

Meeting Date: 5/10/2016

Report Type: Consent

Report ID: 2016-00472

Title: B Street Theatre Project Financing Implementation Agreements (Continued from 05/03/2016)

Location: 27th Street and Capitol Avenue, District 4

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to: 1) execute a subordination and intercreditor agreement with Theatre for Children, Inc., Five Star Bank, N.A., Sutter Health Sacramento Sierra Region, and Sutter Health Sacramento Sierra Region, dba Sutter Medical Center, Sacramento; and 2) execute a supplemental lender's agreement to construction disbursement agreement with Theatre for Children, Inc. and Five Star Bank, N.A.

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

Presenter: None

Department: Economic Development Dept

Division: Downtown Development

Dept ID:

Attachments:

1-Description/Analysis

2-Subordination and Intercreditor Agreement

3-Supplemental Lender's Agreement to Construction Disbursement Agreement

City Attorney Review

Approved as to Form

Michael Sparks

4/20/2016 5:18:23 PM

Approvals/Acknowledgements

Department Director or Designee: Larry Burkhardt - 4/18/2016 1:05:00 PM

Description/Analysis

Issue Detail: On December 15, 2015, the Council approved \$3 million in funding and a loan agreement with the Theatre for Children, Inc. (commonly known as “B Street”) for the development of a new 45,000 sq. ft. theatre complex. The facility is to be located at 27th Street and Capitol Avenue.

Since Council approval, B Street has been diligently working with the other funders of the project, Sutter Health, Five Star Bank, and the California Infrastructure Bank (IBank) in the preparation of various agreements required to implement the financing structure.

This report requests authorization for the City Manager or his designee to execute two agreements required to implement the B Street Theatre project financing - a Subordination and Intercreditor Agreement (“Subordination Agreement”, Attachment 1) and a Supplemental Lender’s Agreement to Construction Disbursement Agreement (“Disbursement Agreement”, Attachment 2). The Subordination Agreement subordinates the City’s loan to that of the primary lender on the project, Five Star Bank, and establishes the rights among the funders of the project. Five Star Bank will be providing \$12 million to the project. The Disbursement Agreement outlines the process for the disbursement of the funding for the project. As contemplated in the original Loan Agreement for the City’s \$3 million, the City’s funds would be provided after B Street’s equity is in the project and the property has been transferred to B Street from Sutter.

B Street and the lenders on the project currently envision a closing in early May for an initiation of construction within the following month.

Policy Considerations: The B Street Project is consistent with the 2030 General Plan as it will add to Sacramento’s cultural amenities and contribute to the quality of life for residents and visitors.

Economic Impacts: The economic impact estimates are calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). The total estimated cost of construction for the B Street Theatre Project is \$12.3 million, which is projected to create 42 direct jobs and 30.8 indirect jobs. Additionally, according to the CSER calculation over \$7.7 million in direct output and over \$4.2 million in indirect or induced activities will be generated by the construction of the B Street Project. Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

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

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

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

Commission/Committee Action: None.

Rationale for Recommendation: The actions recommended in this report will provide for the finalization of the financing structure for this long-awaited project. B Street has been a mainstay of the arts and cultural offerings in Sacramento and is known as one of the best professional regional theatres in the nation. It has steady levels of ticket sales averaging over 90,000 tickets annually and has introduced thousands of school children to high quality, educational theatre. B Street has demonstrated experience and has operated self-sufficiently for almost 30 years. The project represents a true public-private partnership with the funds from B Street being complemented by funding from Sutter Health, Five Star Bank, the California Infrastructure Bank and the City.

B Street has received all of the required entitlements, environmental clearances, and design review need to begin the project. They have completed their construction drawings and submitted for permits. It is anticipated that they will be able to receive their building permits within the next 45 days.

Financial Considerations: The total project cost is \$28.85 million. B Street has secured \$4.2 million in cash and pledges in addition to approximately \$4.1 already invested in the project. Sutter Health is donating the land valued at \$6 million. Five Star Bank is utilizing an IBank tax-exempt bond conduit program to bring an additional \$12 million in financing to the project.

Local Business Enterprise (LBE): None at this time.

Recording Requested By:

Theatre for Children, Inc. d/b/a The B Street Theatre
2711 B Street
Sacramento, California 95816

And Upon Recording, Return To:

Weintraub Tobin Chediak Coleman Grodin
Law Corporation
Attn: Michael A. Kvarme
400 Capitol Mall, 11th Floor
Sacramento, California 95814

Space above this line for recorder's use only

SUBORDINATION AND INTERCREDITOR AGREEMENT

NOTICE: THIS SUBORDINATION AND INTERCREDITOR AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN REFERENCED BELOW.

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this "Agreement") is made as of May 3, 2016, by and among **THEATRE FOR CHILDREN, INC. D/B/A THE B STREET THEATRE**, a California nonprofit public benefit corporation (hereinafter referred to as "Borrower"), the **CITY OF SACRAMENTO**, a municipal corporation ("City"), **SUTTER HEALTH SACRAMENTO SIERRA REGION**, a California nonprofit public benefit corporation and **SUTTER HEALTH SACRAMENTO SIERRA REGION**, doing business as **SUTTER MEDICAL CENTER, SACRAMENTO**, a California nonprofit public benefit corporation (together, "Sutter") (collectively, Sutter and City are referred to as "Subordinated Lenders") and **FIVE STAR BANK** (hereinafter referred to as "Senior Lender"):

WITNESSETH

WHEREAS, Sutter, the prior owner of that certain real property and improvements located at 1315 27th Street and 2700, 2706, 2710, 2720 Capitol Avenue, Sacramento, California, as described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), conveyed the Property to Borrower, subject to that certain unrecorded Agreement Regarding Option to Purchase And Development Matters, effective March 14, 2010, by and between Borrower and Sutter (as amended, the "Sutter Option Agreement"); that certain Memorandum of Right of Refusal recorded concurrently herewith against the Property by Sutter ("Memorandum"); that certain Declaration of Restrictions recorded concurrently herewith against the Property by Sutter ("Sutter Declaration"); and that certain Parking Agreement recorded concurrently herewith affecting the Property by and between Sutter and Borrower ("Sutter Parking Agreement"); collectively, the Sutter Option Agreement, Memorandum, Sutter Declaration and Sutter Parking Agreement are referred to herein as the "Sutter Documents").

