thirty (30) days from actual receipt of STC's request. If the City approves the request, the City shall within thirty days pay the amount set forth in the request from funds held in the Capital Reserve Account upon receipt of invoices from STC, for qualified replacement, maintenance or repairs.

Section 6. H Street Replacement Account. CMT agrees to deposit monies to fund a reserve for payment of the cost of required roof or HVAC replacement, maintenance, or repairs for both the H Street and G Street facilities. CMT shall annually, commencing July 1, 2016 and thereafter on each July 1 for a twenty-five year period, deposit into a separate City held fund (the "**H Street Replacement Account**") the sum of \$25,000.

The funds in the H Street Replacement Account shall be used only for roof and HVAC replacement, maintenance, and repairs in excess of \$25,000 per event. For purposes of this section, "event" means an individual occurrence that requires CMT to engage a qualified contractor in order to accomplish the replacement, maintenance, or repair, or a routine annual (or other regular interval) need for replacement, maintenance, or repair.

CMT shall submit to City a written request for the use of funds held in the H Street Replacement Account. The request shall be deemed approved unless City disapproves the request in writing within thirty (30) days from actual receipt of CMT's request. If the City approves the request, the City shall within thirty days pay the amount set forth in the request from funds held in the H Street Replacement Account, upon receipt of invoices from CMT, for qualified replacement, maintenance, or repairs.

The requirement to deposit these funds in the H Street Replacement Account ends twenty-five years after the first deposit. Any remaining balance of the funds in the H Street Replacement Account after the twenty-five year period will be used for future HVAC and roof repairs and maintenance at either the G or H Street facilities until the funds are exhausted. After twenty-five years, the funds in the H Street Replacement Account may be used for events less than \$25,000, until the funds are exhausted.

Section 7. Designees. Whenever it refers to the City Manager or the County Executive in the Funding Agreement, it shall also include the designees of the City Manager and the County Executive.

Section 8. Extension of Term. The term of the Funding Agreement shall be extended to the date of the Sublease Payments are paid in full.

IN WITNESS WHEREOF, the parties have caused this Second Amendment and Supplement to Funding Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Assistant City Attorney

COUNTY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Attest:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Deputy County Counsel

SACRAMENTO THEATRE COMPANY

By \_\_\_\_\_  
Authorized Representative

CALIFORNIA MUSICAL THEATRE

By \_\_\_\_\_  
Authorized Representative

## EXHIBIT A

### MASTER LIST OF DEFINITIONS

“**Act**” means the Joint Exercise of Powers Act (being Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as amended) and all laws amendatory thereof or supplemental thereto.

“**Additional Rental Payments**” means the payments so designated and required to be paid by: (1) the City pursuant to Section 6.02 of the Sublease Agreement; and (2) CMT pursuant to Section 6.02 of the Facility Lease Agreement.

“**Affiliate**” means, with respect to any Person: (1) each Person that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, one percent (1%) or more of any class of equity securities of such Person; (2) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person; or (3) each of such Person’s officers, directors, joint ventures, managers and partners. For the purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“**Applicable Laws**” means with reference to any Person, all laws, statutes, ordinances and treaties and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or Governmental Authority, and all rules, regulations, orders, written interpretations, directives, licenses and permits of any Governmental Authority applicable to such Person or its property or in respect of its operations.

“**Assignment Agreement**” means that certain assignment agreement, dated as of January 1, 2016, between the Authority and the Purchaser, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

“**Authority**” means the Sacramento Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State, its successors and assigns.

“**Base Rental Payment Date**” means the dates upon which Base Rental Payments are required to be paid under the Facility Lease Agreement.

“**Base Rental Payment Schedule**” means the schedule of Base Rental Payments payable by CMT pursuant to the Facility Lease Agreement, which schedule is attached as Exhibit C to the Facility Lease Agreement.

“**Base Rental Payments**” means all rental payments required to be paid by CMT to the City pursuant to Section 6.01 of the Facility Lease Agreement, including any prepayment thereof pursuant to the Facility Lease Agreement.

