REDEVELOPMENT AGENCY OF CENTERVILLE CITY/DAVIS CENTER FOR THE PERFORMING ARTS ADMINSTRATIVE CONTROL BOARD MEETING AGENDA

NOTICE IS HEREBY GIVEN THAT THE REDEVELOPMENT AGENCY OF CENTERVILLE CITY BOARD AND THE ADMINISTRATIVE CONTROL BOARD OF THE DAVIS CENTER FOR THE PERFORMING ARTS WILL HOLD A COMBINED PUBLIC MEETING AT 9:00 PM ON March 19, 2019 AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Tentative Time: - The times shown below are tentative and are subject to change during the meeting.

9:00 PM **A. ROLL CALL**

B. NEW BUSINESS

1. Review and Approve Minutes

   March 5, 2019 Minutes

2. Approve Amendments to Lease Agreement with CenterPoint Theatre for use of Performing Arts Center

   Consider amendments to the Lease and Operating Agreement with CenterPoint Theatre for the use and operation of the Performing Arts Center.

C. RDA ONLY BUSINESS

3. Approve tax increment participation agreement with developer of Legacy Trails Apartments Project

4. Consider possibility of extending period for receiving "additional tax increment" to offset improvement cost of Freedom Hills Park

5. Report re hotel developer's request for tax increment incentive

6. Continue discussion of uses of future tax increment revenue from Project Areas

D. ADJOURNMENT

Mackenzie Wood
Centerville City Recorder

CENTERVILLE

Staff Backup Report
3/19/2019

Item No. 1.

Short Title: Review and Approve Minutes

Initiated By:

Scheduled Time:

SUBJECT

March 5, 2019 Minutes

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

	Description
🗋	3-5-19 RDA ACB Preliminary Minutes

Minutes of the Redevelopment Agency of Centerville City/Davis Center for the Performing Arts Administrative Control Board meeting held Tuesday, March 5, 2019 at 9:40 p.m. in the Centerville City Council Chambers, 250 North Main Street, Centerville, Utah.

MEMBERS PRESENT

Clark Wilkinson, RDA of Centerville City Chair, ACB Chair, Centerville Mayor
Tamilyn Fillmore, RDA of Centerville City, ACB Board member
William Ince, RDA of Centerville City, ACB Board member
Stephanie Ivie, RDA of Centerville City, ACB Board member
George McEwan, RDA of Centerville City
Robyn Mecham, RDA of Centerville City
Chris Simonsen, ACB Board Member, Bountiful City Council

MEMBER ABSENT

John Marc Knight, ACB Board Member, Bountiful City Council

STAFF PRESENT

Steve Thacker, RDA Executive Director
Lisa Romney, Centerville City Attorney
Jacob Smith, Centerville City Management Services Director
Katie Rust, Recording Secretary

VISITORS

Paul Cutler, CenterPoint Legacy Theatre Board Vice Chair

LEASE AGREEMENT WITH CENTERPOINT LEGACY THEATRE

Lisa Romney, City Attorney, introduced this item and explained the history of the current Lease Agreement. In May 2009, the RDA and the Davis Performing Arts Association (CenterPoint Theatre) entered into a Lease and Operating Agreement for the use and operation of the Performing Arts Center. The Lease Agreement was drafted and entered into prior to the actual construction of the Theatre and its terms had to anticipate many moving parts with regards to the new facility. The Lease Agreement has been in place for almost ten years and has been amended ten times. The current term of the Lease Agreement is set to expire in 2021.

In July 2018, representatives from CenterPoint requested some changes to the Lease Agreement and also suggested the RDA consider more substantial edits regarding rent and reserve funds. A committee was formed to work through the requested updates. Ms. Romney explained the proposed edits to the Lease Agreement as recommended by the committee. The proposed revisions are based on closer analysis of the maintenance obligations of the parties as set forth in the Lease Agreement, and on the intent to better allocate funding for such maintenance obligations. The committee concluded CenterPoint has substantially more maintenance obligations and costs under the Lease Agreement than the RDA. The committee further concluded the RDA maintenance obligations are most likely adequately covered by rent proceeds. The recommended elimination of variable rent is countered by additional requirements for funding CenterPoint's maintenance reserve fund and better allocation of resources based on relative obligations of the parties. The elimination of variable rent simplifies rent calculations, eliminates the need to define annual profits, increases funding for maintenance, and incentivizes fundraising efforts. Ms. Romney explained proposed allocations and minimum balances of reserve funds. The Board generally indicated support for the revisions. This matter will be continued to the next ACB/RDA meeting for further consideration and possible action by the ACB and RDA.

Chris Simonsen was excused at 10:45 p.m.

MINUTES REVIEW AND APPROVAL

The minutes of the February 19, 2019 RDA meeting were reviewed. Director Ivie made a **motion** to approve the minutes. Director McEwan seconded the motion, which passed by unanimous vote (5-0).

RDA REVENUES AND TAX INCREMENT PARTICIPATION

Mr. Thacker reported revenues for the different project areas. The RDA Board directed staff to draft a Tax Increment Participation Agreement for the Legacy Trails Subdivision with reimbursement at 25% of the tax increment revenue generated by the four parcels, increasing reimbursement from the two currently undeveloped parcels to 50% when they are developed. The RDA also suggested that the payout of the increment should be over a period of ten years.

ADJOURNMENT

Director McEwan made a **motion** to adjourn the meeting at 10:57 p.m. Director Ivie seconded the motion, which passed by unanimous vote (5-0).

______________________________ ______________________
Steve Thacker, RDA Executive Director Date Approved

____
Katie Rust, Recording Secretary

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
3/19/2019

Item No. 2.

Short Title: Approve Amendments to Lease Agreement with CenterPoint Theatre for use of Performing Arts Center

Initiated By:

Scheduled Time:

SUBJECT

Consider amendments to the Lease and Operating Agreement with CenterPoint Theatre for the use and operation of the Performing Arts Center.

RECOMMENDATION

Approve amendments to the Lease and Operating Agreement with CenterPoint Theatre for the use and operation of the Performing Arts Center.

BACKGROUND

On March 5, 2019, the RDA/ACB reviewed and discussed the proposed amendments to the Lease and Operating Agreement with CenterPoint Theatre. Since the amendments propose substantial changes to the agreement, including revisions to the reserve accounts and the elimination of variable rent, Staff wanted to allow the RDA/ACB the opportunity to review and become familiar with the changes before taking action. The RDA/ACB suggested a few items that may need further thought and amendment.

These are summarized as follows:

- Provide more flexibility on the annual spend requirement for preventative maintenance; i.e. if building is being maintained adequately, don't require expenditure of funds if not needed.
- Consider increasing the Minimum Annual Contribution for the Maintenance Reserve Fund from 1% to 2% of Annual Revenues or more to ensure the Maintenance Reserve Fund is adequately funded every year.
- Make sure CenterPoint has sufficient insurance coverage and any required insurance riders to use flames or pyrotechnics as part of performance.

Possible revisions to the agreement regarding the first two bullet points are attached. CenterPoint has been asked to respond to the insurance coverage question.

Previous Staff Report:

In May 2009, the Centerville RDA and the Davis Performing Arts Association, dba CenterPoint Theatre, entered into a Lease and Operating Agreement ("Lease Agreement") for the use and operation of the Performing Arts Center. The Lease Agreement was drafted and entered into prior to the actual construction of the Theatre and its terms had to anticipate many moving parts with regards to the new facility. The Lease Agreement has been in place for almost ten years and has been amended ten times. The current term of the Lease Agreement is set to expire in 2021.

In July 2018, representatives from CenterPoint requested some changes to the Lease Agreement and also suggested we consider more substantial edits regarding rent and reserve funds. A committee was formed to work through the requested updates to the Lease Agreement. Members of the committee include Steve Thacker (City Manager), Lisa Romney (City Attorney), Clark Wilkinson (Mayor), Jansen Davis (CPT Executive Director), Jason Burningham (CPT Board Chair), Paul Cutler (CPT Board Vice-Chair) and Ron Russell (CPT Board Member). The committee met numerous times over the past six months and members have agreed upon suggested edits to the Lease Agreement. These edits are fairly substantial and are highlighted in the attached Lease Agreement. A bullet point summary of the edits by section number is also attached.

You will note some of the major changes to the Lease Agreement involve revisions to the reserve funds and the proposed recommendation to eliminate variable rent. These proposed revisions are based on closer analysis of the maintenance obligations of the parties as set forth in the Lease Agreement, and on the intent to better allocate funding for such maintenance obligations. After reviewing the maintenance obligations, the committee concluded CenterPoint has substantially more maintenance obligations and costs under the Lease Agreement than the RDA. The committee further concluded the RDA maintenance obligations are most likely adequately covered by Rent proceeds. The recommended elimination of variable rent is countered by additional requirements for funding CenterPoint's maintenance reserve fund and better allocation of resources based on relative obligations of the parties. The elimination of variable rent simplifies rent calculations, eliminates the need to define annual profits, increases funding for maintenance, and incentivizes fundraising efforts. Staff will discuss these and other amendments in more detail at the meeting.

ATTACHMENTS:

Description

- Lease Agreement - Proposed Amendments (2019)
- Bullet Point Summary of Amendments (2019)
- Operations Reserve Fund - Flow Chart
- Maintenance Reserve Fund - Flow Chart
- Whitestone Facility Maintenance and Repair Reference (2009)
- Lease Agreement - Exhibit B1 - Subdivision Plat
- Lease Agreement - Exhibit B2 - Amended Plat
- Lease Amendment - Additional Changes from 3/5/19

LEASE AND OPERATING AGREEMENT
FOR THE
DAVIS CENTER FOR THE PERFORMING ARTS

THIS LEASE AND OPERATING AGREEMENT FOR THE DAVIS CENTER FOR THE PERFORMING ARTS ("Lease and Operating Agreement") is entered into this ________ ~~5th~~ day of ________________________, ~~May,~~ 2019, ~~2009,~~ by and between the **REDEVELOPMENT AGENCY OF CENTERVILLE CITY** ("RDA"), a community development and renewal agency and public body organized and existing under the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act of the State of Utah, with principal offices located at 250 North Main, Centerville, Utah 84014, and the **DAVIS PERFORMING ARTS ASSOCIATION** ("Association"), a Utah nonprofit corporation, **DBA CENTERPOINT LEGACY THEATRE,** with principal offices located at 525 North 400 West, ~~292 Pages Lane,~~ Centerville, Utah 84014.

RECITALS

WHEREAS, the RDA is the owner of approximately 2.67 acres of real property located at approximately 535 North 400 West, Centerville, Utah, as more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Site"); and

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

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

WHEREAS, the RDA has previously leased ~~desires to lease~~ the Site and Theatre to the Association pursuant to that certain Lease and Operating Agreement for the Davis Center for the Performing Arts dated May 5, 2009, as subsequently amended; ~~, and the Association desires to lease the Site and Theatre from the RDA, to be used as a performing arts theatre providing family entertainment in accordance with and subject to the terms and conditions of this Lease and Operating Agreement;~~ and

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

~~**WHEREAS,** the parties mutually intend the Theatre to provide a regional center for the use and enjoyment of the public providing an opportunity for public participation in and appreciation of the fine arts and family entertainment and expanding and enriching the cultural~~

~~and educational opportunities available to the residents of Davis County and surrounding areas and communities; and~~

~~**WHEREAS,** the RDA has determined that it is necessary, desirable, and in the best interest of the community and the public to enter into this Lease and Operating Agreement to secure a long-term tenant for the Theatre that will provide and present theatrical productions and other cultural and fine arts exhibits or events that will expand and enrich the cultural and educational opportunities available to the residents of Davis County and surrounding areas and communities.~~

~~**WHEREAS,** the RDA has further determined that the cost of construction of the Theatre will be financed through issuance of tax-exempt bonds, to be repaid from public funds derived from generally applicable taxes; and~~

~~**WHEREAS**, the RDA expects that a facility such as the Theatre will have a need for substantial renovations, replacements, improvements and modernization expenditures over the term of the lease that it contemplates will be financed through reserves derived from lease payments rather than issuance of tax-exempt bonds or other debt.~~

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

AGREEMENT

1. Recitals. The Recitals are hereby incorporated into this Lease and Operating Agreement by this reference.

~~**2. RDA Obligation to Build**. The parties expressly agree and understand that the RDA is in the process of designing and receiving approvals for the construction of the Theatre and is further in the process of obtaining financing, in cooperation with Centerville City, necessary to construct the Theatre and related Site improvements for the project. The parties desire to enter into this Lease and Operating Agreement so that if and when the RDA determines to construct the Theatre, there will already be a tenant for the facility. Nothing herein is intended or shall be interpreted to obligate the RDA to build the Theatre. The RDA reserves, in its sole discretion, the right to determine whether to construct the Theatre and related Site improvements for the project after further conditions of approval and terms of financing are finalized. If the RDA decides to construct the Theatre and a building permit for the construction of the Theatre is obtained within two (2) years from the date of this Lease and Operating Agreement, the Association shall be obligated to lease and operated the Theatre in accordance with the terms and conditions of this Agreement.~~

2.~~3.~~ **Purpose.** The purpose of this Lease and Operating Agreement is to grant a lease to the Association to be the tenant and operator of the Theatre, to use the Theatre for the preparation, rehearsal, staging and performance of theatrical productions, and for related purposes and uses as more particularly provided herein, and to operate the Theatre in accordance with the terms and conditions of this Lease and Operating Agreement. It is specifically intended by the parties through this Lease and Operating Agreement that the Theatre provide an opportunity for public participation in and appreciation of the fine arts and family entertainment and expand and enrich the cultural and educational opportunities available to the residents of

Davis County and surrounding areas and communities. The parties further agree and acknowledge the purpose of the Theatre and this Lease and Operating Agreement is to promote family values by providing a forum for the presentation of family entertainment.

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

4.~~5.~~ **Exclusivity.** Except as otherwise provided for in this Lease and Operating Agreement, the Association's primary purpose is to ~~shall~~ stage theatrical performances solely at the Theatre ~~and shall not perform, provide, assist, manage, operate or stage theatrical performances at any other location~~ during the Term of this Lease and Operating Agreement. However, ~~With prior approval from the RDA,~~ the Association may stage performances at schools, churches, community events, festivals or other charitable venues when deemed to be in furtherance of the Association's charitable purposes and not in conflict with the Association's obligations or contrary to the RDA's interests provided in the Lease and Operating Agreement.

5.~~6.~~ **Term.** The term of this Lease and Operating Agreement shall be for a period of ten (10) ~~twelve (12)~~ years ("Initial Term") commencing upon the Effective Date of this Lease and Operating Agreement. ~~The Association shall have the right to use and occupy the Site and Theatre for the purposes and on the terms and conditions set forth herein commencing on the Possession Date.~~ If this Lease and Operating Agreement has not been previously terminated, the parties shall have the option to extend the Initial Term of this Lease and Operating Agreement for an additional ten (10) year term ("Optional Term"), on such terms and conditions as may be agreed to by the parties. Any optional extension of this Lease and Operating Agreement shall be entered into by the parties prior to the expiration of the Initial Term. The Association shall notify the RDA at least six (6) months in advance of the expiration of the Initial Term of its intent to terminate or extend this Lease and Operating Agreement. If the parties cannot reach agreement on the terms and conditions of the additional term prior to the expiration of the Initial Term, this Lease and Operating Agreement shall terminate upon the expiration of the Initial Term.

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

7.~~8.~~ **Easements and Restrictions**. In connection with the original creation of the Subdivision, as amended, all of the Lots within the Subdivision are encumbered by and subject to that certain Grant of Easements and Restrictions for the Centerville Corporate Park Subdivision dated June 23, 2000, as more particularly recorded at the Davis County Recorder's Office on June 26, 2000, as Entry No. 1599782, Book No. 2662, and Pages 898-919, as amended by various amendments recorded at the Davis County Recorder's Office ~~that certain Amendment No. 1 to the Grant of Restrictions and Easements dated March 31, 2009, as more particularly recorded at the Davis County Recorder's Office on April 7, 2009, as Entry No. 2439263, Book No. 4749, and Pages 1279 – 1294~~ (collectively referred to as "Easements and Restrictions"). The Easements and Restrictions are incorporated herein by reference. The Easements and Restrictions define certain Easement Areas within the Subdivision consisting of parking lots, drive aisles, landscaped areas, and common walkways located on the lots within the Subdivision. The Easements and Restrictions provide for an owners association to maintain and pay for the cost of maintaining the improvements and facilities within the Easement Areas ("Subdivision Owners Association"). Notwithstanding anything to the contrary set forth herein, this Lease and Operating Agreement and any use, operation and maintenance of the Site and Theatre shall be subject to and shall comply in all respects to applicable provisions of the Easement and Restrictions, and any amendments thereto. The Association shall comply with and shall be responsible for performing all obligations and duties of the owner of Lot 3 under the Easements and Restrictions, including, but limited to, paying any and all assessments, fees and fines due and owing under the terms of the Easements and Restrictions as they related to the Theatre and Site. The Association shall also be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers, employees, agents, and assigns, including reasonable attorneys' fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability or such breach. As the Owner of Lot 3, the RDA shall retain the authority to appoint a voting member to the Subdivision Owners Association as provided under the terms of the Easements and Restrictions.

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

9.~~10.~~ **Conditional Use Permit and Site Plan Approval.** The Site and Theatre are subject to the terms and conditions of those certain Conditional Use Permits, and any amendments thereto ("Conditional Use Permits") for the Centerville Corporate Park Subdivision and Lot 3 within said Subdivision, including a conditional use permit for a planned center, auditorium use, and increased building height, as approved by the Centerville City Planning Commission on April 8, 2009. The Site and Theatre are also subject to the terms and conditions of a Parking Modification, and any amendments thereto ("Parking Modification") for the Centerville Corporate Park Subdivision, and Final Site Plan, and any amendments thereto ("Final Site Plan") for Lot 3 of the Centerville Corporate Park Subdivision, as approved by the Centerville City Planning Commission on April 8, 2009. The Conditional Use Permits, Parking

Modification and Final Site Plan are incorporated herein by this reference. Notwithstanding anything contrary set forth herein, this Lease and Operating Agreement and any use, operation and maintenance of the Site and Theatre shall be subject to and shall comply in all respects to applicable provisions of the Conditional Use Permits, Parking Modification and Final Site Plan, and any amendments thereto. The Association shall be responsible and liable for any breach or violation of the terms and conditions of Conditional Use Permits, Parking Modification and/or Final Site Plan by the Association, its officers, employees, agents and assigns, including reasonable attorneys' fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach or violations.