The Sutter Documents provide, among other things, that (1) Sutter shall have a right of first refusal to reacquire the Property in the event the Property is sold to a third party or any lender commences a foreclosure against the Property, and (2) Sutter will make an annual donation to Borrower (“Sutter Garage Donation”) for so long as Sutter owns the community parking structure neighboring the Property (“Sutter Garage”).

WHEREAS, the California Infrastructure and Economic Development Bank (the “Issuer”) has issued \$12,000,000 aggregate principal amount of tax exempt obligations (the “Obligations”) pursuant to that certain Master Loan Agreement, dated as of May 1, 2016 (the “Senior Loan Agreement”), by and among the Issuer, Borrower and Senior Lender, and Senior Lender has loaned the proceeds thereof to the Borrower (the “Loan”); and

WHEREAS, Borrower will use the proceeds of the Loan, in part, to finance the acquisition, construction, development, furnishing and equipping of the Property; and

WHEREAS, Borrower has executed a Deed of Trust with Assignment of Leases and Rents, Security Agreement and Financing Statement, dated as of May 1, 2016, to Stewart Title of Sacramento for the benefit of Issuer, and assigned to the Senior Lender (“Senior Deed of Trust”) in the amount of **TWELVE MILLION DOLLARS (\$12,000,000)**, as security for Borrower’s obligations under the Senior Loan Agreement, including, without limitation, (i) the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement set forth in the Senior Loan Agreement, the Senior Deed of Trust and in any other document or instrument executed by Borrower in connection with the Senior Deed of Trust and the Senior Loan Agreement (collectively, the “Senior Lender Documents”), and (ii) advances made by Senior Lender pursuant to the Senior Lender Documents to preserve the security of the Senior Deed of Trust, payments of taxes and insurance premiums, and reasonable collection costs attorney’s fees (collectively, the “Senior Obligations”); and

WHEREAS, the Borrower has executed a short form construction deed of trust and assignment of rents, dated May 3, 2016 (“City Deed of Trust”), to First American Title Company for the benefit of City and recorded concurrently herewith, as security for Borrower’s obligations under the Forgivable Loan Agreement, dated May 3, 2016 (“City Loan Agreement”), in the amount of **THREE MILLION DOLLARS (\$3,000,000)** (“City Loan” and together with the City Deed of Trust and all other documents and instruments executed by Borrower in connection with the City Loan and the City Deed of Trust, the “City Lender Documents”); and

WHEREAS, it is a condition precedent to Senior Lender entering into the Senior Loan Agreement that the Senior Deed of Trust shall unconditionally be and remain at all times that the Senior Obligations are unpaid, a lien or charge upon the Property, prior and superior to the lien or charge of the Sutter Documents, City Deed of Trust and the Subordinated Lenders specifically and unconditionally subordinate the liens or charges of the Sutter Documents and City Deed of Trust to the lien or charge of the Senior Deed of Trust; and

WHEREAS, Subordinated Lenders have agreed to so subordinate; and

WHEREAS, it is to the mutual benefit of the parties hereto that Senior Lender enter into the Senior Loan Agreement with Borrower; and Subordinated Lenders have agreed to allow the Senior Deed of Trust, when recorded, to constitute a lien or charge upon the Property which is unconditionally prior and superior to the lien or charge of the Sutter Documents and City Deed of Trust.

WHEREAS, Senior Lender has agreed to provide Sutter and City certain rights to cure Borrower's defaults under the Senior Obligations, or to acquire Senior Lender's rights under the Senior Loan Documents or to assume Borrower's obligations under the Senior Loan Documents all of which Borrower has agreed to consent to;

NOW THEREFORE, in consideration of the mutual benefit accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lender to enter into the Senior Loan Agreement, it is hereby declared, understood and agreed:

Section 1. Subordination. Subordinated Lenders hereby subordinate any and all of their interests in the Property, and any and all other real or personal property or other assets securing the Senior Obligations, Sutter Documents and/or City Loan, including without limitation the Sutter Documents and City Deed of Trust, in favor of the Senior Deed of Trust and the Senior Obligations until the Senior Obligations shall have been repaid and satisfied in full and/or any remaining obligations provided in the Senior Obligations have been terminated or released, whether contingent or matured ("Fully Paid"). Until the Senior Obligations are Fully Paid, Senior Lender will have the right to commence and maintain an action to enforce this Agreement or the Senior Lender Documents (including the rights to set off or credit bid their debt), make determinations regarding the release or disposition of, or restrictions with respect to, any collateral securing the Senior Obligations, and otherwise enforce the rights and remedies of a secured creditor under the U.C.C., California commercial code, and/or any bankruptcy laws of any applicable jurisdiction, so long as any proceeds received by Senior Lender in excess of those necessary to achieve discharge of the Senior Obligations are distributed in accordance with this Agreement, except as otherwise required pursuant to the U.C.C. and applicable law and subject to the relative priorities described herein. Senior Lender may take any action in any manner in its sole discretion in compliance with this Agreement (including without limitation Section 7) and applicable law, without consultation with or the consent of Subordinated Lenders, regardless of whether an insolvency proceeding has been commenced, regardless of any provision of any restrictions of the Sutter Documents or City Lender Documents (other than this Agreement), and regardless of whether such exercise is adverse to the interest of Subordinated Lenders. Senior Lender's rights to enforce any provision of this Agreement or any Senior Lender Document will not be prejudiced or impaired by any act or failure to act by Borrower or noncompliance by any person other than Senior Lender with any provision of this Agreement, with respect to any Senior Lender Document, Sutter Document, or any City Lender Document, regardless of any knowledge thereof that Senior Lender may have or otherwise be charged with.