“**Bond Counsel**” means an attorney or a firm of attorneys, acceptable to the Authority, of nationally recognized standing in matters pertaining to bonds and other obligations issued by

states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America.

**“Broadway Sacramento Shows”** means the shows which are part of CMT’s Broadway Sacramento season.

**“Business Day”** means any day other than: (1) a Saturday or a Sunday; or (2) a day on which commercial banks in the City of New York, New York are required or authorized by law to remain closed; or (3) a day on which the New York Stock Exchange is closed.

**“California Musical Theatre”** or **“CMT”** means the California Musical Theatre, a nonprofit public benefit corporation organized and existing under the laws of the State, or any corporation which is the surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted under the Facility Lease Agreement.

**“Capital Leases”** means any and all lease obligations that, in accordance with GAAP, are required to be capitalized on the books of a lessee.

**“Certificate of the Authority”** or **“Statement of the Authority”** means, respectively, a written certificate or statement signed by the Chair, Vice-Chair, Treasurer or Secretary of the Authority or such other Person as may be designated and authorized to sign for the Authority. Any such instrument and supporting opinions, representations or certificates, if any, may, but need not, be combined in a single instrument with any other instrument, opinion, representation or certificate and the two or more so combined shall be read and construed as a single instrument.

**“2002 Certificates”** mean the Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation.

**“City”** means the City of Sacramento, a municipal corporation and charter city organized and existing under the laws of the State, its successors and assigns.

**“City/County HTP Contribution Account”** means the account by that name established pursuant to Section 3(a) of the Control Agreement.

**“City/County HTP Contributions”** means the payments by the City, subject to annual appropriation, of \$66,000 on each October 1, commencing on October 1, 2016 and ending on (and including) October 1, 2020 and the payment by the County, subject to annual appropriation, of \$66,000 on each October 1, commencing on October 1, 2016 and ending on (and including) October 1, 2020, in each case, as required by the HTP Funding Agreement.

**“Clearing Account”** means the account by that name established pursuant to Section 2(a) of the Control Agreement.

**“Clearing Investment Account”** means account by that name established pursuant to Section 4(a) of the Control Agreement.

“**Closing Date**” means \_\_\_\_\_.

“**CMT Facilities Fee**” means the surcharge imposed on all tickets sold (except tickets sold for private, fundraising events not open to the general public) for CMT performances, presentations and productions at the Premises of not less than \$4.00 per ticket starting with 2016 season.

“**CMT Supplemental Contribution**” means the following scheduled payments required to be paid by CMT under the Facility Lease Agreement to be paid from Non-Project Related Revenues that become Project Related Revenues upon their deposit with the Custodian under the Control Agreement:

[\_\_\_\_\_ on each February 1, March 1, April 1, May 1, June 1, July 1 and August 1 during 20\_\_ through 2032].

“**Code**” means the Internal Revenue Code of 1986 and the regulations issued thereunder, or any successor to the Internal Revenue Code of 1986.

“**Collateral Account**” means the Clearing Account, the Project Related Revenue Account, the Non-Project Related Revenue Account, the Clearing Investment Account, the Project Related Revenue Investment Account and the Non-Project Related Revenue Investment Account.

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

“**Contractually Obligated Revenues**” means any revenues from contracts which constitute Theater Revenues, including but not limited to contracts for advertising, sponsorships, naming rights (including rights under the Naming Rights Agreement) or media rights.

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

“**Control Agreement**” means that certain control agreement, dated as of January 1, 2016, between the Custodian, the City and CMT, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

“**Counsel**” means an attorney at law or a firm of attorneys duly admitted to the practice of law before the highest court of any state of the United States of America.

“**Cumulative Contributed Amount**” shall have the meaning given such term in Section 5(f) of the Control Agreement.