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

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

~~13. **Theatre Construction.** In accordance with the provisions of Section 2, if the RDA determines to construct the Theatre, the RDA shall construct the Theatre in accordance with the Final Site Plan and the construction drawings and plans and specifications ("Plans and Specification") approved by Centerville City for the project. The parties acknowledge that the Plans and Specification for the Theatre shall be reviewed and approved by the RDA in accordance with the terms and conditions of the Interlocal Agreement including providing for input and participation in the design and construction of the Theatre by the ACB and the Association. The RDA and the Association acknowledge and agree that any changes or modifications in the Plans and Specifications necessary to comply with applicable codes, governmental requirements and regulations as they pertain to the Theatre shall be permitted changes and shall be provided by the RDA as part of its obligation herein to construct the Theatre in accordance with the Plans and Specification.~~

~~14. **Additional Fittings and Fixtures.** The Association may request the installation of additional fittings, fixtures, and equipment in addition to those identified in the Plans and Specifications ("Additional Fixtures") to be installed with the initial construction of the Theatre.~~

~~Any such Additional Fixtures shall be approved by the RDA, in its sole discretion, in accordance with the Interlocal Agreement and applicable construction documents. The Association shall pay for any approved Additional Fixtures at its sole cost, including design costs, change order costs, installation costs, and all other costs resulting from the Additional Fixtures. Unless otherwise agreed to by the parties, all costs for Additional Fixtures shall be paid by the Association prior to the installation of the Additional Fixtures. The RDA may, in its sole discretion, pay for the Additional Fixtures, or any costs associated therewith in connection with the initial construction of the Theatre.~~

~~**15. Completion of Construction.** The Theatre shall be considered to be complete when the RDA has received a certificate of occupancy from the Centerville City Building Official, and any other required certificates or final inspections, certifying that the Theatre is substantially complete and is approved for occupancy, and when the Theatre is performance ready ("Complete"). For purposes of this Lease and Operating Agreement, performance ready shall mean that the Theatre, the facilities and equipment, and any ancillary facilities, are ready for the performance of a professional theatrical production ("Performance Ready"). The Association shall not be obligated to occupy the Theatre or pay Rent under the terms of this Lease and Operating Agreement until the Theatre is Complete and Performance Ready. The parties agree and acknowledge that the RDA and the Association will collaborate in the design and preparation of the Plans and Specifications of the Theatre, and when construction of the Theatre is Complete in substantial accordance with the Plans and Specifications, the Association shall be and is hereby estopped from asserting that the RDA is obligated at its cost to undertake physical alterations to the Theatre or to modify the physical design of the Theatre.~~

~~**16. Possession.** When the Theatre is Complete and Performance Ready, the RDA shall tender possession of the Theatre to the Association by written notification, including copies of the required certificates and approvals as set forth in Section 15. Such tendering of possession shall constitute the possession date ("Possession Date") commencing the Association's right to occupy the Theatre and duty to pay Rent under the terms and conditions of this Lease and Operating Agreement. The Association shall be required to comply with all conditions precedent prior to taking Possession of the Theatre.~~

~~**17. Shakedown Period.** The first thirty (30) days following the Possession Date shall constitute the shakedown period ("Shakedown Period"). During the Shakedown Period the Association shall have the right to inspect the Theatre and related facilities and improvements and shall advise the RDA, in writing, of any defects, errors, or omissions in the construction of the Theatre that become known to the Association ("Punch List"). The Punch List provided by the Association to the RDA shall be deemed advisory. If any Punch List item reveals a failure to construct the Theatre in accordance with the Plans and Specifications, as determined by the RDA, the RDA shall take appropriate action to correct, or cause to be corrected, such Punch List item and any such defects. At the conclusion of the Shakedown Period, the Association's inspection of the Theatre and related facilities and improvements shall be deemed an acceptance of the Theatre and all related facilities and improvements.~~

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

13.~~19.~~ Rent. For purposes of this Lease and Operating Agreement, the parties intend the rental payment charged for use and operation of the Theatre be fair, reasonable and flexible and set at an amount that will provide for the long-term viable lease and operation and maintenance of the Theatre. For the reasons set forth in Section 12 ~~18~~ regarding the public funding and purpose of the Theatre, the rental payment due and owing for the use and operation of the Theatre under this Lease and Operating Agreement, shall be based on a minimum monthly ~~base~~ rent as more particularly set forth in Section 14 ~~20 and a variable annual rent calculated in accordance with the provisions set forth in Section 20 and a variable annual rent calculated in accordance with the provisions set forth in Section 21 (collectively referred to as~~ ("Rent"). Rent shall be paid to the RDA when due without prior notice, demand, deduction, setoff or counterclaim. Interest on unpaid delinquent Rent shall accrue at the rate of ten (10%) per annum from the date due to the date of payment. Interest on delinquent Rent shall be in addition to any other rights and remedies available to the RDA for failure to pay Rent as a breach of this Lease and Operating Agreement. All Rent and other payments due under this Lease and Operating Agreement shall be paid by the Association to the RDA at the RDA's office at 250 North Main, Centerville, Utah, 84014, or at such other place as may from time to time be designated in writing by the RDA.

14.~~20.~~ Monthly ~~Base~~ Rent Payment. ~~Commencing six (6) months from the Possession Date, the~~ The Association shall pay to the RDA a minimum monthly ~~base~~ rent and use fee ("~~Base~~ Rent") in the amount of $6,837 ~~$6,000~~ per month. ~~Except as provided herein for the first month's rent, Base~~ Rent shall be paid monthly in advance due on the 20th day of the month for the next month's rent. ~~For the first month, or any portion thereof commencing six (6) months from the Possession Date, the Association shall pay to the RDA a prorated portion of the current month's Base Rent and the next month's Base Rent in advance on the first day following six (6) months from the Possession Date.~~ The ~~Base~~ Rent shall be adjusted annually each January

~~beginning in 2014~~ using the Consumer Price Index for all Urban Consumers ("CPI-U") for the West Urban Area (Index Base Period 1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics. The increase in the amount of each monthly ~~Base~~ Rent payment shall be directly proportional to the percentage change in the CPI-U index between the specified time periods; provided that under no circumstances shall the monthly ~~Base~~ Rent be less than the previous year's monthly ~~Base~~ Rent ("Adjusted ~~Base~~ Rent"). The Adjusted ~~Base~~ Rent shall be calculated using the average of the CPI-U for the current twelve (12) month period from October to September as compared to the previous twelve (12) month period from October to September. Each year, ~~Starting in 2013,~~ the RDA shall calculate the Adjusted ~~Base~~ Rent for the coming year and provide the Association with thirty (30) days notice of the Adjusted ~~Base~~ Rent for the coming year. Such notice is provided as a courtesy only. If the RDA does not send the notice of Adjusted ~~Base~~ Rent or the Association does not receive such notice, the Association is still bound and obligated to pay the Adjusted ~~Base~~ Rent when due and owing. If the United States Department of Labor revises the CPI-U or the index base period, the parties shall accept the method of revision or conversion recommended by said Department. If the CPI-U is discontinued or revised, such government indices or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the indices had not been discontinued or revised.

15.~~21.~~ No ~~Annual~~ Additional ~~Variable~~ Rent. Rather than charge any type of additional or variable rent to the Association, the parties agree that any additional annual revenues or profits from the operation of the Theatre should be retained by the Association for purposes of funding the Association's significant maintenance and operations obligations under the terms of this Lease and Operating Agreement. ~~In addition to the Base Rent, for the reasons set forth in Section 18 regarding the public funding and purpose of the Theatre, the Association shall pay to the RDA a variable annual rental and use fee in an amount equal to the Association's previous year's annual profits as more particularly provided herein ("Variable Rent"). For purposes of this Section, annual profits shall be defined as any and all revenue generated by the operation of the Theatre, including, but not limited to, ticket sales, sponsorship, concessionaires, gift shop sales, etc., less all operating and production costs, expenses, and authorized reserves for each calendar year ("Annual Profits"). Annual Profits shall also include donations except as otherwise provided in Section 27 regarding donations earmarked for specified purposes. For purposes of determining Variable Rent, the parties expressly agree that part of the operating and production costs and expenses may include reasonable and necessary reservation of funds for purposes of funding the Association's Operations Reserve Fund, Maintenance Reserve Fund and Capital Reserve Fund as more particularly defined in Section 22, Section 23 and Section 23.1. Variable Rent for the current year shall be calculated based on the Annual Profits of the Association for the immediately preceding calendar year. Subject to the waiver period provided herein, Variable Rent shall be due annually on June 30th of each calendar year. The Association shall be responsible for determining and calculating its Annual Profits in order to make timely payment of annual Variable Rent. Each annual Variable Rent payment shall be accompanied by a written statement, certified to be true, correct, and complete by an independent accountant or officer of the Association, showing for the previous calendar year the revenue, expenses, reserve funds and Annual Profit calculations.~~

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

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

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

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

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

Replacement Value Funding (1.5%) allocated to Preventative Maintenance and Minor Repair is approximately 0.5%.

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

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

20.~~22.~~ Association's Operations Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future operations obligations set forth in this Lease and Operating Agreement ("Operations Reserve Fund"). The intent of the Operations Reserve Fund is to provide liquidity and appropriate cash reserves for Theatre operations. The Association shall retain the Operations Reserve Fund in a specially created fund to be maintained by the Association and used solely for operations and production costs as more particularly provided herein. The Association shall use its best efforts to allocate funds to the Operations Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its operations obligations under this Lease and Operating Agreement~~; provided, the fund balance in the Operations Reserve Fund shall not exceed an amount equal to Two Hundred Thousand Dollars ($200,000)~~. There is a minimum target balance for Operations Reserve Fund, as more particularly described in Section 21. The Operations Reserve Fund shall only be used to fund the Association's operations obligations set forth in this Lease and Operating Agreement. ~~In accordance with the provisions of Section 32, until and unless the Maintenance Reserve Fund is fully funded to the maximum fund balance for such fund, a minimum of fifty percent (50%) of the combined annual reservation of funds to both the Operations Reserve Fund and the Maintenance Reserve Fund shall be allocated to the Maintenance Reserve Fund, exclusive of earmarked donations. The combined amount calculations and percentage allocation requirements set forth herein may include the Minimum MRF Contribution set forth in Section 33.~~ Allocations to the Operations Reserve Fund ~~and the Maintenance Reserve Fund~~ shall be subject to review and approval by the RDA ~~and ACB~~ in accordance with the provisions of Section 30~~28~~ regarding the budget process. The Association may be required by the RDA as part of the budget process to utilize funds in the Operations Reserve Fund to pay for current or future operations obligations. ~~The Association shall provide the RDA and ACB with at least thirty (30) days prior written notice of any proposed withdrawal and/or use of funds within the Operations Reserve Fund.~~

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

22.~~23.~~ Association's Maintenance Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future maintenance and repair obligations set forth in this Lease and Operating Agreement ("Maintenance Reserve Fund"). The Association shall retain the Maintenance Reserve Fund in a specially created fund to be maintained by the Association and used solely for maintenance and repair obligations as more particularly provided herein. The Association shall use its best efforts to allocate funds to the Maintenance Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its maintenance and repair obligations under this Lease and Operating Agreement~~; provided, the fund balance in the Maintenance Reserve Fund shall not exceed Three Hundred Thousand Dollars ($300,000)~~. There is a minimum target balance and a required minimum annual contribution to the Maintenance Reserve Fund, as more particularly described in Section 23. The Maintenance Reserve Fund shall only be used to fund the Association's maintenance and repair obligations set forth in this Lease and Operating Agreement, including, but not limited to, the maintenance, repair or replacement of any buildings, grounds, landscaping, facilities and improvements associated with the Theatre and the Site. The primary purpose and intent of the Maintenance Reserve Fund is to create a substantial and sufficient reserve fund to be used for major, non-routine or unexpected maintenance, repairs and replacement obligations of the Association, including Unscheduled Maintenance and Renewal and Replacement costs as defined in Section 19. Routine and preventative maintenance and recurring repair and replacement projects should be budgeted for and funded out of the Annual Operating Budget, including Preventative Maintenance and Minor Repair costs as defined in Section 19. ~~In accordance with the provisions of Section 32, until and unless the Maintenance Reserve Fund is fully funded to the maximum fund balance for such fund, a minimum of fifty percent (50%) of the combined annual reservation of funds to both the Operations Reserve Fund and the Maintenance Reserve Fund shall be allocated to the Maintenance Reserve Fund, exclusive of earmarked donations. The combined amount calculations and percentage allocation requirements set forth herein may include the Minimum MRF Contribution set forth in Section 33.~~ Allocations to ~~the Operations Reserve Fund and~~ the Maintenance Reserve Fund shall be subject to review and approval by the RDA ~~and ACB~~ in accordance with the provisions of Section 30~~28~~ regarding budget review. The Association may be required by the RDA as part of the budget process to utilize funds in the Maintenance Reserve Fund to pay for current or future maintenance and repair obligations. The Association shall provide the RDA ~~and ACB~~ with at least thirty (30) days prior written notice of any proposed withdrawal and/or use of funds within the Maintenance Reserve Fund.

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

24.~~23.1.~~ Association's Capital Projects Reserve Fund. The Association may create a reserve fund for purposes of funding special capital projects or improvements ("Capital Reserve Fund"). If created, the Association shall retain the Capital Reserve Fund in a specially created fund to be maintained by the Association and used solely for special capital projects or improvements as more particularly provided herein. Except as otherwise expressly authorized by the RDA for extenuating circumstances, the ~~The~~ Association may only allocate funds to the Capital Reserve Fund after the ~~appropriate and required~~ Total Target Annual Contribution has been made to the Maintenance Reserve Fund and the Minimum Target Balance has been met in ~~annual amounts have been allocated to~~ the ~~Association's~~ Operations Reserve Fund ~~(in accordance with Section 22) and the Maintenance Reserve Fund (in accordance with Section 23), including the Minimum MRF Contribution (set forth in Section 33)~~. Any allocation of funds to the Capital Reserve Fund must be approved by the RDA ~~and ACB~~ and must be tied to a list of specific approved capital projects or improvements. The Association shall provide the RDA ~~and ACB~~ with an annual accounting of the use of funds from the Capital Reserve Fund and evidence of appropriate use of funds for specific approved capital projects or improvements. If the Theatre's Operations Reserve Fund or the Maintenance Reserve Fund are determined by the RDA to be drained or underfunded, the Association may be required by the RDA ~~as part of the annual budget process~~ to transfer funds from the Capital Reserve Fund (other than specifically earmarked donations) to the Operations Reserve Fund and/or Maintenance Reserve Fund.

25.~~24.~~ **RDA Rent Proceeds.** Monthly ~~Base~~ Rent ~~and the annual Variable Rent~~ shall be paid to the RDA. ~~Base~~ Rent ~~and Variable Rent~~ proceeds shall first be used to reimburse the RDA for any actual expenditures or expenses incurred by the RDA for the construction, financing, maintenance, repair, alteration, or operation of the Theatre or the Site. Such reimbursement amounts may be retained by the RDA from the Rent without prior approval of the ACB. ~~The RDA shall be required to provide the ACB with itemized statements regarding any and all such reimbursements from Rent proceeds.~~ Any remaining ~~Base~~ Rent ~~or Variable Rent~~ proceeds shall be used to fund the RDA~~'s~~ ~~Theatre~~ Reserve Fund as more particularly provided in Section 26~~25~~. Use of funds within the RDA ~~Theatre~~ Reserve Fund shall be subject to the specific conditions and limitations set forth in this Lease and Operating Agreement regarding the RDA ~~Theatre~~ Reserve Fund as set forth in Section 26~~25~~.

26.~~25.~~ **RDA ~~Theatre~~ Reserve Fund**. The RDA shall create a reserve fund to be used solely for the Theatre and Site as more particularly provided herein ("RDA ~~Theatre~~ Reserve Fund"). The RDA shall retain the RDA ~~Theatre~~ Reserve Fund in a specially created fund to be maintained by the RDA and used solely for the purposes set forth herein. There is a total target and minimum target balance requirement for the RDA Reserve Fund, as more particularly described in Section 27. The RDA ~~Theatre~~ Reserve Fund shall be funded with remaining ~~Base~~ Rent ~~or Variable Rent~~ proceeds as set forth in Section 25~~24~~. Nothing herein is intended to or shall obligate the RDA to separately fund the RDA ~~Theatre~~ Reserve Fund. The parties expressly acknowledge that the funding of the RDA ~~Theatre~~ Reserve Fund is solely dependent upon ~~the calculation and amount of Annual Profits and~~ the payment of ~~Base~~ Rent ~~and Variable Rent~~ under the terms of this Lease and Operating Agreement. It is the intent of the parties to fund not only the Association's Operations Reserve Fund and Maintenance Reserve Fund, but also the RDA~~'s~~ ~~Theatre~~ Reserve Fund, in order to provide an equitable distribution of funds for the long-term success and viability of the Theatre operations and the long-term maintenance, repair and replacement of the Theatre and the Site. As such, the Association agrees to ~~use its good faith best efforts to accurately and fairly allocate~~ pay Rent to the RDA ~~funds and expenses and to calculate Annual Profits~~ in accordance with the stated intent of the parties as more particularly discussed herein and ~~in~~ Section 12~~18~~ regarding the use of public funds for the project. The RDA ~~Theatre~~ Reserve Fund shall only be used for investment, financing, maintenance, repair, replacement, expansion, alteration, enhancement, betterment or operation of any buildings, grounds, facilities, improvements, programs, fixtures and related equipment and accessories associated with the Theatre and the Site. It is expressly acknowledged that the primary purpose of the RDA Reserve Fund is to fund the RDA's maintenance and repair obligations set forth in this Lease and Operating Agreement, including the RDA's proportionate share of the Renewal and Replacement cost obligations as more particularly described in Section 19. Use of any portion of the RDA ~~Theatre~~ Reserve Fund shall be pre-approved by the ACB, which approval shall not be unreasonably withheld. The parties, together with the ACB, may adopt policies for prioritizing projects, repairs, replacements, betterments, capital improvements, etc., with respect to the use and expenditures of the RDA ~~Theatre~~ Reserve Fund. For purposes of prioritizing the use of the RDA ~~Theatre~~ Reserve Fund it is the parties' intent to create a substantial and sufficient RDA ~~Theatre~~ Reserve Fund for the primary purpose of providing for future repair, replacement and capital improvements associated with the Theatre and the Site. ~~Standard calculations for repair~~

~~and replacement costs for a building the size and quality of the Theatre suggest an annual fund contribution equal to one and one-half percent (1.5%) of the replacement value of the facility. Although permitted under the terms of this Lease and Operating Agreement, it~~ It is not the parties' intent that the RDA ~~Theatre~~ Reserve Fund be used for Preventative Maintenance and Minor Repairs, Unscheduled Maintenance, or any ~~routine~~ maintenance obligations of the Association, as set forth in this Lease and Operating Agreement, ~~until and unless a sufficient Theatre Reserve Fund is established and/or the use of such funds for routine maintenance~~ unless expressly authorized by the RDA for extenuating circumstances as ~~is~~ deemed necessary and appropriate under the circumstances. It is not the intent, and the RDA shall not use any Rent proceeds or the RDA ~~Theatre~~ Reserve Fund for debt retirement or service with respect to the tax-exempt bonds.

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

28.~~26.~~ Flow of Funds. Consistent with the provisions set forth in Sections 12-27~~18-25~~, the allocation of revenues from the operation of the Theatre shall be distributed and allocated in the following order of intended priority: (1) payment of ~~Base~~ Rent; (2) payment of current operations, production and maintenance costs and expenses; (3) allocation of funds to the Maintenance Reserve Fund; (4) allocation of funds to the Operations Reserve Fund; and (5) allocation of funds to the Capital Reserve Fund or other authorized purposes~~; and (6) distribution of Annual Profits as Variable Rent due to the RDA~~.