Section 2. Limitation of Subordination. This Agreement shall be limited to the Senior Obligations due to Senior Lender under the Senior Lender Documents and does not cover

any other advances made by Senior Lender to Borrower under any document or instrument, now or hereinafter entered into, not related to the Senior Lender Documents other than as defaults under other loans from Senior Lender to Borrower may be in default and consequently create a default under the Senior Loan Documents. No Party will have by reason of this Agreement or any other document a fiduciary relationship with any other Party to this Agreement, unless expressly set forth in this Agreement, the Senior Lender Documents, City Lender Documents or the Sutter Documents. The parties recognize that the interests of the parties may differ, and Senior Lender may act in its own interest without taking into account the interests of Subordinated Lenders.

Section 3. Entire Agreement. This Subordination Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Subordinated Lender's Subordinated Deed of Trust and all amounts due to Subordinated Lender pursuant to the Subordinated Lender Documents (collectively, the "Subordinated Obligations"), and shall supersede and cancel any prior agreements between the parties hereto to subordinate the Sutter Documents and City Deed of Trust to the Senior Deed of Trust. If this Agreement conflicts with the Senior Lender Documents, Sutter Documents or the City Lender Documents, this Agreement will control.

Section 4. Permitted Payments.

(a) *Payments to Subordinated Lender.* Subject to the following paragraph (b), unless an "Event of Default," as defined in any Senior Lender Documents (which Subordinated Lender acknowledges includes, without limitation, the occurrence of any default under any Subordinated Lender Documents) ("Senior Default"), has occurred and is continuing, which results in a payment default under the Senior Lender Documents, City shall be entitled to receive payments of principal (including prepayments) and interest on the City Loan, in accordance with the terms therein.

(b) *Insolvency or Dissolution of Borrower.* Subject to the provisions of this Agreement, upon any payment or distribution of all or any of the assets of Borrower of any kind or character, whether in cash, property or securities, upon any dissolution, winding up, liquidation, reorganization, arrangement, protection, relief or composition of Borrower or its debts, whether voluntary or involuntary or in bankruptcy, insolvency, receivership, arrangement, reorganization, relief or other proceedings, or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of Borrower (any such event being an "Insolvency Event"), all Senior Obligations shall first be Fully Paid (on their terms as of the date thereof for the full then unpaid amount without giving effect to any reductions which may have resulted from or during such Insolvency Event) before City shall be entitled to receive any payment on account of the City Loan or before Sutter shall be entitled to exercise any of its rights under the Sutter Documents. Upon the occurrence of any Insolvency Event and until the Senior Obligations have been Fully Paid, any payment or distribution of assets of Borrower to which City or Sutter would be entitled but for the foregoing provisions, shall be made by Borrower (or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution) directly to Senior Lender for application (in the case of cash) to or as

collateral (in the case of non-cash property or securities) for the payment in full of all Senior Obligations.

(c) **Default Under Senior Obligations.** Subject to paragraph (d) below, no direct or indirect payment or distribution by or on behalf of Borrower in respect of the City Loan, whether pursuant to the terms of the City Loan or any other City Lender Document, or upon acceleration or otherwise, or any exercise by Sutter of any of its rights under the Sutter Documents, shall be made if, at the time of such payment or distribution, there exists any Senior Default; and if a Senior Default shall have occurred and be continuing, no Subordinated Lender shall, except as expressly provided in this Agreement: (A) attempt to collect, demand, accept or receive any direct or indirect payment in cash or property or by setoff, exercise of contractual or statutory rights or otherwise of or on account of the Sutter Documents or City Loan (including, without limitation, any exercise or attempt to exercise any remedies with respect to the Property), or (B) commence or maintain any action, suit or any other legal or equitable proceeding against Borrower or any of them (or join with any creditor in any such proceeding) under any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar law, unless Senior Lender also shall join in bringing such proceeding.

(d) **Notice Before Exercise of Remedies.** Subordinated Lenders agree that, in each instance where they have sent a notice of default to Borrower with respect to a default occurring under the either the City Lender Documents or Sutter Documents, they shall simultaneously provide Senior Lender with a copy of such notice of default and shall not exercise any remedies (other than providing a notice of default or negotiating a resolution of any default with Borrower, Sutter and/or Senior Lender) with respect to the City Lender Documents or Sutter Documents until ninety (90) days have elapsed from the date of such notice of default. If, by the end of such ninety-day (90-day) period, Senior Lender has not commenced an action to foreclose under the Senior Deed of Trust, or has not otherwise commenced proceedings to collect the Senior Obligations or enforce the Senior Lender Documents, then Subordinated Lenders shall be permitted to exercise remedies in respect to the City Lender Documents or Sutter Documents, notwithstanding the provisions of paragraph (c) above, but otherwise subject to the terms and conditions of this Agreement.

(e) **Application of Proceeds.** Until the discharge of the Senior Obligations, and regardless of whether an insolvency proceeding has been commenced, any proceeds, property or other assets received in connection with an action to enforce this or any related agreement or loan document or received in connection with any insolvency proceeding involving Borrower will be applied (in each case, as specified in the Senior Lender Documents, Sutter Documents or the City Lender Documents, or as otherwise determined by Senior Lender and/or Subordinated Lenders, as applicable):

- (i) First, to the payment in full or cash collateralization of the Senior Obligations,
- (ii) Second, to the payment in full of the City Loan,

- (iii) Third, to Borrower or as otherwise required by applicable law.

Notwithstanding the foregoing, until the discharge of the Senior Obligations, any non-cash collateral or non-cash proceeds will be held by Senior Lender as collateral unless the failure to apply such amounts as set forth above would be commercially unreasonable.

Section 5. Certain Payments Held For Benefit of Senior Lender. In the event that either Subordinated Lender receives any payment or distribution with respect to the City Lender Documents or Sutter Documents following the commencement of an action by Senior Lender to foreclose under the Senior Deed of Trust, then such payment or distribution shall be received and held on behalf of Senior Lender and shall be paid over or delivered to Senior Lender for application to or as collateral for the payment of all Senior Obligations in full.

Section 6. Insurance Proceeds and Condemnation Awards.