**“Cumulative Contribution Requirement”** shall mean the amounts specified in Exhibit D to the Control Agreement.

**“Custodian”** means Wells Fargo Bank, N.A., or any other bank or trust company which may at any time be substituted in its place as provided in Section 10 of the Control Agreement.

**“Deed of Trust”** means that certain deed of trust, assignment of leases and rents, security agreement and fixture filing, dated as of January 1, 2016, by CMT as trustor to Fidelity National Title Company, as trustee for the benefit of the City, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

**“Default Rate”** means \_\_\_% per annum.

**“Defeasance Obligations”** means: (1) cash; (2) noncallable United States of America Treasury bills, notes, bonds or certificates of indebtedness; (3) obligations for which the full faith and credit of the United States are pledged for the payment of principal and/or interest; or (4) securities evidencing direct ownership interests in securities enumerated in clauses (2) or (3) of this definition or in specified portions of the interest or principal of such securities that are held by a custodian in safekeeping on behalf of the owners of such securities.

**“Employee Benefit Plan”** shall have the meaning given to it in ERISA.

**“Environmental Laws”** means, but shall not be limited to: the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; and all rules and regulations under each of the foregoing; and all other governmental rules relating to the protection of human health and the environment including all governmental rules pertaining to the reporting, licensing, permitting, transportation, storage, disposal, investigation or remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater, land, or other environments or relating to the manufacture, processing, distribution, use, generation, control, treatment, storage, disposal, transportation, handling, removal or recovery of Hazardous Substances.

“**ERISA**” means the Employment Retirement Income Security Act.

“**ERISA Affiliate**” means any Person which is treated as a single employer with CMT under Section 414 of the Code.

“**Event of Default**” means: (1) with respect to the Deed of Trust, an event of default under the Deed of Trust, as defined in Section B.1 of the Deed of Trust; (2) with respect to the Sublease Agreement, an event of default under the Sublease Agreement, as defined in Section 15.01 of the Sublease Agreement; or (3) with respect to the Facility Lease Agreement, an event of default under the Facility Lease Agreement, as defined in Section 15.01 of the Facility Lease Agreement.

“**Event of Taxability**” means a determination, decision, or decree made by the Commissioner or any District Director of the Internal Revenue Service, or by any court of competent jurisdiction, that the interest component of the Sublease Payments is includable in gross income for federal income tax purposes because of an action or omission of the City.

“**Facilities Fee**” means the surcharge imposed on all tickets sold (except tickets sold for private, fundraising events not open to the general public) for CMT and STC performances, presentations and productions at the Premises.

“**Facility Lease Agreement**” means that certain facility lease agreement, dated as of January 1, 2016, between the City and CMT, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

“**Facility Sublease Agreement**” means that certain Facility Sublease Agreement, dated as of January 1, 2016, between CMT and STC, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

“**Financing Agreements**” means the Joint Exercise of Powers Agreement, the Deed of Trust, the Site Lease Agreements, the Sublease Agreement, the Facility Lease Agreement, the Facility Sublease Agreement, the Assignment Agreement, the HTP Funding Agreement, the Tax Certificate and the Control Agreement.

“**Fiscal Year**” means, with respect to CMT, the period beginning on January 1 of each year and ending on the succeeding December 31, or any other twelve-month period hereafter selected and designated as the official fiscal year of CMT and, with respect to the City, the period beginning on July 1 of each year and ending on the succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year of City.

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

“**G Street Site**” means that certain real property located at 1422 G Street, Sacramento, California, and more particularly described in Exhibit B to the Site Lease Agreement I.

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

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

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

“**H Street Site**” means that certain real property located at 1419 H Street, Sacramento, California and more particularly described in Exhibit B to the Site Lease Agreement II.

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

“**HTP Fund**” means the fund by that name established pursuant to the HTP Funding Agreement.

“**HTP Funding Agreement**” means that certain funding agreement, dated as of May 1, 1997, as amended and supplemented, including as amended and supplemented as of January 1, 2016, between the City, the County, STC and CMT, as originally executed or as it may from time to time be further supplemented, modified or amended pursuant to the provisions thereof.