29.~~27.~~ Exception for Earmarked Donations. It is the intent of the parties to encourage the donation of private funds to the Theatre to the broadest extent possible. In order to encourage such donations, the parties desire to provide an exception to Annual Revenues ~~Annual Profit~~ calculations ~~and reserve fund maximum cap limitations~~ for earmarked donations and the ability to use such donations for the intended purpose. The parties hereby agree that any legitimate private donation specifically earmarked for a particular specified purpose, such as donations for a specified capital improvement, specialized accessory or particular performance, may be used for the designated purpose without such donation being required to be designated as revenue for purposes of calculating the Annual Revenues~~Annual Profits~~. ~~In addition, donations earmarked specifically to the Operations Reserve Fund or the Maintenance Reserve Fund shall not be subject to the maximum fund balance restrictions set forth in Section 22 or Section 23, but shall be utilized to determine whether the fund balance cap has been reached for purposes of calculating Annual Profits. In order to qualify for this exception, the donation must be expended or allocated in the budget for the designated purpose within the calendar year the funds are received~~. Any reservation of such earmarked donated funds shall be placed in a restricted account earmarked for the specified purpose in accordance with standard and acceptable accounting practices regarding the same. Any donations that are not earmarked for a particular specified purpose shall be deemed revenue for purposes of calculating Annual Revenues ~~Annual Profits~~ in the calendar year they are received.

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

31.~~29.~~ No Excessive Salaries. ~~The parties expressly acknowledge that various decisions and factors will impact Annual Profits, such as, salaries, improvement projects, donations, ticket sales, ticket prices, repairs, equipment purchases, repair and maintenance reserves, etc. The RDA and the ACB shall have input regarding such matters as part of the annual budget process.~~ The Association shall not pay any excessive salaries or wages, including benefits, to its executives~~,~~ ~~board members~~ or staff. In order to determine what is deemed excessive under the provisions of this Section, the salaries or wages paid by the Association to its officers and employees shall not exceed 110% of the average salary and/or wage paid to similarly situated and experienced officers or employees of public community theatres and nonprofit theatre associations or entities in Utah of like size, budget and experience to the Association and the Theatre. By allowing wages at slightly above comparative averages, the Association may negotiate for a stable and effective management staff.

32.~~30.~~ Preventative Maintenance Obligations. The RDA has a long-term interest in preserving its building asset and desires to ensure through the provisions of this Lease and Operating Agreement that proper maintenance practices are used for the inspection and upkeep of the Theatre. Preventative maintenance is widely recognized to extend the life of buildings and equipment, prevent premature breakdown of systems and ensure efficient operation of systems and equipment. In consideration of the minimal ~~Base~~ Rent and for the purposes set forth in Section 12~~18~~ regarding public funds used for the construction of the building, the Association's maintenance obligations set forth herein shall be a priority and shall be subject to the oversight and direction of the RDA. Specifically, the Association shall be required to pursue all of its repair and maintenance obligations under this Lease and Operating Agreement with due diligence and on a pro-active and preventative maintenance basis in order to ensure the long-term sustainability and maintenance of the Theatre. All maintenance and repairs shall be conducted in accordance with the approved Maintenance Plan as set forth in Section 33~~31~~. All maintenance and repairs shall be performed by manufacturer authorized technicians and in accordance with the manufacturer's recommended maintenance schedule and warranty requirements for the particular equipment, improvement or system. Annual service contracts regarding maintenance and repair services shall be subject to review and approval of the RDA.

33.~~31.~~ **Comprehensive Maintenance Plan.** As part of the budget process each year, the Association shall be required to prepare a long-range comprehensive maintenance plan ("Maintenance Plan"), which plan shall include at least a five (5) year projection and plan for dealing with and paying for all current, future and on-going maintenance and repair obligations and issues with respect to the Theatre and the Site. The Maintenance Plan shall include, but is not limited to, addressing the Association's maintenance and repair obligations regarding parking facilities, drive aisles, landscaping, plumbing, electrical, mechanical, HV-AC Systems, carpeting, painting, stage facilities, lighting, telecommunications, seating, etc. The Maintenance Plan shall include scheduled maintenance and inspection programs and documentation of maintenance work performed. The Maintenance Plan shall be based on manufacturer's recommended maintenance schedules, warranty requirements, industry standards, benchmarks and best practices for asset management and shall include maintenance modeling that considers the size, design, life expectancy, age and replacement cost of the Theatre. The Association is encouraged to invest in computer software program(s) that will assist in establishing and implementing the Maintenance Plan. The Maintenance Plan shall also address and provide recommendations regarding how to best estimate and use the reserve funds for known and unknown repairs and maintenance obligations which may arise. The Association shall implement and comply with the maintenance schedules and requirements set forth in the approved Maintenance Plan. The Maintenance Plan shall be reviewed and is subject to approval by the RDA as part of the annual budget approval process. Drafts of the Maintenance Plan shall be prepared by the Association and submitted annually to the RDA with the tentative budget and reviewed in accordance with the review and approval schedule for the budgets as set forth in Section 30~~28~~. Any amendments to the Maintenance Plan shall be subject to the review and approval of the RDA.

34.~~32.~~ **Maintenance Budgeting and Funding Priorities.** The Association shall be required to provide for current maintenance and repair obligations in its Annual Operating Budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 30~~28~~. The Association shall also be required to provide for known and unknown future and on-going maintenance and repair obligations in its annual Maintenance Reserve Fund budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 30~~28~~. The Association shall be required to actually transfer funds to the Maintenance Reserve Fund, including required minimum contributions set forth in Section 23~~33~~, in accordance with the approved budget, on an annual basis. The purpose of the annual funding of the Maintenance Reserve Fund is to ensure that sufficient funds are reserved to pay for known and unknown current, future and on-going maintenance and repair obligations as provided herein. All budgeting and allocations for maintenance and repairs shall be sufficient to meet the Association's obligations set forth in this Lease and Operating Agreement and shall be provided in accordance with the Maintenance Plan as approved by the RDA. As indicated in Section 28~~26~~ regarding flow of funds, the funding of current maintenance obligations and the reservation of funds for future maintenance obligations is a priority of the parties and an express requirement of this Lease and Operating Agreement.

~~**33. Minimum Maintenance Reserve Fund Contribution.** In order to ensure that maintenance spending is addressed on a continuous basis, rather than waiting until a problem occurs, the Association shall be required to contribute a minimum amount of funds to the Maintenance Reserve Fund on an annual basis as more particularly set forth herein. Starting in the calendar year 2012, and until and unless the maximum fund balance is met for the Maintenance Reserve Fund, the Association shall be required to contribute to the Maintenance Reserve Fund on an annual basis an amount equal to one percent (1 %) of the Association's previous year's annual revenues ("Minimum MRF Contribution"). For purposes of this Section, annual revenue shall be defined as the gross revenues generated by the operation of the Theatre, including, but not limited to, ticket sales, sponsorship, concessions, gift shop sales, etc. ("Annual Revenues"). Annual Revenues shall also include donations except as otherwise provided in Section 27 regarding donations earmarked for specified purposes. The Minimum MRF Contribution shall be addressed in the budget and shall be paid annually on or by June 30th. The Association shall be responsible for determining and calculating its Annual Revenues in order to make timely payment of the annual Minimum MRF Contributions to the Maintenance Reserve Fund.~~

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

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

<u>37.</u>~~36.~~ **Responsibility for Operations.** The Association is solely responsible for all operations of and activities and uses conducted within the Theatre, including, but not limited to, staging productions and operating all venues within the facility. All such operations of and activities and uses within the Theatre shall comply with the provisions of this Lease and Operating Agreement. Rental of venues or facilities within the Theatre or on the Site shall be subject to and in compliance with the Facilities Rental Policy to be approved by the parties ("Facilities Rental Policy"). No venues or facilities within the Theatre or on the Site shall be rented to third parties until and unless a Facilities Rental Policy has been approved by the parties. Any rental of venues or facilities within the Theatre or Site shall be subject and subordinate to the terms and conditions of this Lease and Operating Agreement, including, specifically, the family values provisions of Section <u>48</u>~~47~~. Any rental agreement entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days notice should this Lease and Operating Agreement be terminated prior to its expiration. The Association shall be solely responsible, at its cost and expense, for any and all operating losses resulting from operations of and activities and uses conducted within the Theatre, and nothing in this Lease and Operating Agreement shall be construed to obligate the RDA to pay or reimburse the Association for any operating losses incurred by the Association hereunder. The Association shall ensure that no liens, rights or claims by third parties are registered, recorded or made against the Theatre or Site as a result of or attributed to the Association's use or operation of the Theatre and Site.

<u>38.</u>~~37.~~ **Utilities.** Electricity, natural gas, sewer, water, telecommunications, and other utilities necessary for use of the Theatre, including, but not limited to, regular house lighting, Theatre lighting, air conditioning, ventilation, heating, irrigation and culinary water, and other operations, shall be provided and paid for by the Association. All utility connections must be approved in advance by the RDA and shall be made by a representative of the RDA or a contractor approved in advance by the RDA. Following completion of the construction of the Theatre, any special or additional connections or wiring requested by the Association shall be provided for in accordance with this Section. Unless otherwise agreed to by the RDA, any such additional connections or wiring shall be installed at the sole expense of the Association. Connections, equipment, and services provided by the Association must comply with all applicable codes, regulations, and federal, state, and local statutes and ordinances. The RDA shall not be liable or responsible for any injury, loss or damage resulting from any interruption or failure of utilities or services provided. The Association shall not be entitled to any offset, reduction or return of any ~~Base~~ Rent ~~or Variable Rent~~ as a result of any interruption or failure of utilities or services.

<u>39.</u>~~38.~~ **Parking Facilities.** ~~The RDA agrees to install and provide P~~<u>P</u>arking facilities <u>have been constructed</u> on the Site <u>and other lots within the Centerville Corporate Park (Amended) Sudivision</u> ("Parking Facilities") in accordance with the approved Plans and Specifications. The design, use, maintenance and operation of the Parking Facilities shall comply with all the provisions and conditions of the Easements and Restrictions for the Centerville Corporate Park, as more particularly defined in Section <u>7</u>~~8~~ and set forth in the Easement and Restrictions, including, but not limited to, cross-access easements, maintenance, and assessment obligations. The Parking Facilities shall be managed and operated by the Subdivision Owners Association in accordance with the Easements and Restrictions as more particularly provided in Section <u>7</u>~~8~~. The Association shall be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers, employees, agents and assigns, including reasonable attorneys' fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach. The RDA reserves the right to regulate

all traffic entering or exiting the Site or Parking Facilities, and to change, alter or modify any driveways, entry and exit points, parking stalls, and traffic circulation within or adjacent to the Site or Parking Facilities.

40.~~39.~~ **Parking Restrictions.** In conjunction with the development of the Theatre and as required by the Centerville City Planning Commission as a condition of Final Site Plan approval for the Theatre, the RDA has entered into that certain Amendment No. 1~~1~~ to the Grant of Easements and Restrictions for Centerville Corporate Park Subdivision, as more particularly described in Section 7~~8~~, wherein the RDA has agreed to install and provide additional parking, driveway, landscaping, and pedestrian pathway facilities and improvements on a portion of Lot 2 of the Centerville Corporate Park Subdivision (now Lot 201 and Lot 202 of the Centerville Corporate Park (Amended) Subdivision) . Pursuant to Section 16.8 of the amended Easement and Restrictions, the Owner, tenant, lessee or assign of Lot 3 of the Centerville Corporate Park Subdivision must require its employees and performers to park on Lot 3 between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday, exclusive of State and federally recognized holidays ("Daytime"). In addition, any tenant, lessee and assign of the Theatre is required to provide the Owners of Lot 1, Lot 201, and Lot 202 of the Centerville Corporate Park (Amended) Subdivision with at least seven (7) days prior written notice of any Daytime performances or activities anticipated to generate parking demand in excess of the on-site parking provided on Lot 3 and to receive prior approval of the same from the Owners of Lot 1~~1~~, Lot 201, and Lot 202 ("Notice and Request"). The Association, its employees, invitees and guests, shall comply with all applicable provisions of the Easements and Restrictions, including, but not limited to, the Daytime employee parking restrictions and the Notice and Request provisions summarized herein and the "reasonable use provisions of Section 4.4(D)(2) of the Easements and Restriction. The Association shall be responsible and liable for any breach of the Easements and Restrictions by the Association, its officers, employees, agents and assigns, including reasonable attorneys' fees and costs associated therewith, and shall indemnify, defend and hold the RDA harmless from and against any liability for such breach.

41.~~40.~~ **Landscaping.** The Association shall be responsible for maintaining all landscaping and improvements on the Site. Any landscaping that is not maintained by the Subdivision Association in accordance with the Easements and Restrictions shall be independently maintained by the Association. All landscaping and associated improvements shall be maintained by the Association in compliance with applicable zoning regulations of the City of Centerville and shall be maintained in a clean, safe and aesthetically pleasing manner. Landscaping maintenance shall be addressed in the annual budgets and shall be performed in accordance with the approved Maintenance Plan as set forth in Section 33~~31~~.

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

43.~~42.~~ **Service Contracts.** The Association may, subject to the terms and conditions of this Lease and Operating Agreement, negotiate and enter into service contracts or agreements in the name, and at the sole cost and expense, of the Association, which are reasonably necessary or appropriate in the ordinary course of business in operating the Theatre, including, but not limited to, contracts for utilities, ticketing, engineering services, staffing personnel, janitorial services, accounting or legal services and other services. Any ticketing service contracts shall be subject to and comply with the provisions of Section 49~~48~~. Any contracts or agreements entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days notice should this Lease and Operating Agreement be terminated prior to its expiration.

44.~~43.~~ **Concessions and Sales.** The Association may, subject to the terms and conditions of this Lease and Operating Agreement, negotiate and enter into contracts, agreements or licenses in the name, and at the sole cost and expense, of the Association, with third parties to operate concessions for the sale of novelties, food and beverages, retail merchandise, and other similar articles, and/or the rental of costumes, or for the advertising and promotion of products and services from or in the Theatre. Any such contracts, agreements or licenses entered into hereunder for the sale, operation, advertising, and/or promotion of products and services for the Theatre shall comply with the family values provisions of Section 48~~47~~ of this Lease and Operating Agreement and shall comply in all respects to the advertising and signage restrictions set forth in Section 52~~51~~. Any such contracts, agreements or licenses entered into hereunder shall be subordinate and subject to the terms and conditions of this Lease and Operating Agreement and shall be subject to the Facilities Rental Policy adopted by the parties, as applicable. Any such contracts, agreements or licenses entered into hereunder may not extend beyond the term of this Lease and Operating Agreement and must be terminable by the RDA, without penalty, on not more than thirty (30) days notice should this Lease and Operating Agreement be terminated prior to its expiration.

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

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

Theatre regarding the type of entertainment to be presented in accordance with Section 48~~47~~ and in accordance with the Facilities Rental Policy adopted by the parties.

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

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

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

b. Portray community involvement in a positive manner.

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

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

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

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

49.~~48.~~ **Tickets.** For ticketed events, the Association may either provide its own ticket services or utilize a ticket service approved by the RDA to sell tickets and maintain an accounting of the proceeds in a form approved by the RDA. The RDA's approval of such form and process shall not be unreasonably withheld or delayed. If the Association provides its own ticket services, all funds received from the sale of tickets to an event shall be deposited into a segregated account, the records of which may be examined and audited as set forth in Section 36~~35~~. The RDA reserves the right to inspect ticket accounting records at any reasonable time in accordance with Section 36~~35~~.

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

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

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

53.~~52.~~ **Maintenance.** Except as otherwise provided in Section 54~~53~~ regarding the RDA's obligation to replace the boiler and chiller associated with the HV-AC Systems for the Theatre, the Association shall, at its own cost and expense, keep, operate and maintain the Theatre's interior rooms, spaces, walls, doors, windows, fixtures, equipment, appurtenances, and systems (including, but not limited to, plumbing, electrical, HV-AC, sound, and lighting) in good working order and repair and in a neat, clean, safe, and sanitary condition, and in compliance with the requirements of all applicable laws, ordinances, rules, and regulations, at all times throughout the term of this Lease and Operating Agreement. The Association shall be required to maintain and repair the HV-AC systems, including the heating, ventilation and air conditioning systems for the Theatre ("HV-AC Systems"). The Association shall obtain and enter into an annual service contract with a reputable provider for the on-going maintenance of the HV-AC System. Such contract shall be subject to approval by the RDA to ensure sufficient maintenance scheduling and upkeep of the HV-AC System and compliance with the Maintenance Plan. Except as otherwise provided in Section 54~~53~~ regarding the RDA's obligation to make repairs and replacements that are necessary to maintain structural integrity of the Theatre, such as roofs, exterior walls, foundation and structural supports of the Theatre, the Association shall, at its own cost and expense, keep, operate and maintain the Theatre's exterior trim, doors, windows, fixtures, equipment, building materials, appurtenances, and systems in good working order and repair and in a neat, clean, safe, and sanitary condition, and in compliance with the requirements of all applicable laws, ordinances, rules, and regulations, at all times throughout the term of this Lease and Operating Agreement. The Association shall immediately act to effect repairs when malfunctions or defects arise and, without limiting the generality of any of the foregoing, shall keep the glass of all windows, including all exterior glass, and doors clean and presentable; replace all broken glass immediately; paint and refinish the interior of the Theatre at regular intervals; keep all exterior door closing mechanisms functioning; and keep all pipes, drains, toilets, fixtures, and basins clean and free of debris and any obstructions. The Association shall provide, or cause to be provided, and pay the cost of all recurring janitorial, custodial, and repair services. In accordance with the provisions of Section 32~~30~~, the Association shall provide and pursue maintenance and repairs for the Theatre proactively in order to ensure the long-term sustainability and operation of the Theatre. All maintenance and repairs shall be performed in a timely manner. All maintenance obligations shall be addressed in the annual budgets and shall be performed in accordance with the approved Maintenance Plan as set forth in Section 33~~31~~. The RDA reserves the right to require the Association to take such reasonable protective measures as the RDA may deem necessary to ensure the preservation and protection of the Theatre and equipment. In accordance with and subject to the limitations set forth in Section 22~~23~~ and Section 34~~32~~, the Association shall maintain sufficient and necessary funds in the Association's Maintenance Reserve Fund to perform the Association's current and future maintenance obligations set forth in this Lease and Operating Agreement. Subject to the priority and use provisions set forth in Section 26~~25~~ regarding the RDA's RDA ~~Theatre~~ Reserve Fund, the Association may request assistance from the RDA through the use of funds in the RDA ~~Theatre~~ Reserve Fund for maintenance and upkeep to the Theatre.