(a) ***Assignment by Subordinated Lenders.*** Subordinated Lenders agree to and does hereby assign and release to Senior Lender:

(i) All of Subordinated Lenders' right, title and interest or claim, if any, in and to the proceeds of all policies of insurance covering the Property for application to the Senior Obligations or other disposition thereof in accordance with the provisions of the Senior Deed of Trust; and

(ii) All of Subordinated Lenders' right, title and interest or claim, if any, in and to all awards or other compensation made by any condemnation or other taking of any part of the Property for application to the Senior Obligations or other disposition thereof in accordance with the provisions of the Senior Deed of Trust.

(b) ***Good Faith Negotiation.*** Notwithstanding anything to the contrary contained in this Section 6, Senior Lender and Subordinated Lenders hereby agree to negotiate in good faith with respect to the application of any insurance proceeds or condemnation awards with the objective of restoring or replacing the Property to the extent such restoration or replacement is practicable under the circumstances; provided, however, Subordinated Lenders acknowledge and agree that the final determination of the practicality of such restoration or replacement shall be made by Senior Lender, which determination shall be final and conclusive.

(c) ***Payment of Excess Amounts.*** In the event that following any such application and disposition of insurance proceeds, condemnation awards and other compensation with respect to the Property, any balance remains after the Senior Obligations are Fully Paid, then such excess shall be paid to Subordinated Lenders to the extent permitted under the City Lender Documents or Sutter Documents. Subordinated Lenders shall apply such insurance proceeds, condemnation awards and other compensation to the City Lender Documents or Sutter Documents, respectively, until fully satisfied, and shall remit any excess to Borrower. Borrower acknowledges and agrees to the application of such insurance proceeds, condemnation awards or other compensation with respect to the Property as set forth in this paragraph.

(d) ***Control of Claims and Proceedings.*** Subordinated Lenders agree that Senior Lender shall have the exclusive right to control the settlement of insurance claims and condemnation proceedings; provided, however, that Senior Lender agrees to provide Subordinated Lenders with such information as Subordinated Lenders may reasonably request in writing in connection with the settlement of any claims or proceedings.

(e) ***Release of Insurance Proceeds and Condemnation Awards.*** Subordinated Lenders further agree that if Senior Lender shall at any time release to Borrower any such insurance proceeds or condemnation award for the purpose of restoration of the Property, such release shall not be deemed to be an additional advance under the Senior Lender Documents nor shall it otherwise be deemed to be in violation of any restriction of this Agreement upon the amount permitted to be secured by the Senior Deed of Trust and to which the City Deed of Trust and Sutter Documents are subordinate.

Section 7. Parties Rights in the Event of Default.

(a) ***Accrual of Default Rights.*** Notwithstanding anything to the contrary in this Agreement, the Senior Lender Documents, the Sutter Documents or the City Lender Documents, the provisions of this Section 7 shall control the process upon the occurrence of an Event of Default as defined in the Senior Lender Documents and as determined by Senior Lender in its sole and absolute discretion. Upon the determination by Senior Lender that Borrower has taken or not taken any action that may lead to an Event of Default, Senior Lender shall copy Sutter and City on any correspondence to Borrower identifying any such action or inaction; provided, however, that Senior Lender's failure to copy Sutter or Borrower as a courtesy under this Section 7 or Borrower's failure to provide notice of such correspondence to Sutter or City shall not preclude or be a bar to action by Senior Lender to declare an Event of Default or any subsequent action. Senior Lender shall, however, provide Sutter and City with copies of any notice under the Senior Lender Documents from Senior Lender notifying Borrower that an Event of Default has occurred ("Default Notice"), whereupon:

(i) Sutter shall have sixty (60) days from the date of the filing by Senior Lender of any Notice of Default in the Official Records of the County of Sacramento with respect to an Event of Default to exercise the remedies set forth below; provided, however, that in the event that Borrower subsequently cures an Event of Default and the Notice of Default is terminated with respect to such Event of Default, Sutter shall have the continuing right to exercise such remedies in connection with any future Event of Default for sixty (60) days following any Notice of Default filed in connection therewith; and

(ii) City shall then have thirty (30) days from the expiration of any sixty-day (60-day) period provided in Section 7(a)(i) within which to exercise the remedies set forth below; provided, however, that in no event shall Senior Lender be prohibited from or limited in any way from filing a Notice of Sale, as defined under California law, during the foregoing time periods but shall not proceed under the Notice of Sale until each time period in (i) and (ii) above have expired.

(b) **Default Rights.** Sutter during the first sixty (60) day period under (a) and then the City during the thirty (30) day period under (b) shall have the right, but not the obligation to do any of the following:

(i) Sutter, only, may exercise the right of first refusal set forth in the Sutter Option Agreement to purchase the Property; provided, however, that if the fair market value as determined under the right of first refusal is less than the total amount required to pay off the Senior Obligations as of the date of acquisition, Sutter shall pay the full amount required to pay off the Senior Obligations and neither Borrower nor City shall receive any additional funds.

(ii) Either Sutter or City may cure any Event of Default on behalf of Borrower, which amount shall include without limitation, all amounts presently due under the Senior Obligations.

(iii) Either Sutter or City may cure any Event of Default on behalf of Borrower, which amount shall include without limitation, all amounts presently due under the Senior Obligations, and assume all of Borrower's obligations under the Senior Lender Documents. Such assumption will be made pursuant to an assignment agreement in form and substance reasonably satisfactory to, and prepared by counsel for, Senior Lender (with the cost of such counsel to be paid by the acting party), whereby the acting party will assume all obligations of Borrower under the Senior Lender Documents.

(iv) Either Sutter or City may pay to Senior Lender, on behalf of Borrower, any and all amounts due under the Senior Lender Documents, including without limitation the amount stated in the notice of the Event of Default and all principal of, and all accrued and unpaid prepayment penalties, interest, fees, and expenses under the Senior Obligations outstanding at the time of the notice of the Event of Default;

(v) Either Sutter or City may purchase Senior Lender's interest under the Senior Lender Documents, which amount shall include without limitation all principal of, and all accrued and unpaid interest, fees, and expenses under the Senior Obligations outstanding at the time of purchase. Such purchase will be made pursuant to an assignment agreement in form and substance reasonably satisfactory to, and prepared by counsel for, Senior Lender (with the cost of such counsel to be paid by the acting party), whereby the acting party will assume all funding commitments and obligations of Senior Lender under the Senior Lender Documents. Senior Lender will retain all rights to indemnification provided in the relevant Senior Lender Documents for all claims and other amounts relating to periods prior to the purchase of the Senior Obligations pursuant to this Section.