“**Immediate Notice**” means oral or telephonic notice, promptly followed by written notice by telex, telecopier or other electronic means or first class mail to the applicable Notice Delivery Address; provided, that verbal or telephonic notice shall be effective notwithstanding any failure to receive such written notice.

**“Indebtedness”** means all obligations for borrowed money, installment sales and Capital Leases, incurred or assumed by CMT.

**“Indemnified Party”** shall have the meaning given to such term in Section 7.11 of the Facility Lease Agreement.

**“Independent Accountant”** means an independent certified public accountant reasonably acceptable to the Authority.

**“Independent Consultant”** means an independent professional consultant or firm of independent professional consultants of recognized national standing in the analysis and review of theater facilities management and economics, which shall be selected by the Authority.

**“Independent Counsel”** means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Authority or the City.

**“Insolvent”** means:

(1) having, at a fair valuation, total liabilities (including contingent, subordinated, unmatured, unliquidated, disputed, legal, equitable, secured or unsecured liabilities) that exceed total assets;

(2) generally not paying debts as they become due;

(3) based on current projections that are themselves based on underlying assumptions providing a reasonable basis for the projections and reflecting present circumstances and the most likely course of action for the period projected, having insufficient cash flow to pay debts as they mature;

(4) having unreasonably small capital with which to engage in anticipated business;  
or

(5) being “insolvent” as defined under any applicable federal or state law.

For purposes of this definition, the “fair valuation” of the assets of any Person shall be determined on the basis of the amount which may be realized within a reasonable time, either through collection or sale of such assets at the regular market value, conceiving the latter as the amount which could be obtained for the property in question within such period by a capable and diligent seller from an interested buyer who is willing to purchase under ordinary selling conditions.

**“Insurance Consultant”** means any independent Person with a national reputation in consulting on the insurance requirements of governmental entities of the general size and character of the City, or at the option of the City, the City’s Risk Manager.

**“Joint Exercise of Powers Agreement”** means that certain joint exercise of powers agreement creating the Sacramento Public Financing Authority, effective February 25, 2014, between the City and the Housing Authority of the City of Sacramento, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

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

**“Material Adverse Effect”** means,

(1) as it relates to CMT, a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of CMT; or (b) the ability of CMT to pay or perform the obligations of CMT in accordance with the terms of the Financing Agreements to which CMT is a party, or

(2) as it relates to the City, a consequence that is materially adverse to (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the Closing Date or to meet or perform its obligations under the Sublease Agreement on a timely basis, or (c) the validity or enforceability of the Sublease Agreement.

**“Material Governmental Proceedings”** means any investigation, inquiry, or similar proceeding by any Governmental Authority that may have a Material Adverse Effect.

**“Material Litigation”** means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, that (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated by the Sublease Agreement, or (iii) may adversely affect (A) the exclusion of the interest component of the Sublease Payment from gross income for federal income tax purposes or the exemption of such interest for California income tax purposes or (B) the ability of the City to perform its obligations under the Sublease Agreement.

**“Multiemployer Plan”** means any multiemployer plan within the meaning of section 3(37) of ERISA maintained or contributed to by CMT or any ERISA Affiliate.

**“Naming Rights Agreement”** means that certain California Musical Theatre sponsorship and naming rights agreement, dated as of June 1, 2000 and as amended from time to time between CMT and Wells Fargo Bank, N.A. in which Wells Fargo Bank agrees to pay CMT a stated amount annually for certain naming rights as described in the Naming Rights Agreement and any other naming rights agreement with respect to the Premises.

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

**“Non-Project Related Revenue Account”** means the account by that name established pursuant to Section 2(a) of the Control Agreement.

**“Non-Project Related Revenue Investment Account”** means account by that name established pursuant to Section 4(a) of the Control Agreement.