54.~~53~~. **Repairs and Replacements.** Except as otherwise provided herein regarding the RDA's obligation to make repairs and replacements that are necessary to maintain structural integrity of the Theatre and the RDA's obligations regarding the replacement of the boiler and chiller associated with the HV-AC Systems for the Theatre, the Association shall be responsible for making all needed repairs to the Theatre and its equipment and fixtures, including all repairs and replacements that are necessary to maintain the operational functioning of the Theatre. All repairs to the Theatre, equipment or fixtures, other than general wear and tear replacement or repairs not exceeding five thousand dollars ($5,000), shall require prior written approval from the RDA. In accordance with and subject to the limitations set forth in Section 22~~23~~ and Section 34~~32~~, the Association shall maintain sufficient and necessary funds in the Association's Maintenance Reserve Fund to perform the Association's current and future repair and replacement obligations set forth in this Lease and Operating Agreement. The Association may request assistance from the RDA through the use of funds in the RDA~~'s~~ ~~Theatre~~ Reserve Fund for any repairs or replacements to the Theatre. As indicated in Section 26~~25~~, it is the parties' intention that the primary use of the RDA ~~Theatre~~ Reserve Fund is to be used for repairs and replacements for the Theatre as more particularly described herein. Requests for the use of funds from the RDA ~~Theatre~~ Reserve Fund for such purposes provided herein shall be given a priority. The RDA shall be responsible for capital repairs and replacements that are necessary to maintain the structural integrity of the Theatre, such as roofs, exterior walls, foundation and structural supports. The RDA shall also be responsible for replacing the boiler and chiller associated with the Theatre's HV-AC Systems. The RDA may use the RDA ~~Theatre~~ Reserve Fund for such capital repairs and replacements for the Theatre or the replacement of the boiler and chiller associated with the HV-AC Systems.

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

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

57.~~56.~~ **Alterations, Improvements and Additions.** The Association may make any alterations, improvements or additions to the Theatre or Site, at its sole cost and expense, subject to the prior written approval of the RDA. Prior to making any alterations, improvements or additions, the Association shall submit to the RDA, for review and approval, all schematic designs, design development drawings, and final working drawings and specifications for the undertaking of any and all construction, improvement, alteration, or addition in or on any portion of the Theatre or Site. All such designs, drawings, and plans shall be prepared by a licensed architect or engineer and shall contain the architect or engineer's signature and seal. The approval of such designs, drawings, and plans by the RDA shall not constitute an opinion or representation by the RDA as to their compliance with any law or ordinance or their adequacy for other than the RDA's purposes, and such approval shall not create or form the basis of any liability on the part of the RDA or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or for any failure to comply with applicable laws or ordinances. Any approvals by the RDA pursuant to this Section shall be in addition to (and not in lieu of) any other approvals required under applicable state and local building, fire, or life safety codes and Centerville City Ordinances. Subject to the priority and use provisions of Section 26~~25~~ regarding the RDA~~'s~~ ~~Theatre~~ Reserve Fund, the Association may request assistance from the RDA through the use of funds in the RDA ~~Theatre~~ Reserve Fund for any alterations, improvements or additions to the Theatre or Site. In addition to the traffic and parking alterations reserved to the RDA in Section 39~~38~~, the RDA reserves the exclusive right to change, in any manner whatsoever, the number, appearance, dimension, and location of the walks, landscaping, parking and service areas on the Site. The RDA may use the RDA ~~Theatre~~ Reserve Fund for such changes to the Site.

58.~~57.~~ **Property of the RDA.** All improvements, additions, and alterations made to the Theatre or the Site by the Association shall become the property of the RDA and upon the expiration or termination of this Lease and Operating Agreement shall remain in, and be surrendered with, the Theatre or Site without disturbance or injury. Personal property, trade fixtures, and equipment of the Association shall remain the property of the Association and may be removed by the Association upon the expiration or earlier termination of this Lease and Operating Agreement, subject to restoration obligations set forth in Section 69~~68~~.

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

60.~~59.~~ **Electrical Wiring and Plumbing.** In addition to the utility connection provision of Section 38~~37~~, no change shall be made to any permanent electrical wiring or other utility serving the Theatre ~~as of the Effective Date of this Lease and Operating Agreement or at any time subsequent thereto~~ prior to written approval from the RDA. Any approved alterations shall be made by a properly licensed electrical contractor or electrician, or plumbing contractor or plumber. The Association may modify or install temporary wiring or lighting as may be necessary to stage productions in the Theatre, provided that such wiring or lighting is in compliance with all applicable codes and regulations.

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

62.~~61.~~ **Hazardous Waste.**

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

b. The Association shall comply with every applicable Law and Regulation regulating any Hazardous Substance found in or about the Theatre or Site, and shall not cause to occur upon, in, or about the Theatre or Site, or use the Theatre or Site to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. The Association shall provide the RDA with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence the Association receives from, or provides to, any governmental unit or agency in connection with the Association's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous substance in or about the Theatre or Site.

c. If the Association violates any of the terms of this Section concerning the presence or use of any Hazardous Substance or the handling or storing of hazardous wastes, the Association shall promptly take such action as is necessary to mitigate and correct the violation. If the Association does not act in a prudent and prompt manner, the RDA reserves the right, but has no obligation, to act in its place, to come onto the premises, and to take such action as the RDA deems necessary to ensure compliance or to mitigate the violation. If the RDA determines that the Association is in violation of any Law or Regulation, or that the Association's actions or inactions present a threat of violation or a threat of damage to the Theatre or Site, the RDA reserves the right to enter the Theatre or Site and take such corrective or mitigating action as the RDA deems necessary. All costs and expenses incurred by the RDA, where an actual violation had or would have occurred, shall become immediately due and payable by the Association upon presentation of an invoice therefor by the RDA.

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

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

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

g. In addition to all other indemnities provided in this Lease and Operating Agreement, and notwithstanding the expiration or earlier termination of this Lease and Operating Agreement, the Association agrees to defend, indemnify, and hold the RDA free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including, without limitation, cleanup or other remedial costs, and including attorneys fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation, arising from the existence or discovery of any

Hazardous Substance in or about the Theatre or Site resulting from a violation of the terms of this Section or the migration of any Hazardous Substance from the Theatre or Site to other property or into the surrounding environment that is the result of a violation of the terms of this Section by the Association whether (1) made, commenced, or incurred during the term of this Lease and Operating Agreement, or (2) made, commenced, or incurred after the expiration or termination of this Lease and Operating Agreement, if arising out of an event occurring during the term of this Lease and Operating Agreement. The indemnification provided in this Section shall survive the expiration or earlier termination of this Lease and Operating Agreement. Notwithstanding anything contained herein, this Section shall not require the Association to indemnify the RDA against the RDA's negligence.

h. The RDA expressly acknowledges and discloses that chemicals, fertilizers and other substances were used on the Site in connection with the historic usage of the Site as a Centerville City municipal facility and ballpark. The RDA hereby agrees, for a period not to exceed fifteen (15) years from the Effective Date of this Lease and Operating Agreement, to indemnify and hold the Association harmless against any and all costs and liability solely from the cleanup or remediation of environmental contamination from the leaking petroleum underground storage tanks (LUST) which was located on the Site, Facility ID #3000032, Release Site EIHK. It is expressly agreed and understood that this indemnity shall not indemnify the Association for any consequential damages whatsoever, or for anything other than the costs and liability for actual cleanup or remediation of contamination from the identified leaking petroleum underground storage tank. This indemnity and hold harmless provided for in this Section 62~~61~~(h) shall automatically expire fifteen (15) years from the Effective Date of this Lease and Operating Agreement. The RDA represents that its current board and staff employees have no knowledge of any other environmental contamination of the Site and no knowledge of any other environmental enforcement efforts or proceedings regarding the Site.

63.~~62.~~ RDA Right of Access.

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

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

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

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

a. Operate the Theatre in any manner in violation of the family values provisions as set forth in Section 48~~47~~ of this Lease and Operating Agreement, or for any purpose other than as set forth herein.

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

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

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

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

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

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

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

65.~~64.~~ **Insurance Coverage.** The Association, ~~prior to the time of the Association's first use of the Theatre as of Possession Date and thereafter~~ throughout the term of this Lease and Operating Agreement, shall maintain the following insurance coverage. All insurance policies required by this Section or this Lease and Operating Agreement shall comply with the Insurance Policy Requirements set forth in **Exhibit "C."**

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

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

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

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

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

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

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

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

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

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

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

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

66.~~65.~~ Indemnification.

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

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

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

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

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

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

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

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

i. The indemnity provisions contained herein shall survive the expiration or termination of this Lease and Operating Agreement.

67.~~66.~~ Remedies for Breach.

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

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

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

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

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

f. The provisions of this S~~s~~ection shall survive the termination of this Lease and Operating Agreement.

68.~~67.~~ Receivership and Foreclosure.

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

b. Upon foreclosure, judicial sale or disposition, or other involuntary assignment or transfer by an assignee for the benefit of creditors, receiver, trustee, examiner, custodian or other fiduciary of all or a substantial part of the Association's business operations, fixtures or equipment within or affecting the Theatre, or upon the occasion of additional events which effectively cause termination of the Association's rights or ability to operate the Theatre, the Association shall notify the RDA of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that an assignment or transfer of the Association's interest has or will take place, and the provisions of this Lease and Operating Agreement governing such assignment or transfer including those of Section 73~~72~~ shall apply.

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

69.~~68.~~ Termination. In the event of termination of the Lease and Operating Agreement, either voluntary or involuntary, the Association shall at its sole cost and expense remove all of its personal property, trade fixtures and other equipment and accessories owned by the Association from the Theatre and Site and repair any damages to the Theatre or Site caused by the Association's use of the Theatre and Site within thirty (30) days from the effective date of termination, normal wear and tear excepted. Any personal property, trade fixtures, equipment, or accessories remaining in the Theatre or on the Site longer than thirty (30) days after the effective date of termination shall be deemed abandoned and forfeited and may be removed and retained or disposed of or sold by the RDA. The Association shall be required to reimburse the RDA for any costs incurred by the RDA for such removal, disposal or sale of the Association's property, or for any costs incurred by the RDA to remedy any damages to the Theatre or Site caused by the Association. In the event of termination of the Lease and Operating Agreement for any reason, either voluntary or involuntary, the Association may retain any remaining funds in the

Association’s Operations Reserve Fund, but shall transfer and donate any remaining funds within the Association’s Maintenance Reserve Fund and Capital Reserve Fund to the RDA within thirty days from the effective date of termination. The RDA shall deposit all such funds from the Association to the RDA~~’s Theatre~~ Reserve Fund as more particularly described in Section 26~~25~~. The following Sections shall survive any termination of this Lease and Operating Agreement: Section 62~~61~~ (Hazardous Waste); Section 65~~64~~ (Insurance); Section 66~~65~~ (Indemnification); Section 67~~66~~ (Remedies); Section 68~~67~~ (Receivership and Foreclosure); Section 69~~68~~ (Termination); Section 79~~78~~ (Risks and Liabilities); and Section 81~~80~~ (Remedies at Law).

70.~~69.~~ **Damage, Destruction or Condemnation.** If, during the term of this Lease and Operating Agreement, the Theatre or any substantial portion of the Theatre or Site is damaged, destroyed or if title to or use of the Theatre is lost due to an exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation and acts constituting inverse condemnation, such that the Theatre is rendered unusable, or in case of emergency, which in the reasonable determination of the Association and the RDA prevents the Theatre from being used for Association performances, the Association may stage theatrical performances at a site other than the Theatre during the period the Theatre is not useable. In the event of an occurrence described herein, which is not caused by any act or omission of the Association, the Association's rental payments to the RDA shall be suspended during the period that the Theatre is not usable, unless and to the extent the Association is entitled to receive reimbursement for such payments through business interruption insurance or some other form of insurance. Any condemnation awards shall be paid to the RDA. Nothing in this Lease and Operating Agreement shall limit the right of the Association to any separate insurance or condemnation award made for the Association's loss of business, for the Association's relocation expenses, or with respect to the Association's equipment and personal property. The provisions set forth herein are in addition to the Force Majeure provisions set forth in Section 104~~103~~.

71.~~70.~~ **Notice of Casualty.** The Association shall give written notice (the "Notice of Casualty") to the RDA immediately upon the occurrence of any event of damage, destruction, or emergency as set forth in Section 70~~69~~ describing the nature and scope of any event described in Section 70~~69~~. Upon the occurrence of an event of substantial damage, destruction, or emergency, the RDA shall determine, in its sole discretion, whether to: (1) repair and/or reconstruct ("Reconstruct") the Theatre, or (2) terminate this Lease and Operating Agreement. The RDA shall give written notice to the Association, delivered within ninety (90) days after the RDA's receipt of the Notice of Casualty, of its determination. If the RDA elects to Reconstruct the Theatre pursuant to this provision, the RDA shall Reconstruct the Theatre to a Performance Ready condition within a reasonable time under the circumstances. Once the RDA elects to Reconstruct, it shall commence and complete such reconstruction work with due diligence. If the RDA determines to terminate this Lease and Operating Agreement, then it shall give written notice to the Association of the termination of this Lease and Operating Agreement, effective as of the date of such notice. The RDA shall not be liable to the Association or in breach if this Lease and Operating Agreement is terminated as a result of damage or destruction of the Theatre as provided herein.

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

To the Association:	Davis Performing Arts Association Attn: Executive Director 525 North 400 West Centerville, Utah 84014
With a Copy to:	Cathleen C. Gilbert P.O. Box 790 Bountiful, Utah 84011
To the RDA:	Redevelopment Agency of Centerville City Attn: Executive Director 250 North Main Street Centerville, Utah 84014
~~With a Copy to:~~	~~Randall S. Feil~~ ~~3748 Bountiful Blvd~~ ~~Bountiful, Utah 84010~~

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

74.~~73.~~ **Assignment by RDA.** The RDA shall have the right and the authority to assign its rights and obligations under this Lease and Operating Agreement, in whole or in part, to the extent permitted by law. The RDA shall provide the Association with thirty (30) days prior notice of any such assignment by the RDA.

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

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

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

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

79.~~78.~~ **Risks and Liabilities.** Except for the RDA's responsibility and obligations regarding the structural integrity of the Theatre and the replacement of the boiler and chiller associated with the HV-AC Systems as more particularly provided in Section 54~~53~~, by entering into this Lease and Operating Agreement, the RDA is not assuming any risks or liabilities for the maintenance or operation of the Theatre or Site, which risks and liabilities shall be solely and separately borne by the Association. The Association shall take all necessary and prudent steps as required by law or based on reasonable care to keep the Theatre and Site in a safe condition and to protect the public, employees and invitees of the Theatre safe from harm. In no event shall the RDA be liable to the Association for any consequential, indirect, liquidated or special damages, or lost revenue or lost profits arising out of this Lease and Operating Agreement and the lease of the Theatre and Site to the Association.

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

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

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

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

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

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

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

87.~~86.~~ **Construction of Agreement.** This Lease and Operating Agreement is the result of the joint efforts and negotiations of the parties hereto, and no single party is the author or drafter hereof. The parties assume joint responsibility for the form and content of this Lease and Operating Agreement and agree that this Lease and Operating Agreement shall be interpreted as though each of the parties participated in the composition of this Lease and Operating Agreement ~~87. Section Headings. The section headings in this Lease and Operating Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the~~

~~scope or intent of the section to which they apply~~.

88.~~87.~~ **Section Headings.** The section headings in this Lease and Operating Agreement are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the section to which they apply.

89.~~88.~~ **Relationship of Parties.** It is understood that this Lease and Operating Agreement is a contract that has been negotiated and voluntarily entered into by the parties. Nothing contained in this Lease and Operating Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture between the parties or to impose a trust, partnership or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Lease and Operating Agreement. In no event shall the employees, agents and servants of the Association be considered to be the employees, agents or servants of the RDA, and in no event shall the employees, agents and officers of the RDA be considered to be the employees, agents or officers of the Association.

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

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

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

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

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

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

96.~~95.~~ **Nonprofit Status.** The parties expressly acknowledge that the Association is a Utah non-profit corporation. The Association has filed its articles of incorporation with the Utah Department of Commerce and has been duly formed and created under applicable laws of Utah. ~~The Association is in the process of applying for, but has not yet secured, its federal income tax exemption status and determination letter from the Internal Revenue Service ("IRS"). As a condition of this Lease and Operating Agreement, the Association shall obtain its federal income tax exemption status from the IRS prior and as a condition precedent to Possession of the Theatre. In the event the Association fails to obtain its federal income tax exemption status within thirty (30) days from the date the Theatre is Complete and Performance Ready as defined in Section 15, the RDA shall have the option to void and terminate this Lease and Operating Agreement In the event this Agreement is voided and terminated by the RDA under the circumstances provided herein, the RDA shall not be liable for any damages or claims arising from such voiding or termination of the Agreement.~~ The Association shall maintain at all times during the Term of this Lease and Operating Agreement its status as a valid Utah nonprofit corporation in good standing and shall perform its obligations and take such actions as may be necessary for the Association to obtain and remain a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code or such successor statutes as may be applicable, including all financial reporting requirements.

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

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

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

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

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

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

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

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

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

~~**105. Construction Cost Obligation.** The Association shall pay FIVE HUNDRED THOUSAND DOLLARS ($500,000) to the RDA as a contribution to costs associated with the construction of the Theatre ("Construction Cost Obligation"). It is anticipated by the parties that the Association shall pay the Construction Cost Obligation to the RDA on an incremental basis as the funds and/or donations are available; provided, the Association shall pay the Construction~~

~~Cost Obligation in full by June 30, 2015. A portion of the Construction Cost Obligation shall be paid by the Association with funds obtained through naming rights campaign donations in accordance with the provisions of Section 106. In-kind donations that the Association obtains for the Theatre that actually reduce construction costs may be credited towards the Construction Cost Obligation to the extent such credit is approved by the RDA.~~

106. Naming Rights.

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

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

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

(d~~c~~) Subject to the terms and conditions set forth herein, the Association shall receive all proceeds and donations obtained through naming rights agreements. Notwithstanding anything herein to the contrary, naming rights funds shall be considered donations required to be included in the calculation of Annual Revenues, as used in this Agreement, ~~for purposes of this Lease Agreement, including, but not limited to, the calculation of revenue and annual profits, all proceeds and donations obtained by the Association through naming rights agreements shall be deemed a "donation"~~ and shall not be deemed an "earmarked donation."

(d) All proceeds and donations obtained by the Association through naming rights agreements may be retained by the Association; provided, the Association is able to make its Total Target Annual Contribution to the Maintenance Reserve Fund. ~~shall be distributed in accordance with the following order of priority:~~

~~(1) Until and unless the Association's Construction Cost Obligation set forth in Section 105 is paid in full, all proceeds and donations from naming rights agreements entered into by the Association shall be paid to the RDA and credited to the Association's Construction Cost Obligation. Such amounts shall be paid to the RDA within a reasonable time after receipt of the same by the Association.~~

~~(2) Once the Asso ciation has paid its Construction Cost Obligation in full to the RDA, all proceeds and donations from the naming rights agreements entered into by the Association shall be allocated equally to the Association's Operations Reserve Fund and Maintenance Reserve Fund until either of such funds is fully funded to the maximum fund balance as more particularly provided in Section 22 and Section 23, respectively. Once and so long as either of such funds is fully funded to its maximum fund balance, all proceeds and donations from the naming rights agreements entered into by the Association shall be allocated to the remaining fund, until fully funded.~~

~~(3) Once and so long as the Association's Operations Reserve Fund and Maintenance Reserve Fund are fully funded to the maximum fund balance, all proceeds and donations from the naming rights agreements entered into by the Association shall be allocated to the RDA's Theatre Reserve Fund as more particularly described in Section 25, unless otherwise approved by the RDA.~~

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

"RDA"
Redevelopment Agency of Centerville City

By: ______________________________
Clark A. Wilkinson, ~~Ronald G. Russell,~~ Chair

ATTEST:

____
Secretary

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

By: ______________________________
Its: ______________________________

ATTEST:

____
Secretary

Approved as to Form:

Administrative Control Board

By: ______________________________
Its: ________________________________

RDA ACKNOWLEDGMENT

STATE OF UTAH)
:ss
COUNTY OF DAVIS)

On the _____ day of _________________~~May~~, 2019, ~~2009,~~ personally appeared before me Clark A. Wilkinson, ~~Ronald G. Russell,~~ who being duly sworn by me did say that he is the Chairperson of the **REDEVELOPMENT AGENCY OF CENTERVILLE CITY**, a community development and renewal agency and public body organized and existing under the Limited Purpose Local Government Entities-Community Development and Renewal Agencies Act of the State of Utah, and that the forgoing instrument was signed on behalf of said Agency by authority of its Board and said Chairperson acknowledge to me that said Agency executed the same.