(c) **Use Restrictions.** The parties acknowledge that the Loan is a Qualified Loan Transaction (as defined in the Sutter Declaration) and, in the event of a completion of a judicial or non-judicial foreclosure action by Senior Lender, the use restriction contained Section 2.1.B of the Sutter Declaration shall be null, void and cancelled in accordance therewith. Sutter shall take any reasonable action requested by Senior Lender to release and remove such use restriction at no cost or expense to Senior Lender.

(d) **Notice, Effectiveness and Damages.** If either Subordinated Lender desires to exercise any of the rights provided in this Section 7, the Subordinated Lender will deliver a signed, written notice to Senior Lender (the "Subordinated Lender Notice") stating that the Subordinated Lender irrevocably elects to exercise one of the rights provided in this Section 7 and designates a date on which the Subordinated Lender intends to complete the exercise of the specified right, which shall occur no later than ninety (90) days following Senior Lender's delivery of the Default Notice ("Exercise Deadline"). A Subordinated Lender Notice will be ineffective if it is received by Senior Lender after the Event of Default is waived, cured, or otherwise ceases to exist, regardless of whether caused by Borrower, Senior Lender, Subordinated Lenders or any other third party. In the event both Sutter and City purport to exercise a right provided in this Section 7 by delivering a Subordinated Lender Notice to Senior Lender, a Subordinated Lender Notice from Sutter in the first sixty (60) days after the Default Notice shall prevail and a Subordinated Lender Notice from City shall prevail in the next thirty (30) days and thereafter, the first Subordinated Lender Notice shall prevail if accepted by Senior Lender in its sole and absolute discretion. Upon Senior Lender's receipt of an effective Subordinated Lender Notice conforming to this Section, the Subordinated Lender will be irrevocably obligated to complete the exercise of the right set forth in the Subordinated Lender Notice (and consistent with this Section 7) no later than the Exercise Deadline. In the event the Subordinated Lender fails to complete the exercise of the right set forth in the Subordinated Lender Notice, Senior Lender shall proceed to enforce any and all rights available under the Senior Lender Documents and California law as if the Subordinated Lender Notice had not been served and Subordinated Lender shall be responsible for any and all costs and expenses incurred by Senior Lender in connection with Subordinated Lender's attempted exercise of the rights provided in this Section 7.

(e) **Insolvency Proceedings.** In the event of any voluntary or involuntary bankruptcy proceeding relating to Borrower, or if Borrower makes an assignment for the benefit of creditors, files for dissolution, winding up, liquidation, reorganization, or other marshalling of the assets and liabilities of Borrower, neither Sutter nor City shall be permitted to exercise any of the rights provided in this Section 7.

Section 8. Sutter Rights Upon Acquisition or Assumption. City agrees that, in the event Sutter acquires title to the Property under Section 7(b)(i) or assumes the obligations of Borrower under the Senior Loan Obligation under Section 7(b)(iii) (a "Sutter Acquisition"), Sutter shall have the right to assume the rights and obligations of Borrower under the City Lender Documents provided that as of the date of the Sutter Acquisition Sutter: (i) pays all payments due and owing under the City Loan Agreement as of the date of the Sutter Acquisition (if any); and (ii) Sutter provides evidence reasonably acceptable to City of Sutter's ability to maintain and operate the Property as a theater (directly or through leasing the Property to one or more third parties) substantially in the manner contemplated in the City Loan Agreement. The inability of Sutter to provide evidence that all Performance Targets (as defined in the City Loan Agreement) can be met shall not be definitive evidence that the Property cannot be operated "substantially in the manner" contemplated in the City Loan Agreement; however, City shall have no obligation to forgive any payments due under the City Loan Agreement following an assumption if any of the Performance Targets are not met in accordance therewith.

Section 9. Subordinated Lender Agreements. Subordinated Lenders declare, agree, and acknowledge that:

(a) ***Consents.*** Each consents to (i) all provisions of the Senior Deed of Trust in favor of Senior Lender (ii) all other Senior Lender Documents and (iii) any modification thereto, save and except any modification which increases the principal amount due under the Senior Obligations or extends the term for repayment of the Senior Obligations, for which prior written consent must be provided by City.

(b) ***Application of Proceeds.*** Except as expressly set forth in that certain Supplemental Agreement to Construction Disbursement Agreement, dated May 3, 2016, by and between Senior Lender and City, Senior Lender in making disbursements pursuant to the Senior Lender Documents is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) ***Waiver.*** Each intentionally and unconditionally waives, relinquishes and subordinates the liens or charges of the City Deed of Trust and Sutter Documents in favor of the lien or charge upon the Property of the Senior Deed of Trust, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, the Senior Lender will enter into the Senior Loan Agreement 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 and subordination;

(d) ***Validity.*** This Agreement has been duly executed and delivered by Subordinated Lender, and is the valid and binding obligation of the Subordinated Lenders, enforceable in accordance with its terms;

(e) ***Sutter Documents.*** Sutter represents and warrants as of the date of this Agreement and the date of recordation of this Agreement that: (i) the Sutter Documents are in full force and effect; and (ii) there is no breach or event of default (or conditions or events which, with notice or the passage of time or both, would constitute a breach or default), known to Sutter, under the Sutter Documents; and

(f) ***Sutter Garage.*** Sutter agrees that, unless and until Sutter satisfies its obligation to make the Sutter Garage Donation, as set forth in the Sutter Documents, Sutter shall not sell, convey, assign, lease, sublease, hypothecate, or otherwise transfer its ownership interest in the Sutter Garage, or take any other action which may result in the release of Sutter's obligation to make the Sutter Garage Donation to Borrower. Sutter agrees to execute and record a memorandum against the Sutter Garage consistent with the terms of this Section.