**“Non-Project Related Revenues”** means all Theater Revenues excluding any Project Related Revenues.

**“Notice Delivery Address”** means:

If to the Authority:	Sacramento Public Financing Authority c/o City of Sacramento 915 I Street, New City Hall, 5 <sup>th</sup> Floor Sacramento, California 95814 Attention: City Clerk
If to the California Musical Theatre:	California Music Theater 1510 J Street, Suite #200 Sacramento, California 95814 Attention: President and Chief Executive Officer
If to the City:	City of Sacramento 915 I Street, Historic City Hall, 3 <sup>rd</sup> Floor Sacramento, California 95814 Attention: City Treasurer
If to the Custodian:	Wells Fargo Bank, N.A. 333 Market Street, 18 <sup>th</sup> Floor San Francisco, California 94105 Attention: Corporate, Municipal & Escrow Services
If to the Sacramento Theatre Company:	Attention:

**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Opinion of Counsel”** means a written opinion of Counsel.

**“Permitted Encumbrances”** means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) the Site Lease Agreements; (iii) the Sublease Agreement; (iv) the Facility Lease Agreement and the Facility Sublease Agreement; (v) the Deed of Trust; (vi) the Assignment Agreement; (vii) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law incurred in the ordinary course of business and which do not relate to any dispute regarding payment due; (viii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date hereof and which CMT certify in writing will not materially impair the use of the Project or the Premises by CMT; and (ix) any Lien shown as an exception to the title insurance policies delivered pursuant to Section 8.02(a) of the Facility Lease Agreement on the Closing Date provided that no such Lien (or the amount of Indebtedness secured thereby) may be increased, extended, renewed or modified to apply to any Property of CMT not subject to such Lien on such date, unless such Lien as so extended, renewed or modified otherwise qualifies as a Permitted Encumbrance.

**“Permitted Investments”** means any securities in which funds of the City may be legally invested in accordance with the applicable law in effect at the time of such investment and in accordance with the then current investment policy of the City (as established by the City Council).

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

**“Premises”** means, collectively, the G Street Site together with the G Street Project and the H Street Site together with the H Street Project.

**“Project”** means the acquisition, construction, improvement, renovation and equipping of certain theater facilities located on the Premises that was funded in part by the proceeds of the 2002 Certificates.

**“Project Related Revenue Account”** means the account by that name established pursuant to Section 2(a) of the Control Agreement.

**“Project Related Revenue Investment Account”** means account by that name established pursuant to Section 4(a) of the Control Agreement.

**“Project Related Revenues”** means collectively, the STC Facilities Fee, the CMT Facilities Fee, the Naming Rights Agreement revenues (net of any commissions), and the CMT Supplemental Contribution.

**“Property”** means any and all rights, titles and interests in and to any and all property of any Person whether real or Personal, tangible or intangible and wherever situated.

**“Purchaser”** means Compass Mortgage Corporation, its successors and assigns.

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

**“Rental Period”** means each twelve-month period during the term of the Sublease Agreement and the Facility Lease Agreement commencing on September 1 in any year and ending on August 31 in the next succeeding year; except for the first rental period which shall commence on the Closing Date and shall end on August 31, 2016.

**“Reportable Event”** shall have the meaning given to that term in ERISA and applicable regulations thereunder.

**“Requisition”** means an instrument in writing signed by or on behalf of the Authority by its Chair, Vice-Chair, Treasurer or Secretary or by any other Person (whether or not an officer of the Authority) who is specifically authorized by resolution of the Board of Directors of the Authority to sign or execute such a document on its behalf.

**“Sacramento Theatre Company”** or **“STC”** means the Sacramento Theatre Company, a nonprofit public benefit corporation organized and existing under the laws of the State.