____
Notary

My Commission Expires: Residing at:

_________________________ ______________________________________

ASSOCIATION ACKNOWLEDGMENT

STATE OF UTAH)
:ss
COUNTY OF DAVIS)

On the _____ day of ___________________~~May~~, 2019, ~~2009,~~ personally appeared before me ___________________, who being duly sworn by me did say that (s)he is the ________________________ of the **DAVIS PERFORMING ARTS ASSCIATION**, a Utah non-profit corporation, and that the forgoing instrument was signed on behalf of said non-profit corporation by authority of a resolution of its Board of Directors and that said non-profit corporation executed the same.

____
Notary

My Commission Expires: Residing at:

_________________________ ______________________________________

EXHIBIT "A"

SITE DESCRIPTION

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

EXHIBIT “B”

CENTERVILLE CORPORATE PARK
SUBDIVISION PLAT

AND

CENTERVILLE CORPORATE PARK (AMENDED)
SUBDIVISION PLAT

EXHIBIT "C"

INSURANCE POLICY REQUIREMENTS

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

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

All insurance policies will comply with the following:

-30 day notification cancellation provision

-Bests' rating of at least A- XI

-Carriers must be admitted and approved to conduct business in Utah

Commercial General Liability

Form: ISO CG 0001, edition date 2001 or newer, or its equivalent

- Written on an occurrence basis.

-Include a waiver of subrogation.

-Coverage will be primary. Any insurance maintained by the RDA or Centerville City will be excess of the Associations insurance coverages.

Limits: $5,000,000 per occurrence/aggregate with a per location aggregate endorsement or $5,000,000 per occurrence $10,000,000 aggregate without one.

Additional Insured Endorsement to include the RDA and Centerville City and its officers, employees, representatives and agents as additional insureds, on primary basis.

<u>Automobile Liability (if applicable)</u>

Limits: $2,000,000 per occurrence

Endorsements: To include coverage for owned, hired and non-owned vehicles

<u>Workers' Compensation</u>

Utah Statutory Coverage

Employers Liability Limits: $2,000,000

<u>Business Interruption</u>

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

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

<u>Property Coverage</u>

Limit: Replacement Cost

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

Endorsements: No coinsurance clause

Lease and Operating Agreement for Performing Arts Center
Summary of Proposed Amendments (2019)

The intent of the proposed amendments is to address the following agreed upon goals:

- Eliminate outdated provisions regarding construction and financing
- Clearly identify maintenance obligations
- Appropriately allocate funding for maintenance obligations
- Ensure sufficient funds to cover maintenance obligations
- Ensure long-term sustainability of facility
- Ensure long-term funding of reserve funds
- Ensure cash flow liquidity for operations
- Ensure quality entertainment that contributes to community
- Eliminate arbitrary limits on reserve funds
- Provide incentives for fundraising and naming rights
- Provide more flexibility with community outreach and academy operations
- Plan and allow for capital improvements

The proposed amendments are summarized as follows:

- Update recitals
- Section 2 – eliminate provisions regarding construction of facility
- Section 4 - soften exclusivity clause
- Section 5 - provide for new 10 year term (with optional additional 10 year term)
- Sections 6-10 - update references to governing document amendments
- Sections 13-17 – eliminate outdated provisions on construction of facility
- Section 12 – eliminate reference to financing of facility
- Section 13 – eliminate reference to variable rent
- Section 14 – update provisions regarding rent and eliminate term "base rent"
- Section 15 – eliminate variable rent provisions
- Section 16 – new provision regarding reserve funds
- Section 17 – new provision regarding priority allocations to reserve funds
- Section 18 – new provision and definition of "replacement value"
- Section 19 – new provision describing types of maintenance and repair
- Section 20 - revisions to operations reserve fund (ORF)
- Section 21 – new provision establishing minimum target balance for ORF
- Section 22 – revisions to maintenance reserve fund (MRF)
- Section 23 – new provision establishing target balances and minimum contributions for MRF
- Section 24 – revisions to capital reserve fund (CRF)
- Section 25 – revisions to rent proceeds to eliminate references to base rent and variable rent

- Section 26 – revisions to RDA reserve fund (previously theatre reserve fund)
- Section 27 – new provision establishing target balances for RDA RF
- Section 28 – revisions to flow of funds to eliminate reference to annual profit and variable rent
- Section 29 – revisions to earmarked donations to eliminate reserve fund maximum references
- Section 30 – eliminate reference to annual profit and variable rent
- Section 31 – revise excessive salary provision to allow salaries not to exceed 110% of average
- Section 33 – revise and move minimum MRF contribution to new section 23
- Section 35 – eliminate quarterly financial reporting
- Section 36 – eliminate references to annual profits and variable rent
- Section 39 – update references to amended subdivision plat
- Section 40 – update references to amended plat and new lot numbers for parking obligations
- Section 56 - allow for use of flames and pyrotechnics under certain circumstances
- Section 60 – eliminate outdated references to effective date of agreement
- Section 65 – eliminate outdated reference to possession date, base rent, and variable rent
- Section 87 – eliminate duplicate Section Headings clause
- Section 96 – eliminate outdated language regarding nonprofit status application
- Section 105 – eliminate outdated provision on construction cost obligation
- Section 106 – revise naming rights provisions to allow association to retain funds
- Exhibit B – revise to add amended subdivision plat
- Throughout- revise ACB involvement and voting
- Throughout – change reference from Theatre Reserve Fund to RDA Reserve Fund
- Throughout – eliminate references to base rent, variable rent, and annual profits
- Throughout – use consistent reference to "Lease and Operating Agreement"
- Throughout – update and correct statutory code references
- Throughout – revise numbering and internal section reference

* Section references refer to new proposed numbering (unless the entire section is being eliminated, then the old section number is referenced)

Operations Reserve Fund Flow Chart

February 28, 2019

Current Estimated
Annual Revenues (AR)
$2,000,000

Operations Reserve Fund
(ORF)

Minimum Target Balance
10% AR
$200,000

Minimum Target Balance
to be verified annually with Audit

Must give 30 day notice of use of funds below the Minimum Target Balance

If go below the Minimum Target Balance must present plan to RDA as to how will replenish the fund

No Maximum
But must fund MRF to Annual Target Contribution
before contributing to ORF or CRF

Maintenance Reserve Fund and RDA Reserve Fund Flow Chart

February 28, 2019

Current Estimated
Replacement Value of Facility (RV)
$15,000,000

Recommended Annual Maintenance Cost Allocation
1.5% of RV
$225,000

Recommended Annual Preventative Maintenance 0.5% of RV (0.31%) $75,000	Recommended Annual Unscheduled Maintenance 0.5% of RV (0.28%) $75,000	Recommended Annual Renewal and Replacement 0.5% of RV (1.08%) $75,000
Scheduled taskes that sustain a component's level of service during a prescribed lifetime. These tasks are usually done frequently and require relatively constant amount of labor and materials.	Service calls, emergency response, and other tasks that cannot be individually anticipated.These tasks tend to consume a steady level of annual facility resources.	Component overhaul or replacement tasks. These tasks extend a component lifetime and reset the scheduled preventative maintenance. These tasks tend to be expensive, infrequent, and require specialized expertise and equipment.
AOB Total over 10 year Lease $750,000	MRF Total over 10 year Lease $750,000	RDA RF Total over 10 year Lease $750,000
Minimum Annual Contribution 0.5% RV $75,000 (Paid with AOB)	Minimum Annual Contribution 1% Annual Revenues (AR) $20,000 (Paid annually as Minimum MRF)	Minimum Annual Contribution 0.5% RV $82,000 (Paid with Rent)
	Total Target Contribution 0.5% RV $75,000 (Paid before funding ORF or CRF)	
Total Target Balance Expended Annually $0	Total Target Balance 2.5% RV $375,000	Total Target Balance 5% RV $750,000
Minimum Target Balance Expended Annually $0	Minimum Target Balance 1% RV $150,000	Minimum Target Balance 2% RV $300,000
Must be funded annually with AOB	No Maximum Must be funded annually before contributing to ORF or CRF	No Maximum Must be funded annually with Rent

The Whitestone Facility Maintenance And Repair Cost Reference 2009-2010

Fourteenth Annual Edition

Douglas Abate
Michael Towers
Richard Dotz
Luca Romani

6. Definitions and Methods

In this chapter we define key terms and describe the methods and assumptions behind Whitestone statistics. The discussion is loosely organized by chapter, with the exception of a number of terms that are used throughout the book and need to be defined at the outset.

Maintenance and repair (M&R) is defined as the collection of activities necessary for keeping an asset in good working order. Included in this definition are regularly scheduled adjustments and inspections, preventative maintenance tasks, emergency response and service calls for minor repairs, and the periodic major repair or replacement of asset components. Other tasks associated with facility operation such as custodial services, landscaping, waste disposal, and the provision of central utilities are not included in our definition of M&R.

M&R activities can be divided into three types:

Preventative maintenance (PM) and minor repair consists of scheduled tasks that sustain a component's level of service during a prescribed lifetime. These tasks are usually done frequently and require a relatively constant amount of labor and materials. In generating the cost profiles in Chapter 2, we assume that the facility staff does PM and minor repairs.

Unscheduled maintenance consists of service calls, emergency response, and other tasks that cannot be individually anticipated. Like PM and minor repair, these tasks tend to consume a steady level of annual facility resources. In estimating asset cost profiles, we assume that the facility staff is responsible for unscheduled maintenance. The details of estimating unscheduled maintenance are discussed later in this chapter.

Renewal and replacement consists of component overhaul or replacement tasks. These are tasks that extend a component lifetime, and reset the schedule of PM and minor repair tasks. These tasks tend to be expensive, infrequent, and require specialized expertise and equipment. In generating model cost profiles, we assume this work is done by contract.

Maintenance and repair does not include the collection of related costs often considered capital expenditures. The distinction is summarized neatly in a taxonomy that has been adopted in U.S. Federal accounting language. **Sustainment** costs include the three types of costs presented in this book, while **Restoration and Modernization** costs are those required to restore or improve the productive capability of an asset.[9]

Table 6-1
Annual Facility Requirements

Sustainment:	Preventative maintenance & minor repair
	Unscheduled maintenance
	Renewal & replacement
Restoration & Modernization:	Replacement due to obsolescence
	Change in use modifications
	Policy mandated retrofits
	Catastrophic damage
	Repairs from neglect
	Long-lived components
Operations:	Custodial
	Energy
	Grounds
	Management
	Pest Control
	Refuse
	Road Clearance
	Security
	Telecommunications
	Water/Sewer

In addition to Sustainment and Restoration, **Operations** makes up a third component of the cost of facilities. M&R (Sustainment) is often reported as part of operations costs, particularly in commercial charts of accounts. The *Whitestone Facility Operations Cost Reference* includes M&R costs as well as the individual operations costs shown in Table 6-1. Note that this table focuses only on annual facility cost flows and does not include the one-time construction or disposal costs that would be part of a full life-cycle analysis.

[9] For more on the distinction between sustainment and restoration & modernization, see Whitestone Report: A Standard Terminology for Describing Maintenance and Repair Requirements. Santa Barbara: Whitestone Research, July 2003. For an in depth discussion of restoration & modernization costs estimation, see Lufkin, Desai, and Janke "Estimating the Restoration and Modernization Costs of Infrastructure and Facilities," Public Works Management & Policy, July 2005.

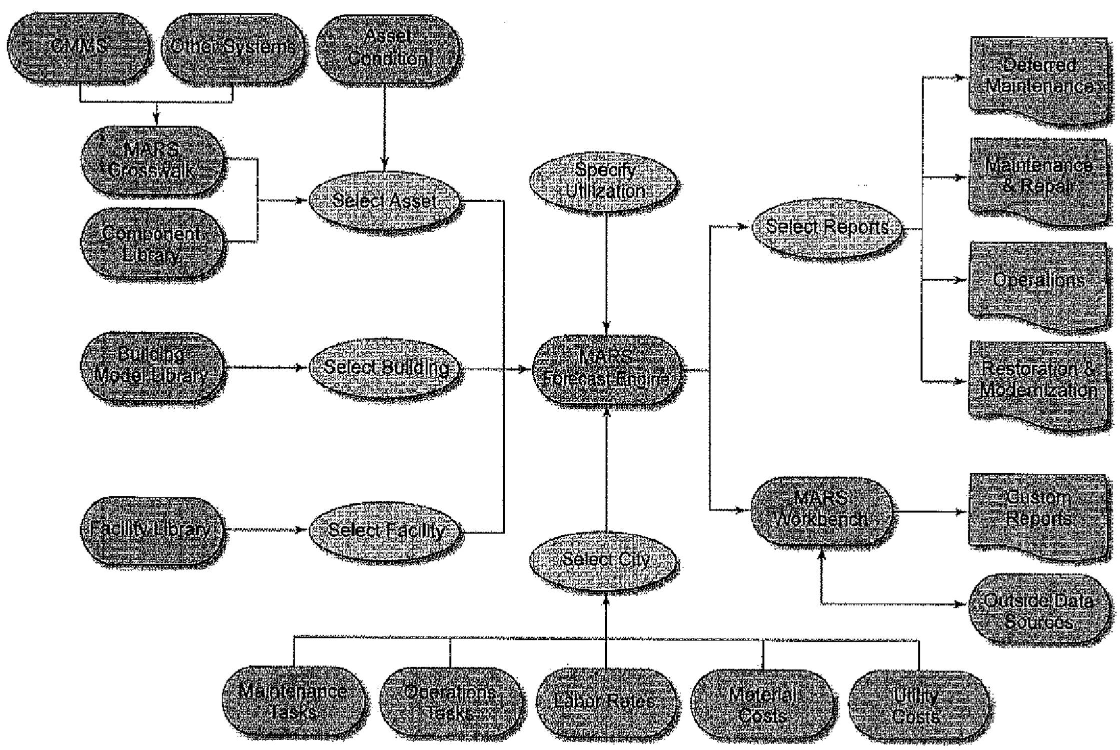
A final cost is incurred at the end of the facility service life. While not considered an annual expense, the costs of disposal, or more precisely Transition and Disposition (T&D), are considerable and should be included in accounting for full costs over the facility life-cycle. We are currently working to develop a full catalog of T&D costs for all Whitestone asset types.[10]

Chapter 2: M&R Cost Profiles

The profiles presented in Chapter 2 provide a comprehensive estimate of M&R costs over a 50-year period, beginning with the completion of construction. Profiles were estimated for 72 common asset types, a sample intended to reflect the diversity of commercial and institutional inventories, and provide cost analysts with a useful set of models. Selection of components was based on surveys and staff judgment of industry design practices. Particular care was taken to select HVAC equipment appropriate for each asset's estimated heating and cooling loads.

We assume most model titles are self explanatory, with one possible exception—the Data Center, Tier III. Data centers are characterized in terms of the redundancy and independence of their power supplies, and their mechanical and computer equipment. A Tier III data center has both redundant components and multiple independent distribution paths, with a single path serving the computer equipment at any one time. A Tier IV data center has similar redundancies, with multiple independent distribution paths simultaneously serving the computer equipment.[11]

Figure 6-1
MARS Cost Forecast Model



The estimation of each profile requires two basic inputs: the facility location (which establishes local labor rates and the frequency of climate-specific maintenance tasks), and an inventory of asset components. The component inventory includes those components required for a safe and comfortable environment consistent with asset usage. Not included in the inventories are furniture, fixtures, appliances, or specialized equipment; notable examples include movable partitions in office buildings, restaurant

---

[10] *Infrastructure Cost Support for NNSA Enterprise Modeling: Final Report of findings.* Prepared for National Nuclear Security Administration by Whitestone Research, February 2, 2009.
[11] Koomey, J. *A Simple Model for Determining True Total Cost of Ownership for Data Centers.* Santa Fe, MN: Uptime Institute, 2007

equipment, gymnasium seating, bowling lanes and pin-setting equipment. Certain specialized equipment is included in component inventories for the jail and hospital models.

Also not included are components that typically require little or no major maintenance within 50 years, such as foundations and electrical wiring.[12] No explicit provision is made for the costs of remediation measures such as asbestos or lead paint removal.

The actual estimation of M&R costs is done with the MARS Facility Cost Forecast System, a software tool developed by Whitestone Research and now in its eighth version. The estimation process (shown in Figure 6-1) draws from a relational database that includes asset templates, component-related maintenance tasks, in-house shop rates and contract trade rates, and material and equipment costs. Output from the MARS system is a detailed year-by-year forecast of M&R tasks and costs presented at various levels of aggregation, as shown in the Chapter 2 profiles. There are over 100 pre-defined reports for the user to select from and, with the MARS Workbench option, the user is free to define Ad Hoc queries and additional reports. MARS is used to generate similar profiles for operation costs in the *Whitestone Facility Operations Cost Reference*.

Note that a new module for estimating Restoration and Modernization cost has been added to the latest edition of MARS (version 8.5)

MARS MARS is an assessment and budgeting tool currently used by many government agencies, corporations, and large individual facilities. Technical details, case studies, and ordering information are available at www.whitestoneresearch.com.

Accuracy of the Whitestone cost profiles. Ideally, the accuracy of Whitestone forecasts could be measured by direct comparison with actual M&R costs. Unfortunately, data strictly comparable in detail and definition is not available. Information that is available from industry surveys tends to address a broad collection of facility services, rather than focusing on M&R. Moreover, these surveys tend to emphasize operating costs and revenues, with little information on capital expenditures. This makes it difficult to get a complete view of M&R costs, as many major repairs are defined as capital improvements rather than operating expenses. To the extent this is true, M&R costs estimates derived from such surveys can understate actual costs.[13]

Studies of deferred maintenance have shown that the MARS system produces estimates close to those made by traditional condition inspections. An experiment by the Department of Energy found that MARS-based estimates of deferred maintenance were within 6 percent of costs determined by physical inspection, but required only a fraction of the costs.[14]

Sensitivity of the estimated profiles. In Table 6-2, the 2 Story Office Building model (shown in Chapter 2) is used to demonstrate the sensitivity of Whitestone estimates to a variety of alternative assumptions and MARS model settings.

Changing individual components can have an appreciable affect on average costs, and changing combinations of components can substantially alter M&R requirements. Substituting terrazzo flooring for carpeting, for example, can reduce M&R costs by an estimated 9 percent over a 50-year period. Type of asset use can also affect M&R costs, both in terms of the number and type of components, and the necessary frequency of repair. An office building with high lighting requirements would require M&R expenditures an estimated 8 percent greater than those for the original asset. The same office building with more frequent wall repainting—typical of many public assets, for example—would require expenditures an estimated 7 percent greater than the model asset.