Section 10. Notices. Except when otherwise required by law, all notices to be given hereunder shall be served personally or mailed first-class United States mail, certified or registered or express mail, with return receipt requested, postage prepaid, addressed to the parties

as follows:

To City:	City of Sacramento Economic Development Department 915 I Street, 4 th Floor Sacramento, California 95814 Attention: Leslie Fritzsche
To Senior Lender:	Five Star Bank Rocklin Office 6810 Five Star Boulevard, Suite 100 P.O. Box 779000 Rocklin, California 95677 Attn: Loan Servicing
To Sutter:	Sutter Health Sacramento Sierra Region 2800 Gateway Oaks Boulevard, Suite 220 Sacramento, California 95833 Attn: Bob Mitsch
To Borrower:	Theatre for Children, Inc., d/b/a B Street Theatre 2711 B Street Sacramento, California 95816 Attn: Managing Director

Any party hereto may change its mailing address at any time by giving written notice of such change to the other party in the manner provided above. All notices under this Subordination Agreement, unless otherwise provided by law, shall be deemed given, received or communicated on the date personal delivery is effected or, if mailed, on the date of delivery or attempted delivery shown on the return receipt.

Section 11. Attorneys' Fees. If any claim or controversy arising under this Agreement is litigated in any lawsuit between such parties, each party shall bear the cost of its own attorneys' fees.

Section 12. Governing Law. This Agreement has been and shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws and decisions of the State of California without regard to principles of conflicts of laws.

Section 13. Entire Agreement. This Agreement contains the entire and exclusive understanding of the parties with respect to its subject matter and may not be modified or amended except by a writing signed by all parties.

Section 14. Waivers by Party; Remedies Cumulative. No waiver shall be deemed to be made by any party of any of its rights hereunder unless it is in writing signed by such party. Each such waiver shall be a waiver only with respect to the specific instances involved and shall in no way impair the rights of such party or the obligations of such party to the other party in any other respect at any other time. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 15. Severability. If a provision of this Agreement is prohibited or unenforceable in a jurisdiction, the prohibition or unenforceability will not invalidate the remaining provisions hereof, or invalidate or render unenforceable that provision in any other jurisdiction.

Section 16. Further Assurances. The Subordinated Lenders will each take such further action and will execute and deliver such additional documents and instruments (in recordable form, if requested) as the other may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

Section 17. No Third Party Beneficiaries. No person is a third-party beneficiary of this Agreement and no trustee in bankruptcy for, or bankruptcy estate of, or unsecured creditor of Borrower will have or acquire or be entitled to exercise any right provided herein. Borrower does not have or acquire any rights hereunder, and Borrower may not rely on the terms hereof. Nothing in this Agreement impairs the obligations of Borrower to pay principal, interest, fees, and other amounts as provided in the Senior Lender Documents, Sutter Documents and City Lender Documents.

Section 18. Counterparts. This Agreement may be signed in any number of counterparts, and by different parties on separate counterparts, with the same effect as if the signature to each such counterpart were on a single instrument. All counterparts shall be deemed an original of this Agreement.

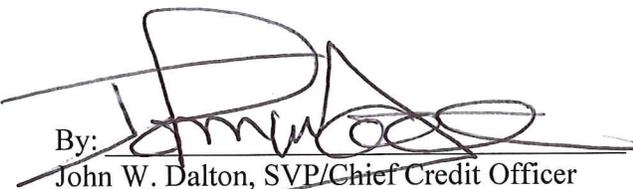
IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

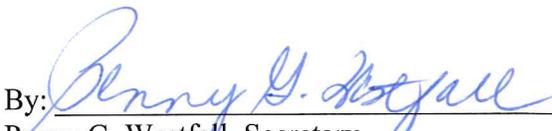
IN ALL OTHER respects the City Deed of Trust and Sutter Documents and their respective priority positions as to all other items on said property not specifically mentioned herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as the date herein first above written.

FIVE STAR BANK, N.A., a California banking corporation

SUTTER HEALTH SACRAMENTO SIERRA REGION, a California nonprofit public benefit corporation

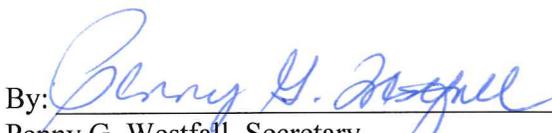
By: 
John W. Dalton, SVP/Chief Credit Officer

By: 
Penny G. Westfall, Secretary

THE CITY OF SACRAMENTO, a California municipal corporation

SUTTER HEALTH SACRAMENTO SIERRA REGION, doing business AS SUTTER MEDICAL CENTER, SACRAMENTO, a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____

By: 
Penny G. Westfall, Secretary

APPROVED AS TO FORM:

THEATRE FOR CHILDREN, INC., doing business as B STREET THEATRE, a California nonprofit public benefit corporation

By: 
Senior Deputy City Attorney

By: 
William T. Blake, Managing Director

ATTEST:

By: _____
Assistant City Clerk

By: 
Roger M. Busfield, III, Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Sacramento

On May 3, 2016 before me, Antigone Vaccaro
(insert name and title of the officer)

a Notary Public, personally appeared
John W. Dalton

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Antigone Vaccaro (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Sacramento

On May 3, 2016 before me, Antigone Vaccaro
(insert name and title of the officer)

a Notary Public, personally appeared
Penny G. Westfall

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Antigone Vaccaro (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Sacramento

On May 3rd 2016 before me, Antigone Vaccaro,
(insert name and title of the officer)

a Notary Public, personally appeared
William T. Blake,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Antigone Vaccaro (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Sacramento

On May 3rd 2016 before me, Antigone Vaccaro,
(insert name and title of the officer)

a Notary Public, personally appeared
Roger M Busfield III,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Antigone Vaccaro (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of _____)

On _____ before me, _____,
(insert name and title of the officer)

a Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

The real property, together with all improvements thereon, referred to in this Security Instrument is situated in the County of Sacramento, State of California and is described as follows:

Parcel 1:

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

Apn: 007-0172-001

Parcel 2:

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

Apn: 007-0172-002

Parcel 3:

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

Apn: 007-0172-003

Parcel 4:

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

Apn: 007-0172-004

Parcel 5:

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

Apn: 007-0172-005

**SUPPLEMENTAL LENDER'S AGREEMENT TO CONSTRUCTION
DISBURSEMENT AGREEMENT**

THIS SUPPLEMENTAL LENDER'S AGREEMENT TO CONSTRUCTION DISBURSEMENT AGREEMENT ("Supplemental Agreement") is made with reference to that certain Construction Disbursement Agreement, dated May __, 2016 ("Five Star Construction Agreement"), by and between **Theatre for Children, Inc., d/b/a The B Street Theatre** ("Borrower"), and **Five Star Bank**, a California banking corporation ("Five Star"). This Supplemental Agreement is made by and between **Borrower, Five Star** and the **City of Sacramento**, a California municipal corporation ("City") to resolve certain procedures relative to disbursements as follows:

1. Any terms not defined herein shall be as defined (i) first, that certain Master Loan Agreement, dated May __, 2016 ("Five Star Loan"), by and between Issuer, Five Star and Borrower ("Five Star Loan Agreement"), and (ii) second, by that certain Forgivable Loan Agreement, dated December 15, 2015 ("City Loan"), by and between Borrower and City, and related documents ("City Loan Agreement"). The City Loan is subordinate to the Five Star Loan.

2. **Priority.** Five Star and City acknowledge and agree that no funds shall be disbursed under the Five Star Loan Agreement, other than funds required to be disbursed pursuant to the Tax Regulatory Agreement, unless and until all funds available to Borrower under the City Loan Agreement are first disbursed to Borrower. Notwithstanding the foregoing, the City Loan Agreement provides for ten percent (10%) of the City Loan funds (the "City Loan Retention") to be withheld as retention until the final disbursement of the Project, which Five Star agrees are not to be disbursed until final disbursement upon completion of the Project, as further set forth in this Supplemental Agreement.

3. **Disbursement Process.** Five Star and City agree that from the commencement of construction of the Project that Five Star shall organize a meeting with the City, Borrower, Contractor, Five Star's construction inspector, the Project architect(s) and Five Star on a monthly basis to review each Borrower Draw Request until and through Borrower's final Draw Request upon completion of the Project.

a. Upon the closing of the Five Star Loan and City Loan, the entire \$3,000,000.00 to be lent to Borrower by City under the City Loan Agreement shall be deposited into an account with Five Star, together with other funds, and denominated the Project Fund consistent with the Five Star Loan Agreement. The Project Fund shall be disbursed, except as otherwise set forth in this Supplemental Agreement, pursuant to the Project Fund Disbursement Agreement. City shall have the exclusive and final authority to make or approve disbursements to Borrower under the City Loan Agreement to fund construction of the Project, as more fully set

forth in the City Loan Agreement, unless a Variance exists as defined below. City shall provide written notice to Five Star prior to making any disbursement under the City Loan Agreement.

b. After disbursement of the City Loan, less the City Loan Retention, Five Star shall have the exclusive and final authority to make or approve disbursements to Borrower under the Five Star Loan Agreement to fund construction of the Project, as more fully set forth in the Five Star Loan Agreement, unless a Variance exists as defined below. Five Star shall provide written notice to City prior to making any disbursement under the Five Star Loan Agreement.

c. At the time of the final disbursement to be made under the Construction Disbursement Agreement, the City Loan Retention and any retentions under the Five Star Loan Agreement shall be made upon the joint agreement of Five Star and City, which agreement shall not be unreasonably withheld, delayed or conditioned by either party. In the event of a disagreement, the parties shall submit the dispute to the Architect whose decision shall be final and binding on all parties.

4. **Variance.** A “Variance” shall exist whenever any disbursement:

a. Exceeds or otherwise varies any single line item in the Construction Budget (to be agreed upon and approved by Five Star and City) by more than five percent (5%); or

b. Exceeds or otherwise varies the overall Construction Budget by more than five percent (5%); or

c. Relates to work that either (i) changes the gross square footage of any theater at the Project by more than 5% or (ii) changes the number of theaters at the Project.

d. In the event of a Variance, each of City and Five Star must approve of the portion of the Disbursement Request creating the Variance.

5. **Disbursement Disputes.** In the event either Five Star or City do not approve a Disbursement Request due to a Variance, Five Star and City shall submit a description of their dispute and a statement of each party’s position to the Architect for the Project, who shall have sole, absolute and exclusive authority to resolve any dispute regarding disbursements and shall render a decision within five (5) business days. The Architect shall render a decision in consideration of (i) the Parties’ relative financial interests and priorities in the Project and (ii) the extent to which the disputed Variance changes the scope and purpose of the original Project; provided, however, in no event shall either Five Star or City be compelled or required to make any disbursement pursuant to this Section.

6. **Notice of Construction Meetings.** Five Star and City shall make good faith, commercially reasonable efforts to provide advance, written notice to the other of any scheduled or anticipated construction meetings at which Borrower, Five Star, City, or any other third parties involved in the construction of the Project are present and intend to discuss Project costs and disbursements.

7. **Conflicts.** If this Supplemental Agreement conflicts with the Five Star Loan Documents or the City Loan Documents, this Supplemental Agreement will control.

8. **No Waivers; Remedies Cumulative; Integration.** A Party's failure or delay in exercising a right under this Supplemental Agreement will not waive the right, nor will a Party's single or partial exercise of a right preclude it from any other or further exercise of that or any other right. The rights and remedies provided in this Supplemental Agreement will be cumulative and not exclusive of other rights or remedies provided by law. This Supplemental Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, oral or written, relating to its subject matter.

9. **Effectiveness; Severability; Termination.** This Supplemental Agreement will become effective when executed and upon the closing of the Five Star Loan and City Loan. Five Star and City waive any right it may have under applicable law to revoke this Supplemental Agreement or any provision thereunder or consent by it thereto. This Supplemental Agreement will survive, and continue in full force and effect, in any insolvency proceeding. If a provision of this Supplemental Agreement is prohibited or unenforceable in a jurisdiction, the prohibition or unenforceability will not invalidate the remaining provisions hereof, or invalidate or render unenforceable that provision in any other jurisdiction. Except as provided herein, this Supplemental Agreement will terminate and be of no further force and effect upon the expiration or termination of the City Loan.