**“Site Lease Agreement I”** means that certain site lease agreement, dated as of January 1, 2016, between the Authority and CMT, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

**“Site Lease Agreement II”** means that certain site lease agreement, dated as of January 1, 2016, between the City and the Authority, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

**“Site Lease Agreements”** means, collectively, the Site Lease Agreement I and the Site Lease Agreement II.

**“Sites”** means, collectively, the G Street Site and the H Street Site.

**“STC Facilities Fee”** means the surcharge imposed on all tickets sold (except tickets sold for private, fundraising events not open to the general public) for STC performances, presentations and productions at the Premises until the amounts payable under the Sublease Agreement have been fully paid or deemed fully paid in accordance with the Sublease Agreement and until the amounts payable under the Facility Lease Agreement have been fully paid or deemed fully paid in accordance with the Facility Lease Agreement.

**“State”** means the State of California.

**“Sublease Agreement”** means that certain sublease agreement, dated as of January 1, 2016, between the Authority and the City, as originally executed and or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

**“Sublease Payments”** means all rental payments required to be paid by the City to the Authority pursuant to Section 6.01 of the Sublease Agreement, including any prepayment thereof pursuant to Article XVI of the Sublease Agreement.

**“Sublease Payment Schedule”** means the schedule of Sublease Payments payable by the City pursuant to the Sublease Agreement attached as Exhibit \_\_ to the Sublease Agreement.

**“Tax Certificate”** means that certain tax certificate and agreement, dated the Closing Date, by and among the Authority, the City and CMT, as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

**“Taxable Rate”** means \_\_% per annum.

**“Theater Revenues”** means any and all receipts, revenues, fees, charges, income and other moneys received as a result of or in connection with the ownership and operation of CMT (regardless of whether or not received by CMT directly), including but not limited to the following: (1) the sales of tickets, including any surcharge related thereto (including season, advance and daily admission tickets, luxury suites, private suites or other facilities or areas separate from individual seating) through any means whatsoever, including but not limited to the Premises box office, the daily event ticket window or any ticket system or service for events at the Premises; (2) all concessions (whether at the Premises or other sites), including without limitation, sales of food, beverages, merchandise, alcoholic and tobacco products, programs, novelties, souvenirs, goods, publications, clothing, pouring rights and other related items; (3) checkroom for clothing; (4) the rental of any devices, such as binoculars or other items; (5) media broadcasts, including but not limited to, television (broadcast, cable, satellite or other), radio, internet, any other form of electronic communication or image (virtual signage); (6) endorsements from the use of the name of the Premises; (7) rental income; (8) royalties; (9) the sale of any advertising from any means whatsoever, including any rights relating to the name of the Premises or rights to signage at the Premises; (10) parking revenues (whether at the Premises or other sites); (11) any liquidated damages payable by the general contractor for the construction of the Premises; (12) Net Proceeds with respect to the Premises or any portion thereof (if any); (13) all Project Related Revenues; (14) gifts, grants, bequests, donations and contributions, exclusive of any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor to a particular purpose inconsistent with their use for the payment of Rental Payments under the Facility Lease Agreement; and (15) all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence. The parties hereto acknowledge that the term “Theater Revenues” shall be liberally construed in favor of considering any receipt, revenue, income or other moneys as “Theater Revenues.” Notwithstanding the foregoing, Theater Revenues shall not include the proceeds of any borrowing, amounts released to CMT from the Non-Project Related Revenue Account. Notwithstanding the foregoing, Theater Revenues shall not include any revenues from the Broadway Sacramento Shows.

**“Total Rental”** means the Sublease Payments, the Base Rental Payments and the Additional Rental Payments and any other amounts, charges or sums payable by the City pursuant to the Sublease Agreement or CMT pursuant to the Facility Lease Agreement.

**“Written Request of the Authority”** means an instrument in writing signed by or on behalf of the Authority by its Chair, Vice-Chair, Treasurer or Secretary or by any Person (whether or not an officer of the Authority) who is specifically authorized by resolution of the Board of Directors of the Authority to sign or execute such a document on its behalf.

**“Written Request of the City”** means an instrument in writing signed by the Treasurer of the City, or by any other Person (whether or not an officer of the City) who is specifically authorized in writing by the Treasurer of the City to sign or execute such a document.