---

[12] Slab on grade for structures and heavy gauge wire in data centers are exceptions.

[13] M&R costs reported by one survey (*2008 BOMA Experience Exchange Report*) averaged $2.58 per rentable square foot for a sample of 52 office buildings in downtown Washington, D.C. The use of survey-based cost data is reviewed in *Whitestone Report: Notes on M&R Cost Benchmarks*. Santa Barbara: Whitestone Research, August 1996.

[14] See *Parametric Estimation of Deferred Maintenance, Phase 1 Prototype at Lawrence Livermore National Laboratory*. Prepared for the National Nuclear Security Administration by Whitestone Research and Jacobs Facilities, May 2004. Also see *Whitestone Report: Current and Future M&R Funding Needs for a Historic School*. Santa Barbara: Whitestone Research, July 2002.

Public Library, 3 Story

Gross Square Feet:	60,000
Height in Ft:	36
Exterior:	Concrete
Floor coverings:	Finished Concrete, Quarry Tile, Carpet
HVAC:	Chilled Water, Gas Boiler, Multizone Air
Capacity:	N/A
Occupancy:	1,080
Replacement Cost:	$13,509,303

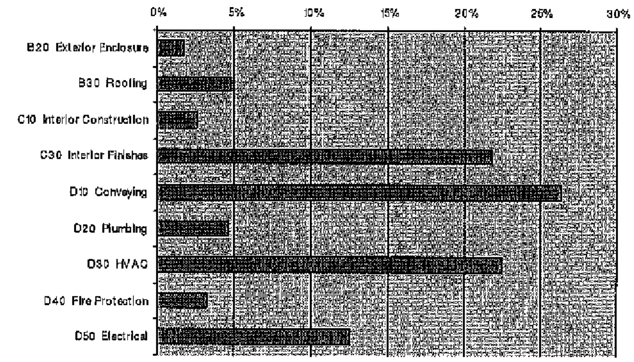
Components (Continued on Page 156)

Uniformat / Component	Quantity	Units
B20 Exterior Enclosure		
Concrete, Painted, Exterior, 1st Floor	5750	Sq Ft
Concrete, Painted, Exterior, 2nd Floor	5750	Sq Ft
Concrete, Painted, Exterior, 3rd+ Floor	5750	Sq Ft
Aluminum Fixed Window, 24 sf, 1st Floor	50	Each
Aluminum Fixed Window, 24 sf, 2nd Floor	40	Each
Aluminum Fixed Window, 24 sf, 3rd+ Floor	40	Each
Aluminum Frame, Fully Glazed, Exterior Door	4	Each
Steel Single 12'x12', Painted, Roll-up Door	1	Each
Steel, Painted, Exterior Door	6	Each
B30 Roofing		
Built-up Roof	20000	Sq Ft
C10 Interior Construction		
Toilet Partitions, Painted Metal, Overhead Braced	21	Each
Wood, Solid Core, Painted, Interior Door	48	Each
Wood, Solid Core w/ Safety Glass, Painted, Interior Door	24	Each
C30 Interior Finishes		
Concrete Block, Painted, Interior Wall Finish	1200	Sq Ft
Sheetrock, Unstippled, Interior Wall Finish	36590	Sq Ft
Carpet, Nylon 20 oz., High Traffic	45000	Sq Ft
Concrete, Painted Flooring	3000	Sq Ft
Quarry Tile Flooring	12000	Sq Ft
Acoustical Tile, Dropped Ceiling	57000	Sq Ft
Metal, Painted Ceiling	3000	Sq Ft
D10 Conveying		
Elevator, Hydraulic, 2,500 lbs, 3-5 Floor, 200 fpm	2	Each
Escalator, 16 ft rise, 100 fpm	4	Each
D20 Plumbing		
Drinking Fountain, Refrigerated	12	Each
Lavatory, Vitreous China	24	Each
Service Sink, Iron, Enamel	3	Each
Tankless Water Closet	21	Each
Urinal, Vitreous China	3	Each
Circulator Pump, 1/2 HP, Cold Water	1	Each
Circulator Pump, 1/2 HP, Hot Water	1	Each
Pipe & Fittings, 3/4" Copper, Cold Water	2.1	K Ln Ft
Pipe & Fittings, 3/4" Copper, Hot Water	0.9	K Ln Ft
Pipe & Fittings, 2" Copper, Cold Water	2.6	K Ln Ft
Pipe Insulation, Fiberglass, Cold Water	2.4	K Ln Ft
Pipe Insulation, Fiberglass, Hot Water	1.4	K Ln Ft
Water Heater, Gas/Oil, 130 Gph	1	Each
Backflow Preventer, 4"	1	Each
Pipe & Fittings, 6" Cast Iron	1	K Ln Ft
Pipe & Fittings, 10" Cast Iron	0.3	K Ln Ft
Pipe & Fittings, 4" PVC	0.5	K Ln Ft
Roof Drain, 4-6"	8	Each
D30 HVAC		
Pipe & Fittings, 4" Steel, Gas	1.3	K Ln Ft
Chemical Feed System	1	Each
Circulation Pump, 5 HP, Hot Water	2	Each
Expansion Tank, 100 Gal.	2	Each
Gas Boiler, 2,000 Mbh	1	Each
Chiller, Reciprocal Water-Cooled Hermetic, 100 Ton	2	Each
Circulation Pump, 5 HP, Chiller & Condenser Water	2	Each
Air Handler, Multizone, 25,000 Cfm	3	Each
Duct Insulation, Fiberglass Blanket	10238	Sq Ft
Ductwork	15280	Lbs
Exhaust Fan, Ceiling, 200-500 Cfm	4	Each
HVAC Control Panel	1	Each
D40 Fire Protection		
Fire Alarm Control Panel	1	Each
Fire Sprinkler Head	462	Each
Fire Sprinkler System	1	Each
Fire Extinguisher	30	Each
D50 Electrical		
Distribution Switch, Fused, <600 V	8	Each
Main Switchgear, <1,200 Amp.	1	Each
Motor Starter, 5-20 HP, <600 V	5	Each
Motor Starter, 21-50 HP, <600 V	1	Each
Motor Starter, 51-75 HP, <600 V	2	Each
Secondary Transformer, Dry, 150 kVA	4	Each
Exit Lighting Fixture, w/ Battery	16	Each
Fluorescent Lighting Fixture, 160 w	750	Each
Receptacle, 120 V, 15 Amp.	800	Each
Wiring Device, Switch	150	Each
Annunciation Panel	1	Each

50-Year M&R Cost Summary

Task Type	50 Year Total Cost	Annual Cost per GSFT	Annual Cost as % of Replacement
PM & Minor Repair	$3,554,521	$1.18	0.53%
Unscheduled Maintenance	$1,515,897	$0.51	0.22%
Renewal & Replacement	$6,294,236	$2.10	0.93%
Total	**$11,364,654**	**$3.79**	**1.68%**

Distribution of M&R Costs



Thirty Most Costly M&R Tasks

M&R Task	Task Cost*	Pct.**
Replace Carpet, Nylon 20 oz., High Traffic	27.17	16.6%
Maintain Escalator, 16 ft rise, 100 fpm	23.51	14.3%
Maintain Elevator, Hydraulic, 2,500 lbs, 3-5 Floor, 200 fpm	11.29	6.9%
Replace Air Handler, Multizone, 25,000 Cfm	7.90	4.8%
Renovate Elevator, Hydraulic, 2,500 lbs, 3-5 Floor, 200 fpm	7.58	4.6%
Refinish Sheetrock, Unstippled, Interior Wall Finish	5.95	3.6%
Replace Chiller, Reciprocal Water-Cooled Hermetic, 100 Ton	5.74	3.5%
Replace Ballast & Lamps, Fluorescent Lighting Fixture, 160 w	4.81	2.9%
Replace Quarry Tile Flooring	4.45	2.7%
Replace Fluorescent Lighting Fixture, 160 w	4.39	2.7%
Maintain Chiller, Reciprocal Water-Cooled Hermetic, 100 Ton	3.67	2.2%
Place New Membrane Over Existing, Built-up Roof	3.66	2.2%
Repair Chiller, Reciprocal Water-Cooled Hermetic, 100 Ton	3.38	2.1%
Replace Membrane, Built-up Roof	3.17	1.9%
Maintain Chemical Feed System	3.10	1.9%
Inspect & Test Gas Boiler, 2,000 Mbh	2.96	1.8%
Maintain Air Handler, Multizone, 25,000 Cfm	2.75	1.7%
Replace Batteries & Check Operation, Smoke Detector	2.39	1.5%
Repair Carpet, Nylon 20 oz., High Traffic (2% of Carpet)	1.72	1.0%
Test Fire Sprinkler Head	1.31	0.8%
Refinish Concrete, Painted, Exterior, 3rd+ Floor	1.04	0.6%
Maintain Built-up Roof	1.01	0.6%
Check Operation, Heat Detector	.99	0.6%
Replace Wood, Solid Core, Painted, Interior Door	.96	0.6%
Replace Wood, Solid Core, Painted, Interior Door Locks	.95	0.6%
Replace Smoke Detector	.91	0.6%
Replace Drinking Fountain, Refrigerated	.90	0.5%
Replace Pipe & Fittings, 2" Copper, Cold Water (20% of Pipe)	.84	0.5%
Maintain Fire Sprinkler System	.79	0.5%
Refinish Concrete, Painted, Exterior, 2nd Floor	.78	0.5%

*Task cost ($2009) per GSFT over 50 years.

**Percent of total M&R costs.

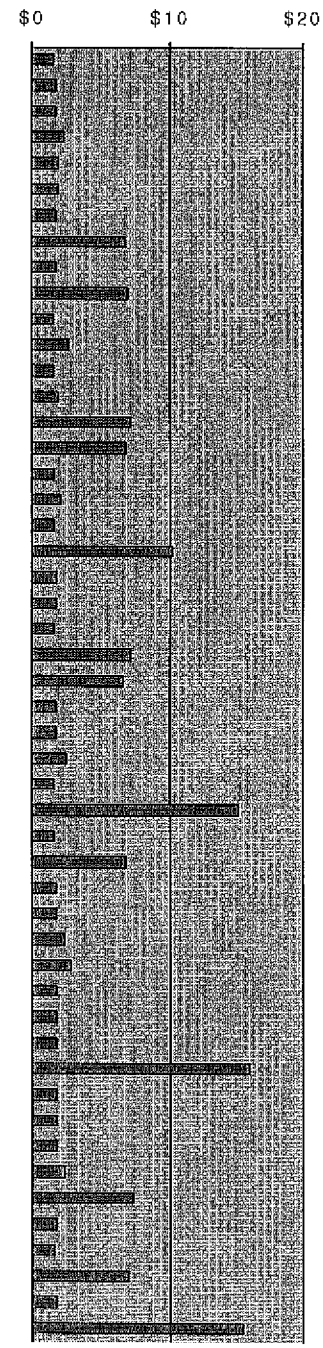
Note: For alternative locations use the Local Indexes shown in Chapter 3.

Cost per GSFT by System

Asset Age	Exterior Closure	Roofing	Interior Constrution	Stairways	Interior Finishes	Conveying Systems	Plumbing	HVAC Systems	Fire Protection	Electrical	Equipment	Site Improvements	Total per GSFT
1		.04				.86	.05	.45	.06	.17			1.63
2		.04			.09	.86	.12	.45	.06	.17			1.80
3		.04				.86	.05	.45	.06	.23			1.69
4		.04	.03		.66	.86	.12	.45	.06	.17			2.40
5	.01	.06	.11			.86	.08	.46	.08	.22			1.90
6		.04			.09	.86	.12	.45	.06	.23			1.85
7		.04				.86	.07	.52	.06	.17			1.73
8		.04	.03		5.10	.86	.13	.45	.06	.17			6.84
9		.04			.05	.86	.05	.45	.06	.23			1.74
10	.55	.06	.47		.12	.86	.47	1.79	.51	2.14			6.98
11		.04				.86	.05	.45	.06	.17			1.63
12	.01	.04	.03		.66	.86	.21	.46	.20	.23			2.71
13		.04				.86	.05	.45	.06	.17			1.63
14		.04			.09	.86	.15	.53	.06	.17			1.89
15	.03	1.89	.11		.10	.86	.07	3.33	.11	.68			7.19
16		.04	.03		5.10	.86	.13	.45	.06	.17			6.84
17		.04				.86	.06	.45	.08	.17			1.66
18		.04			.14	.86	.12	.45	.06	.39			2.08
19		.04				.86	.05	.45	.06	.17			1.63
20	.60	.06	.77		.73	.86	.57	3.24	.49	2.95			10.27
21		.04				.86	.07	.52	.06	.23			1.78
22		.04			.09	.86	.13	.45	.08	.17			1.83
23		.04				.86	.05	.45	.06	.17			1.63
24	.01	.04	.03		5.10	.86	.22	.46	.20	.23			7.15
25	.15	.06	.11		.09	4.37	.75	.66	.06	.50			6.76
26		.04			.09	.86	.12	.45	.06	.17			1.80
27		.04			.05	.86	.05	.45	.06	.23			1.74
28		.04	.03		.66	.86	.15	.53	.06	.17			2.50
29		.04				.86	.06	.45	.08	.17			1.66
30	.57	3.17	.47		.22	.86	.48	5.58	.54	3.33			15.23
31		.04				.86	.05	.45	.06	.17			1.63
32		.04	.03		5.10	.86	.13	.45	.06	.17			6.84
33		.04				.86	.05	.45	.06	.23			1.69
34		.04			.09	.86	.13	.45	.08	.17			1.83
35	.05	.06	.11			.86	.58	.46	.06	.22			2.41
36	.01	.04	.03		.71	.86	.16	.46	.20	.39			2.88
37		.04				.86	.10	.52	.06	.17			1.75
38		.04			.09	.86	.07	.45	.06	.17			1.74
39		.04				.86	.10	.45	.06	.23			1.74
40	.59	.06	1.75		5.17	.86	.42	3.44	.49	3.23			16.00
41		.04				.86	.11	.45	.08	.17			1.71
42		.04			.09	.86	.10	.45	.06	.23			1.83
43		.04				.86	.10	.45	.06	.17			1.68
44		.04	.03		.66	.86	.07	.53	.06	.17			2.42
45	.04	1.89	.11		.15	.86	.26	3.33	.11	.68			7.44
46		.04			.09	.86	.08	.45	.08	.17			1.78
47		.04				.86	.10	.45	.06	.17			1.68
48	.01	.04	.03		5.10	.86	.16	.46	.20	.23			7.09
49		.04				.86	.12	.45	.06	.17			1.70
50	.73	.06	.47		4.66	4.37	.98	1.70	.66	1.86			15.48
Total	**3.38**	**9.11**	**4.83**		**41.14**	**50.00**	**8.69**	**42.51**	**6.08**	**23.66**			**189.41**

A value of ".00" means a cost of more than $.000 but less than $.005 per GSFT.

50-Year Total M&R Cost Profile per GSFT



Note: For alternative locations use the Local Indexes shown in Chapter 3.

Municipal Building

Gross Square Feet:	11,000
Height in Ft:	12
Exterior:	Clay Brick
Floor coverings:	Carpet, Vinyl Tile, Terrazzo Tile
HVAC:	Electric Cooling, Gas Heating
Capacity:	N/A
Occupancy:	660
Replacement Cost:	$2,860,000

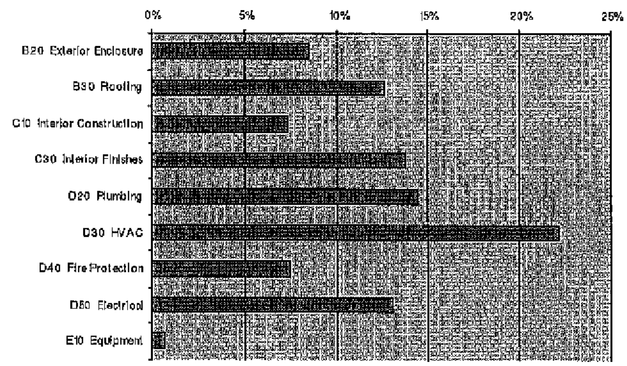
Components

Uniformat / Component	Quantity	Units
B20 Exterior Enclosure		
Clay Brick, Exterior, 1st Floor	4470	Sq Ft
Aluminum Fixed Window, 12 sf, 1st Floor	40	Each
Aluminum Frame, Fully Glazed, Exterior Door	3	Each
Steel w/ Safety Glass, Painted, Exterior Door	1	Each
B30 Roofing		
Built-up Roof	11000	Sq Ft
C10 Interior Construction		
Toilet Partitions, Painted Metal, Overhead Braced	11	Each
Wood, Hollow Core, Painted, Interior Door	55	Each
C30 Interior Finishes		
Ceramic Tile, 4"x4", Interior Wall Finish	1320	Sq Ft
Sheetrock, Stippled, Interior Wall Finish	11860	Sq Ft
Carpet, Nylon 20 oz., Low Traffic	7700	Sq Ft
Terrazzo Flooring	1650	Sq Ft
Vinyl Tile Flooring	1650	Sq Ft
Acoustical Tile Ceiling	7400	Sq Ft
Metal, Painted Ceiling	3600	Sq Ft
D20 Plumbing		
Drinking Fountain, Refrigerated	6	Each
Lavatory, Vitreous China	13	Each
Sink, Enameled Steel	8	Each
Sink, Stainless Steel	2	Each
Tankless Water Closet	11	Each
Urinal, Vitreous China	5	Each
Pipe & Fittings, 3/4" Copper, Cold Water	1.47	K Ln Ft
Pipe & Fittings, 3/4" Copper, Hot Water	0.67	K Ln Ft
Pipe & Fittings, 2" Copper, Cold Water	1.592	K Ln Ft
Pipe & Fittings, 4" Steel	0.887	K Ln Ft
Pipe Insulation, Fiberglass, Cold Water	1.914	K Ln Ft
Pipe Insulation, Fiberglass, Hot Water	0.904	K Ln Ft
Water Heater, Gas/Oil, 75 Gph	1	Each
Backflow Preventer, 2"	1	Each
Pipe & Fittings, 6" Cast Iron	0.709	K Ln Ft
Pipe & Fittings, 10" Cast Iron	0.21	K Ln Ft
Pipe & Fittings, 4" PVC	0.096	K Ln Ft
Roof Drain, 2"	4	Each
D30 HVAC		
Duct Insulation, Fiberglass Blanket	2774	Sq Ft
Ductwork	4140	Lbs
Exhaust Fan, Ceiling, 200-500 Cfm	2	Each
Air Conditioner, Rooftop, Single Zone, 50 Ton	1	Each
HVAC Control Panel	1	Each
D40 Fire Protection		
Fire Alarm Control Panel	1	Each
Fire Sprinkler Head	79	Each
Fire Sprinkler System	1	Each
Fire Extinguisher	4	Each
D50 Electrical		
Main Switchgear, <1,200 Amp.	1	Each
Power Panel Board, 208 Y/120 V, 200 Amp.	3	Each
Safety Switch, Fused, 400 Amp., 3 Ph.	1	Each
Emergency Horn & Strobe	6	Each
Exit Lighting Fixture, w/ Battery	6	Each
Fluorescent Lighting Fixture, 160 w	110	Each
Grounded Fault Circuit Interruptor, 15 Amp.	2	Each
Receptacle, 120 V, 15 Amp.	178	Each
Wiring Device, Switch	55	Each
Annunciation Panel	1	Each
Fire Alarm Horn & Strobe	6	Each
Heat Detector	4	Each
Manual Pull Station	4	Each
Smoke Detector	20	Each
E10 Equipment		
Microwave Oven	1	Each
Refrigerator, Domestic	1	Each