10. **Modifications.** A modification or waiver of any provision of this Supplemental Agreement will only be effective if in writing signed on behalf of each Party or its authorized agent, and a waiver will be a waiver only for the specific instance involved and will not impair the rights of the Parties making the waiver or the obligations of the other Parties to such Party in any other respect or at any other time. Borrower will not have a right to consent to or approve a modification of this Supplemental Agreement.

11. **Information Concerning Financial Condition of Borrower and its Subsidiaries.** Except as provided herein, Five Star and City will each be responsible for keeping themselves informed of the status of the construction of the Project and financial condition of Borrower. Neither Five Star nor the City has a duty to advise the other party of information known to it regarding any such condition or circumstances or otherwise. If either Five Star or the City provides any such information to the other party, the party providing the information will have no obligation to (1) make, and it does not make, any express or implied representation or

warranty, including as to accuracy, completeness, truthfulness, or validity, (2) provide additional information on that or any subsequent occasion, (3) undertake any investigation, or disclose information that, pursuant to applicable law or accepted or reasonable commercial finance practices, it desires or is required to maintain as confidential.

12. **No Reliance**. Each party acknowledges that it has, independently and without reliance on any statement of the other, and based on documents and information it deemed appropriate, made its own credit analysis and decision to enter into the transactions referenced herein and this Supplemental Agreement, and will continue to make its own credit decisions in taking or not taking any action under this Supplemental Agreement or any related documents.

13. **No Warranties; Independent Action**. Except as otherwise expressly provided herein, neither party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any loan document, the construction of the Project, or the perfection or priority of any liens thereon, and each party may manage and supervise its loans and extensions of credit in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate. Neither party will have any duty to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Borrower, regardless of any knowledge thereof that it may have or be charged with.

14. **Applicable Law; Jurisdiction**. This Supplemental Agreement, and any claim or controversy relating to the subject matter hereof, will be governed by the law of the California. All judicial proceedings brought against a Party arising out of or relating hereto shall be brought in the state or federal court in the County of Sacramento, California.

15. **Notices**. Unless otherwise expressly provided herein, notices and consents must be in writing and will be deemed to have been given (i) when delivered in person or by courier service and signed for against receipt thereof, (ii) upon receipt of facsimile or electronic mail (provided such notice is followed by parallel written notice and is only effective upon confirmation of receipt), and (iii) three business days after deposit in the United States mail with first-class postage prepaid and properly addressed. For the purposes hereof, the address of each Party will be as set forth below the Party's name on the signature pages hereto, or at such other address as the Party may designate by notice to the other Parties.

16. **Further Assurances**. The Parties will each take such further action and will execute and deliver such additional documents and instruments (in recordable form, if requested) as the other may reasonably request to effectuate the terms of and the lien priorities contemplated by this Supplemental Agreement.

17. **Successors and Assigns**. This Supplemental Agreement is binding upon and inures to the benefit of each Party hereto and its respective successors and assigns. However, no provision of this Supplemental Agreement will inure to the benefit of a trustee, debtor-in-

possession, creditor trust or other representative of an estate or creditor of Borrower. If either Party resigns or is replaced, as applicable, its successor will be a party to this Supplemental Agreement with all the rights, and subject to all the obligations, of this Supplemental Agreement. Notwithstanding any other provision of this Supplemental Agreement, this Supplemental Agreement may not be assigned to any person except as expressly contemplated herein.

18. **Authorization.** By its signature hereto, each person signing this Supplemental Agreement on behalf of a Party represents and warrants to the other Parties that it is duly authorized to execute this Supplemental Agreement.

19. **No Third Party Beneficiaries.** No person is a third-party beneficiary of this Supplemental Agreement and no trustee in bankruptcy for, or bankruptcy estate of, or unsecured creditor of Borrower will have or acquire or be entitled to exercise any right provided herein. Borrower does not have or acquire any rights hereunder, and Borrower may not rely on the terms hereof. Nothing in this Agreement impairs the obligations of Borrower to pay principal, interest, fees, and other amounts as provided in the Five Star Loan Documents, Sutter Loan Documents and City Loan Documents.

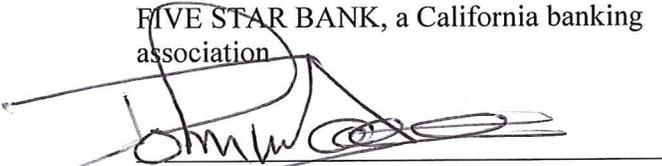
20. **No Indirect Actions.** Unless otherwise expressly stated, if a Party may not take an action under this Supplemental Agreement, then it may not take that action indirectly, or assist or support any other person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Party but is intended to have substantially the same effects as the prohibited action.

21. **Counterparts.** This Supplemental Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. Delivery of an executed counterpart of a signature page of this Supplemental Agreement or any document or instrument delivered in connection herewith by telecopy or electronic facsimile or other electronic means will be effective as delivery of a manually executed counterpart of this Supplemental Agreement or such other document or instrument, as applicable, and each Party utilizing telecopy, electronic facsimile, or other electronic means for delivery will deliver a manually executed original counterpart to each other Party on request.

IN WITNESS WHEREOF, the Parties hereto, intending to be bound, execute this Supplemental Agreement as of the date first above written.

FIVE STAR BANK, a California banking association

CITY OF SACRAMENTO, a California municipal corporation



John W. Dalton, SVP/Chief Credit Officer

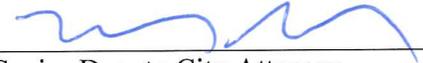
Name:
Its:

THEATRE FOR CHILDREN, INC., doing business as B STREET THEATRE, a California non-profit public benefit corporation

APPROVED AS TO FORM:

By 

William T. Blake, Managing Director

By: 

Senior Deputy City Attorney

By 

Roger M. Busfield, III, Chief Executive Officer

ATTEST:
By: _____
Assistant City Clerk