50-Year M&R Cost Summary

Task Type	50 Year Total Cost	Annual Cost per GSFT	Annual Cost as % of Replacement
PM & Minor Repair	$440,177	$0.80	0.31%
Unscheduled Maintenance	$402,202	$0.73	0.28%
Renewal & Replacement	$1,546,581	$2.81	1.08%
Total	**$2,388,960**	**$4.34**	**1.67%**

Distribution of M&R Costs



Thirty Most Costly M&R Tasks

M&R Task	Task Cost*	Pct.**
Replace Air Conditioner, Rooftop, Single Zone, 50 Ton	24.89	13.8%
Replace Carpet, Nylon 20 oz., Low Traffic	12.68	7.0%
Repair Air Conditioner, Rooftop, Single Zone, 50 Ton	11.85	6.6%
Place New Membrane Over Existing, Built-up Roof	10.97	6.1%
Refinish Sheetrock, Stippled, Interior Wall Finish	10.54	5.8%
Replace Membrane, Built-up Roof	9.50	5.3%
Replace Wood, Hollow Core, Painted, Interior Door Locks	5.92	3.3%
Clean & Reseal Clay Brick, Exterior, 1st Floor	5.58	3.1%
Maintain Air Conditioner, Rooftop, Single Zone, 50 Ton	4.47	2.5%
Refinish Metal, Painted Ceiling	4.32	2.4%
Maintain Fire Sprinkler System	4.30	2.4%
Test Gages & Valves, Fire Sprinkler System	3.96	2.2%
Replace Ballast & Lamps, Fluorescent Lighting Fixture, 160 w	3.84	2.1%
Replace Fluorescent Lighting Fixture, 160 w	3.51	1.9%
Maintain Built-up Roof	3.04	1.7%
Repoint (50% surface) Clay Brick, Exterior, 1st Floor	3.03	1.7%
Replace Pipe & Fittings, 2" Copper, Cold Water (20% of Pipe)	2.80	1.5%
Replace Wood, Hollow Core, Painted, Interior Door	2.53	1.4%
Replace Drinking Fountain, Refrigerated	2.46	1.4%
Replace Batteries & Check Operation, Smoke Detector	2.17	1.2%
Maintain Power Panel Board, 208 Y/120 V, 200 Amp.	1.71	0.9%
Replace Power Panel Board, 208 Y/120 V, 200 Amp.	1.65	0.9%
Maintain Wood, Hollow Core, Painted, Interior Door Locks	1.59	0.9%
Replace Toilet Partitions, Painted Metal, Overhead Braced	1.56	0.9%
Repair Main Switchgear, <1,200 Amp.	1.48	0.8%
Clean Water Heater, Gas/Oil, 75 Gph	1.43	0.8%
Refinish Wood, Hollow Core, Painted, Interior Door	1.30	0.7%
Test Fire Sprinkler Head	1.22	0.7%
Replace Faucet Washer & Clean Trap, Lavatory, Vitreous China	1.21	0.7%
Replace Pipe & Fittings, 3/4" Copper, Cold Water (20% of Pipe)	1.16	0.6%

**Task cost ($2009) per GSFT over 50 years.*

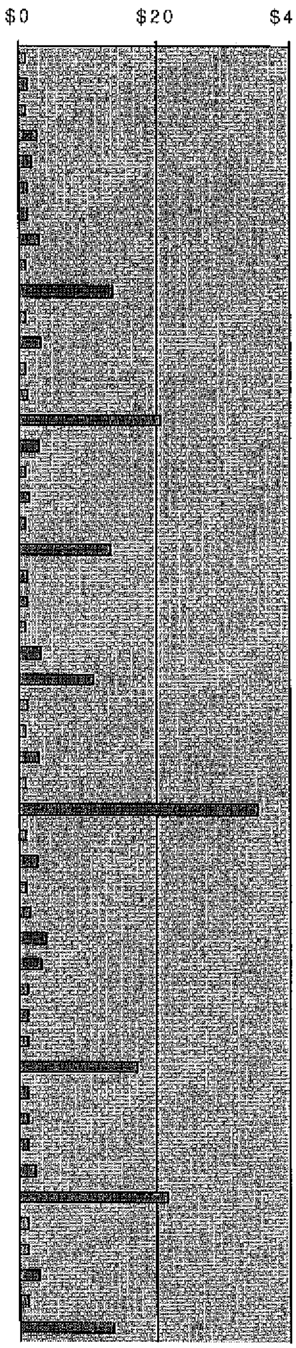
***Percent of total M&R costs.*

Note: For alternative locations use the Local Indexes shown in Chapter 3.

Cost per GSFT by System

Asset Age	Exterior Closure	Roofing	Interior Constrution	Stairways	Interior Finishes	Conveying Systems	Plumbing	HVAC Systems	Fire Protection	Electrical	Equipment	Site Improvements	Total per GSFT
1		.13					.19	.19	.25	.24	.02		1.02
2		.13					.49	.19	.25	.24	.02		1.32
3		.13					.19	.19	.25	.24	.02		1.02
4		.13	.13		1.24		.49	.19	.25	.24	.02		2.69
5	.03	.19	.48		.08		.31	.21	.28	.46	.02		2.07
6		.13					.49	.19	.25	.24	.02		1.32
7		.13					.30	.19	.25	.24	.02		1.12
8		.13	.13		1.24		.53	.19	.25	.25	.02		2.74
9		.13			.04		.19	.19	.25	.24	.02		1.06
10	2.81	.19	1.96		.12		1.55	4.16	.68	2.14	.15		13.76
11		.13					.19	.19	.25	.24	.02		1.02
12	.05	.13	.13		1.24		.79	.19	.35	.24	.02		3.14
13		.13					.19	.19	.25	.24	.02		1.02
14		.13					.60	.19	.25	.24	.02		1.43
15	.05	5.67	.48		4.28		.25	8.60	.55	.95	.02		20.85
16		.13	.13		1.24		.53	.19	.25	.25	.02		2.74
17		.13					.25	.19	.27	.24	.02		1.09
18		.13			.41		.49	.19	.25	.24	.02		1.72
19		.13					.19	.19	.25	.24	.02		1.02
20	2.89	.19	2.85		1.42		1.60	.33	.67	3.39	.15		13.49
21		.13					.30	.19	.25	.24	.02		1.12
22		.13					.55	.19	.27	.24	.02		1.39
23		.13					.19	.19	.25	.24	.02		1.02
24	.05	.13	.13		1.24		.83	.19	.35	.25	.02		3.19
25	1.84	.19	.48		.26		2.67	4.16	.27	1.00	.02		10.89
26		.13					.49	.19	.25	.24	.02		1.32
27		.13			.04		.19	.19	.25	.24	.02		1.06
28		.13	.13		1.24		.60	.19	.25	.24	.02		2.79
29		.13					.25	.19	.27	.24	.02		1.09
30	2.82	9.50	2.64		4.31		1.41	9.59	.95	3.82	.15		35.18
31		.13					.19	.19	.25	.24	.02		1.02
32		.13	.02		1.24		.53	.19	.25	.24	.02		2.62
33		.13					.19	.19	.25	.25	.02		1.03
34		.13	.11				.55	.19	.27	.24	.02		1.50
35	.03	.19	.48		.08		2.22	.21	.27	.46	.02		3.96
36	.05	.13	.02		1.64		.58	.19	.35	.24	.02		3.22
37		.13					.40	.19	.25	.24	.02		1.23
38		.13	.11				.27	.19	.25	.24	.02		1.21
39		.13					.40	.19	.25	.24	.02		1.23
40	2.89	.19	2.74		1.42		1.08	4.28	.67	3.76	.15		17.18
41		.13					.46	.19	.27	.25	.02		1.32
42		.13	.11				.38	.19	.25	.24	.02		1.32
43		.13					.43	.19	.25	.24	.02		1.26
44		.13	.02		1.24		.27	.19	.25	.24	.02		2.36
45	.05	5.67	.48		4.32		.98	8.60	.55	.95	.02		21.62
46		.13	.11				.33	.19	.27	.24	.02		1.28
47		.13					.40	.19	.25	.24	.02		1.23
48	.05	.13	.02		1.24		.59	.19	.35	.24	.02		2.83
49		.13					.51	.19	.25	.25	.02		1.35
50	4.84	.19	2.06		.29		3.29	.21	.82	1.94	.15		13.80
Total	**18.45**	**27.33**	**15.92**		**29.88**		**31.33**	**48.07**	**16.27**	**28.35**	**1.58**		**217.18**

50-Year Total M&R Cost Profile per GSFT



A value of ".00" means a cost of more than $.000 but less than $.005 per GSFT.

Note: For alternative locations use the Local Indexes shown in Chapter 3.

Movie Theater

Gross Square Feet:	10,000
Height in Ft:	20
Exterior:	Clay Brick
Floor coverings:	Finished Concrete, Carpet
HVAC:	Single Zone Rooftop Units
Capacity:	N/A
Occupancy:	600
Replacement Cost:	$2,090,424

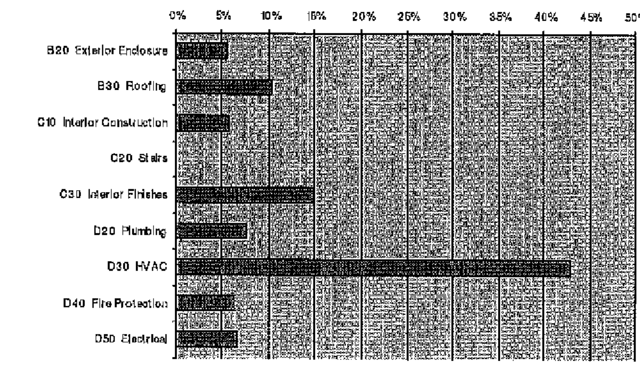
Components

Uniformat / Component	Quantity	Units
B20 Exterior Enclosure		
Clay Brick, Painted, Exterior, 1st Floor	7620	Sq Ft
Aluminum Fixed Window, 24 sf, 1st Floor	16	Each
Aluminum Frame, Fully Glazed, Exterior Door	4	Each
Steel, Painted, Exterior Door	7	Each
B30 Roofing		
Built-up Roof	10000	Sq Ft
C10 Interior Construction		
Toilet Partitions, Painted Metal, Overhead Braced	8	Each
Steel, Painted, Interior Door	50	Each
C20 Stairs		
Concrete, Interior Stairs	150	Sq Ft
Metal, Painted, Interior Railing	75	Ln Ft
C30 Interior Finishes		
Acoustical Tile, Painted, Interior Wall Finish	7160	Sq Ft
Concrete Block, Painted, Interior Wall Finish	1000	Sq Ft
Sheetrock, Unstippled, Interior Wall Finish	19470	Sq Ft
Carpet, Nylon 20 oz., High Traffic	1500	Sq Ft
Concrete, Painted Flooring	8500	Sq Ft
Acoustical Tile Ceiling	9500	Sq Ft
Sheetrock, Unstippled Ceiling	500	Sq Ft
D20 Plumbing		
Drinking Fountain, Refrigerated	1	Each
Lavatory, Vitreous China	6	Each
Service Sink, Iron, Enamel	1	Each
Sink, Stainless Steel	1	Each
Tankless Water Closet	8	Each
Urinal, Vitreous China	3	Each
Pipe & Fittings, 3/4" Copper, Cold Water	0.7	K Ln Ft
Pipe & Fittings, 3/4" Copper, Hot Water	0.3	K Ln Ft
Pipe & Fittings, 2" Copper, Cold Water	0.7	K Ln Ft
Pipe Insulation, Fiberglass, Cold Water	0.7	K Ln Ft
Pipe Insulation, Fiberglass, Hot Water	0.3	K Ln Ft
Water Heater, Gas/Oil, 65 Gph	1	Each
Backflow Preventer, 2"	1	Each
Pipe & Fittings, 6" Cast Iron	0.6	K Ln Ft
Pipe & Fittings, 10" Cast Iron	0.2	K Ln Ft
Pipe & Fittings, 4" PVC	0.2	K Ln Ft
Roof Drain, 4-6"	3	Each
D30 HVAC		
Pipe & Fittings, 4" Steel, Gas	0.2	K Ln Ft
Duct Insulation, Fiberglass Blanket	4476	Sq Ft
Ductwork	6680	Lbs
Exhaust Fan, Ceiling, 200-500 Cfm	4	Each
Air Conditioner, Rooftop, Single Zone, 20 Ton	4	Each
HVAC Control Panel	1	Each
D40 Fire Protection		
Fire Alarm Control Panel	1	Each
Fire Sprinkler Head	50	Each
Fire Sprinkler System	1	Each
Fire Extinguisher	4	Each
D50 Electrical		
Distribution Switch, Fused, <600 V	3	Each
Main Switchgear, <1,200 Amp.	1	Each
Exit Lighting Fixture, w/ Battery	11	Each
Fluorescent Lighting Fixture, 160 w	10	Each
Incandescent Lighting Fixture, Basic, 100 w	42	Each
Receptacle, 120 V, 15 Amp.	40	Each
Wiring Device, Switch	20	Each
Fire Alarm Horn & Strobe	5	Each
Heat Detector	5	Each
Manual Pull Station	5	Each
Smoke Detector	20	Each

50-Year M&R Cost Summary

Task Type	50 Year Total Cost	Annual Cost per GSFT	Annual Cost as % of Replacement
PM & Minor Repair	$439,695	$0.88	0.42%
Unscheduled Maintenance	$335,466	$0.67	0.32%
Renewal & Replacement	$1,855,678	$3.71	1.78%
Total	**$2,630,839**	**$5.26**	**2.52%**

Distribution of M&R Costs



Thirty Most Costly M&R Tasks

M&R Task	Task Cost*	Pct.**
Replace Air Conditioner, Rooftop, Single Zone, 20 Ton	45.42	19.8%
Repair Air Conditioner, Rooftop, Single Zone, 20 Ton	33.86	14.8%
Refinish Sheetrock, Unstippled, Interior Wall Finish	19.00	8.3%
Maintain Air Conditioner, Rooftop, Single Zone, 20 Ton	16.13	7.0%
Place New Membrane Over Existing, Built-up Roof	10.97	4.8%
Replace Membrane, Built-up Roof	9.50	4.1%
Refinish Acoustical Tile, Painted, Interior Wall Finish	7.73	3.4%
Replace Steel, Painted, Interior Door Locks	7.39	3.2%
Repoint (50% surface) Clay Brick, Painted, Exterior, 1st Floor	5.69	2.5%
Replace Carpet, Nylon 20 oz., High Traffic	5.43	2.4%
Maintain Fire Sprinkler System	4.73	2.1%
Test Gages & Valves, Fire Sprinkler System	4.36	1.9%
Refinish Clay Brick, Painted, Exterior, 1st Floor	4.14	1.8%
Maintain Built-up Roof	3.04	1.3%
Refinish Concrete, Painted Flooring	2.82	1.2%
Replace Batteries & Check Operation, Smoke Detector	2.39	1.0%
Maintain Steel, Painted, Interior Door Locks	1.77	0.8%
Repair Main Switchgear, <1,200 Amp.	1.63	0.7%
Clean Water Heater, Gas/Oil, 65 Gph	1.58	0.7%
Replace Pipe & Fittings, 2" Copper, Cold Water (20% of Pipe)	1.35	0.6%
Replace Existing Ductwork (20% of Ductwork)	1.31	0.6%
Maintain Fan & Motor, Exhaust Fan, Ceiling 200-500 Cfm	1.31	0.6%
Refinish Steel, Painted, Interior Door	1.30	0.6%
Replace Toilet Partitions, Painted Metal, Overhead Braced	1.25	0.5%
Replace Water Heater, Gas/Oil, 65 Gph	1.14	0.5%
Replace Main Switchgear, <1,200 Amp.	1.13	0.5%
Repair Clay Brick, Painted, Exterior, 1st Floor (2% of Walls)	1.10	0.5%
Replace Steel, Painted, Exterior Door Locks	1.09	0.5%
Replace Incandescent Lighting Fixture, Basic, 100 w	1.05	0.5%
Replace Fire Alarm Control Panel	1.04	0.5%

**Task cost ($2009) per GSFT over 50 years.*

***Percent of total M&R costs.*

Note: For alternative locations use the Local Indexes shown in Chapter 3.

College Auditorium

Gross Square Feet:	24,000
Height in Ft:	24
Exterior:	Concrete
Floor coverings:	Carpet, Hardwood
HVAC:	Electric Cooling, Gas Heating
Capacity:	N/A
Occupancy:	1,440
Replacement Cost:	$4,224,000

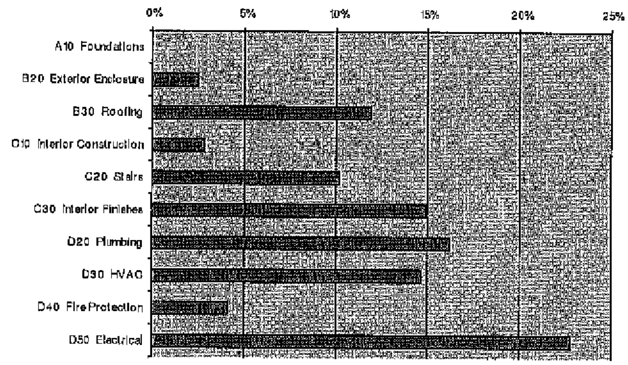
Components

Uniformat / Component	Quantity	Units
A10 Foundations		
Concrete Slab	1000	Sq Ft
B20 Exterior Enclosure		
Concrete, Painted, Exterior, 1st Floor	14900	Sq Ft
Aluminum Fixed Window, 12 sf, 1st Floor	31	Each
Aluminum Frame, Fully Glazed, Exterior Door	6	Each
Steel, Painted, Exterior Door	6	Each
B30 Roofing		
Built-up Roof	24000	Sq Ft
C10 Interior Construction		
Toilet Partitions, Painted Metal, Overhead Braced	17	Each
Steel, Painted, Interior Door	48	Each
C20 Stairs		
Concrete, Exterior Stairs	600	Sq Ft
Concrete, Interior Stairs	380	Sq Ft
Masonry, Painted, Interior Stairs	12288	Sq Ft
C30 Interior Finishes		
Carpet, Nylon 20 oz., High Traffic	7200	Sq Ft
Wood Parquetry Flooring	16800	Sq Ft
Acoustical Tile Ceiling	24000	Sq Ft
D20 Plumbing		
Drinking Fountain, Refrigerated	6	Each
Lavatory, Iron, Enamel	23	Each
Lavatory, Vitreous China	23	Each
Sink, Stainless Steel	2	Each
Tankless Water Closet	17	Each
Urinal, Vitreous China	6	Each
Circulator Pump, 1/6 HP, Cold Water	1	Each
Circulator Pump, 1/6 HP, Hot Water	1	Each
Pipe & Fittings, 3/4" Copper, Cold Water	1.89	K Ln Ft
Pipe & Fittings, 3/4" Copper, Hot Water	0.88	K Ln Ft
Pipe & Fittings, 2" Copper, Cold Water	2.25	K Ln Ft
Pipe & Fittings, 4" Steel	1.439	K Ln Ft
Pipe Insulation, Fiberglass, Cold Water	2.61	K Ln Ft
Pipe Insulation, Fiberglass, Hot Water	1.29	K Ln Ft
Water Heater, Gas/Oil, 850 Gph	2	Each
Backflow Preventer, 4"	2	Each
Pipe & Fittings, 6" Cast Iron	1.065	K Ln Ft
Pipe & Fittings, 10" Cast Iron	0.31	K Ln Ft
Pipe & Fittings, 4" PVC	0.694	K Ln Ft
Roof Drain, 4-6"	14	Each
D30 HVAC		
Duct Insulation, Fiberglass Blanket	3940	Sq Ft
Ductwork	5880	Lbs
Exhaust Fan, Ceiling, 200-500 Cfm	4	Each
Air Conditioner, Rooftop, Single Zone, 20 Ton	1	Each
Air Conditioner, Rooftop, Single Zone, 50 Ton	1	Each
HVAC Control Panel	1	Each
D40 Fire Protection		
Fire Alarm Control Panel	1	Each
Fire Sprinkler Head	185	Each
Fire Sprinkler System	1	Each
Fire Extinguisher	8	Each
D50 Electrical		
Main Switchgear, <1,200 Amp.	1	Each
Motor Starter, 5-20 HP, <600 V	4	Each
Power Panel Board, 208 Y/120 V, 200 Amp.	2	Each
Primary Transformer, Dry, 750 kVA	1	Each
Exit Lighting Fixture, w/ Battery	12	Each
Incandescent Lighting Fixture, Basic, 100 w	50	Each
Light Dimming Panel	2	Each
Metal Halide Lighting Fixture, High Bay, 400 w	240	Each
Receptacle, 120 V, 15 Amp.	192	Each
Wiring Device, Switch	48	Each
Annunciation Panel	1	Each
Fire Alarm Horn & Strobe	12	Each
Heat Detector	12	Each
Manual Pull Station	8	Each
Smoke Detector	20	Each
Sound System, 7 Channel	1	Each

50-Year M&R Cost Summary

Task Type	50 Year Total Cost	Annual Cost per GSFT	Annual Cost as % of Replacement
PM & Minor Repair	$888,678	$0.74	0.42%
Unscheduled Maintenance	$716,995	$0.60	0.34%
Renewal & Replacement	$3,928,136	$3.27	1.86%
Total	**$5,533,809**	**$4.61**	**2.62%**

Distribution of M&R Costs



Thirty Most Costly M&R Tasks

M&R Task	Task Cost*	Pct.**
Replace Masonry, Painted, Interior Stairs	16.48	8.2%
Replace Air Conditioner, Rooftop, Single Zone, 50 Ton	11.41	5.7%
Replace Metal Halide Lighting Fixture, High Bay, 400 w	11.09	5.5%
Place New Membrane Over Existing, Built-up Roof	10.97	5.5%
Replace Carpet, Nylon 20 oz., High Traffic	10.87	5.4%
Replace Wood Parquetry Floor	10.69	5.3%
Replace Lamp, Metal Halide Lighting Fixture, High Bay, 400 w	10.20	5.1%
Sand & Refinish Wood Parquetry Flooring	9.73	4.8%
Replace Membrane, Built-up Roof	9.50	4.7%
Replace Ballast, Metal Halide Lighting Fixture, High Bay, 400 w	9.00	4.5%
Replace Water Heater, Gas/Oil, 850 Gph	6.67	3.3%
Repair Air Conditioner, Rooftop, Single Zone, 50 Ton	5.43	2.7%
Refinish Masonry, Painted, Interior Stairs	5.18	2.6%
Replace Air Conditioner, Rooftop, Single Zone, 20 Ton	4.73	2.4%
Repair Air Conditioner, Rooftop, Single Zone, 20 Ton	3.63	1.8%
Refinish Concrete, Painted, Exterior, 1st Floor	3.36	1.7%
Maintain Built-up Roof	3.04	1.5%
Replace Steel, Painted, Interior Door Locks	2.96	1.5%
Replace Primary Transformer, Dry, 750 kVA	2.86	1.4%
Maintain Air Conditioner, Rooftop, Single Zone, 50 Ton	2.05	1.0%
Repair Wood Parquetry Flooring (2% of Floors)	2.04	1.0%
Maintain Fire Sprinkler System	1.97	1.0%
Test Gages & Valves, Fire Sprinkler System	1.82	0.9%
Replace Pipe & Fittings, 2" Copper, Cold Water (20% of Pipe)	1.81	0.9%
Clean & Service Water Heater, Gas/Oil, 850 Gph	1.80	0.9%
Maintain Air Conditioner, Rooftop, Single Zone, 20 Ton	1.68	0.8%
Replace Backflow Preventer, 4"	1.67	0.8%
Maintain Roof Drain, 4-6"	1.45	0.7%
Maintain Backflow Preventer, 4"	1.38	0.7%
Test Fire Sprinkler Head	1.31	0.7%

**Task cost ($2009) per GSFT over 50 years.*
***Percent of total M&R costs.*

Note: For alternative locations use the Local Indexes shown in Chapter 3.

3. Local M&R Costs

The statistics in this chapter focus on local maintenance costs for 234 major U.S. and Canadian areas. Three types of measures are presented:

Section 3.1: **Local maintenance cost indexes** measure M&R costs across areas.

Section 3.2: **In-house shop rates** for trades and supervisory positions common to facility staff.

Section 3.3: **Contract labor rates** for trades common in M&R construction.

The local maintenance cost index is based on the M&R costs of the 2 Story Office Building (shown in Chapter 2) standardized to the Washington, D.C. area. The range of the index is considerable, as Table 3-1 indicates. Costs in New York, NY are an estimated 26% higher than those in Washington, D.C. for the same asset. In the other direction, M&R costs in San Juan, PR are an estimated 32% lower than the Washington, D.C. value. This index can be used for simple comparisons among areas, and also used to adjust the cost profiles in Chapter 2 for areas other than Washington, D.C.

Table 3-1
Comparison of M&R Costs by Area

Area	Local Maintenance Cost Index*	Area	Local Maintenance Cost Index*	Area	Local Maintenance Cost Index*	Area	Local Maintenance Cost Index*
New York, NY	126.1	Scranton, PA	96.9	Lincoln, NE	88.9	Amarillo, TX	82.6
Yonkers, NY	126.1	Santa Barbara, CA	96.8	Denver, CO	88.9	Tampa, FL	82.3
San Francisco, CA	124.8	Eugene, OR	96.7	Great Falls, MT	88.7	Tuscaloosa, AL	82.0
Trenton, NJ	124.6	Indianapolis, IN	96.7	Manchester, NH	88.6	Oklahoma City, OK	82.0
New Brunswick, NJ	124.6	Evansville, IN	96.6	Omaha, NE	88.6	Little Rock, AR	81.9
Philadelphia, PA	117.3	Bakersfield, CA	96.5	Syracuse, NY	88.5	Bowling Green, KY	81.9
Atlantic City, NJ	117.1	Worcester, MA	96.2	Watertown, NY	88.5	Macon, GA	81.9
Camden, NJ	117.0	Cincinnati, OH	96.2	Billings, MT	88.3	Tulsa, OK	81.9
Jersey City, NJ	116.5	Terre Haute, IN	96.2	Beaumont, TX	88.3	Montgomery, AL	81.7
Morristown, NJ	116.5	Springfield, MA	96.0	Fort Lauderdale, FL	88.0	Fort Worth, TX	81.6
Newark, NJ	116.5	Charleston, WV	95.9	Atlanta, GA	87.8	Beaufort, SC	81.3
Chicago, IL	116.5	Olympia, WA	95.8	Huntsville, AL	87.8	Charleston, SC	81.3
San Jose, CA	111.3	Akron, OH	95.7	Shreveport, LA	87.7	Dallas, TX	81.2
Springfield, IL	111.2	Dayton, OH	95.6	Lawton, OK	87.3	Cheyenne, WY	81.2
Oakland, CA	110.9	Jefferson City, MO	95.5	Baton Rouge, LA	87.3	Columbia, SC	81.0
Ann Arbor, MI	110.4	Saginaw, MI	95.5	Albuquerque, NM	87.2	Knoxville, TN	81.0
Flint, MI	109.8	Salem, OR	95.3	Lewiston, ME	87.1	Orlando, FL	80.9
Kokomo, IN	108.7	Oxnard, CA	95.3	Phoenix, AZ	86.8	Charlotte, NC	80.3
Hilo, HI	108.1	Annapolis, MD	95.2	Boise, ID	86.7	Springfield, MO	80.3
Honolulu, HI	108.1	Rochester, MN	95.2	Houston, TX	86.4	Raleigh-Durham, NC	80.2
Minneapolis, MN	107.1	Baltimore, MD	95.1	Waco, TX	86.4	Roanoke, VA	80.1
St. Paul, MN	107.1	Parkersburg, WV	95.0	Frankfort, KY	85.9	Fort Smith, AR	79.5
Peoria, IL	107.1	Moline, IL	95.0	Lexington, KY	85.9	Fayetteville, AR	79.5
Detroit, MI	107.1	Anacortes, WA	95.0	Chattanooga, TN	85.8	Fargo, ND	79.4
St. Louis, MO	106.9	Eau Claire, WI	95.0	Newport News, VA	85.7	Tallahassee, FL	78.8
Rockford, IL	106.7	Buffalo, NY	94.7	Hampton, VA	85.7	Daytona Beach, FL	78.7
Boston, MA	105.6	Stockton, CA	94.6	Colorado Springs, CO	85.6	Nashville, TN	78.6
Springfield, OH	105.3	Brockton, MA	94.4	Norfolk, VA	85.6	Las Cruces, NM	78.4
Gary, IN	104.5	San Diego, CA	94.0	Virginia Beach, VA	85.6	Sioux Falls, SD	78.3
Juneau, AK	103.7	Reno, NV	93.9	Jacksonville, FL	85.5	Greensboro, NC	78.3
Waterbury, CT	103.5	Harrisburg, PA	93.8	Biloxi, MS	85.4	Pierre, SD	77.9
Kansas City, MO	103.4	Lowell, MA	93.6	Miami, FL	85.3	Rapid City, SD	77.9
Las Vegas, NV	103.4	Fall River, MA	93.5	Richmond, VA	85.1	Bismarck, ND	77.7
Danbury, CT	103.2	Des Moines, IA	93.3	Utica, NY	85.0	Winston-Salem, NC	77.5
Milwaukee, WI	102.6	Boulder, CO	93.2	Memphis, TN	85.0	Columbus, GA	77.3
Cleveland, OH	102.6	Green Bay, WI	93.0	Corpus Christi, TX	84.7	Alamogordo, NM	76.4
Stamford, CT	102.5	Davenport, IA	93.0	Spokane, WA	84.5	El Paso, TX	75.9
New Haven, CT	102.5	Pueblo, CO	93.0	Burlington, VT	84.5	Lubbock, TX	75.2
Norwalk, CT	102.5	Topeka, KS	92.8	Montpelier, VT	84.5	Hagatna, GU	74.8
Anchorage, AK	102.1	Albany, NY	92.8	Sioux City, IA	84.4	San Juan, PR	68.4
Fairbanks, AK	102.1	Providence, RI	92.7	Rutland, VT	84.3		
Seattle, WA	101.9	Columbus, OH	92.6	Tucson, AZ	84.3	**Canadian Cities+**	
Portland, OR	101.8	Fresno, CA	92.6	Owensboro, KY	84.3		
Norwich, CT	101.5	Rochester, NY	92.4	Altus, OK	84.1	Toronto, ON	87.8
Washington, D.C.	100.0	Muncie, IN	92.2	Pocatello, ID	84.0	Calgary, AB	86.7
Lansing, MI	99.6	Helena, MT	91.9	Austin, TX	84.0	Ottawa, ON	86.7
Wilmington, DE	99.4	Battle Creek, MI	91.8	St. George, UT	83.9	Hamilton, ON	86.6
Pittsburgh, PA	99.3	Kalamazoo, MI	91.8	Jackson, MS	83.9	London, ON	86.6
Marquette, MI	99.2	South Bend, IN	91.7	Birmingham, AL	83.9	Vancouver, BC	86.2
Hartford, CT	98.9	Grand Rapids, MI	91.6	Key West, FL	83.9	Edmonton, AB	86.2
Madison, WI	98.8	Concord, NH	91.5	Mobile, AL	83.8	Victoria, BC	85.1
Los Angeles, CA	98.5	Toledo, OH	91.4	Portland, ME	83.7	Montreal, QC	83.0
Anaheim, CA	98.4	Cumberland, MD	91.0	Santa Fe, NM	83.6	Regina, SK	80.7
Richland, WA	98.3	Dover, DE	91.0	Ogden, UT	83.5	Quebec City, QC	80.4
Youngstown, OH	98.2	Riverside, CA	90.9	Salt Lake City, UT	83.5	Halifax, NS	78.2
Carson City, NV	98.2	Medford, OR	90.9	Wichita, KS	83.4	St. John's, NL	76.4
Tacoma, WA	98.0	Cedar Rapids, IA	90.9	Augusta, ME	83.3	Winnipeg, MB	75.6
Duluth, MN	97.4	New Orleans, LA	90.4	Wichita Falls, TX	83.2		
Sacramento, CA	97.3	Erie, PA	90.4	San Antonio, TX	82.9		
Reading, PA	97.2	Louisville, KY	89.9	Savannah, GA	82.7		

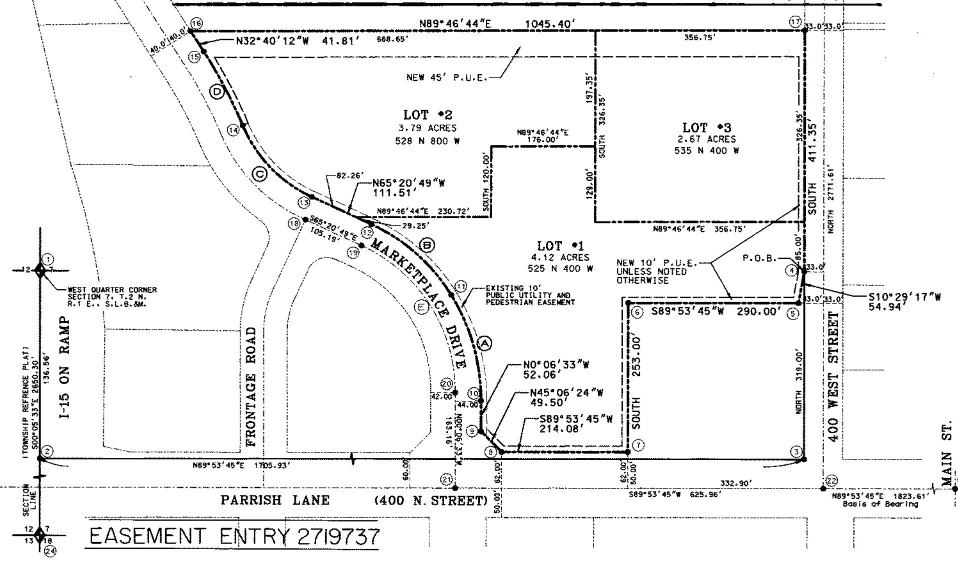
*Total average cost, Washington D.C.=100

+Adjusted using 3/13/09 exchange rate from Reuters.com

CENTERVILLE CORPORATE PARK

PART OF THE S.W. 1/4 OF SEC. 7 & PART OF THE N.W. 1/4 SEC 7
T.2N., R.1E., S.L.B. & M.
CENTERVILLE CITY, DAVIS COUNTY, UTAH

SEE AFFIDAVITS OF CORRECTION 2720-94,95,96



EASEMENT ENTRY 2719737

NOTES:

1. ALL LOTS ZONED C-2 AS OF MAY 2000.
2. ALL PUBLIC UTILITY EASEMENTS ARE 10' UNLESS NOTED OTHERWISE.
3. APPROVAL OF THE DEVELOPMENT PLAT BY CENTERVILLE CITY DOES NOT CONSTITUTE ANY REPRESENTATION AS TO THE ADEQUACY OF SUBSURFACE SOIL CONDITIONS NOR THE LOCATION OR DEPTH OF GROUND WATER TABLES.
4. ALL LOTS AND DEVELOPMENT SUBJECT TO PROVISIONS OF A CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT WHICH HAVE BEEN APPROVED BY CENTERVILLE CITY.
5. P.U.E. DENOTES A PUBLIC UTILITY AND DRAINAGE EASEMENT.
6. THE OWNER SHALL BE REQUIRED TO PROVIDE UTILITY EASEMENTS FOR ALL AS-BUILT UTILITIES AFTER THE UTILITIES ARE INSTALLED, IF THEY DO NOT LIE WITHIN THE BOUNDARIES OF AN EXISTING P.U.E.

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	LENGTH
A	341.89'	188.88'	31°39'13"	N15°56'10"W	186.49'
B	315.00'	184.64'	33°35'04"	N48°33'18"W	182.01'
C	235.00'	172.99'	42°10'37"	N44°15'30"W	169.11'
D	858.51'	142.35'	9°30'01"	N27°55'12"W	142.19'
E	275.00'	313.12'	65°14'16"	N32°43'42"W	296.48'

No. 152158 FREDRIC T CAMPBELL LICENSED PROFESSIONAL ENGINEER STATE OF UTAH

DAVIS COUNTY COORDINATE SYSTEM

	NORTH	EAST
1	131,888.19	113,032.29
2	131,751.63	113,032.51
3	131,754.73	114,738.44
4	132,073.73	114,738.44
5	132,019.71	114,728.44
6	132,019.19	114,438.44
7	131,766.19	114,438.44
8	131,765.80	114,224.35
9	131,800.73	114,189.29
10	131,852.79	114,189.19
11	132,032.11	114,137.99
12	132,152.59	114,001.55
13	132,199.10	113,900.21
14	132,320.22	113,782.19
15	132,445.85	113,715.61
16	132,481.05	113,693.04
17	132,485.08	114,738.44
18	132,160.11	113,889.27
19	132,116.23	113,984.87
20	131,866.82	114,145.16
21	131,703.65	114,145.47
22	131,704.79	114,771.43
23	131,708.11	116,595.04
24	129,237.89	113,036.57

SCALE: 1" = 100'
MAY, 2000

PREPARED BY
ESI ENGINEERING
CONSULTING ENGINEERS AND LAND SURVEYORS
3500 SOUTH MAIN STREET SUITE 206
SALT LAKE CITY, UTAH 84115
(801) 263-1752

BOUNDARY DESCRIPTION

Beginning at a point on the West line of 400 West Street, said point being South 0°05'33" East 136.56 feet along the Section line, North 89°53'45" East 1705.93 feet, and North 319.00 feet from the West Quarter corner of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence South 10°29'17"West 54.94 feet; thence South 89°53'45" West 290.00 feet; thence South 253.00 feet to a point on the North line of Parrish Lane; thence South 89°53'45" West 214.08 feet along the North line of Parrish Lane; thence North 45°06'24" West 49.50 feet; thence North 0°06'33" West 52.06 feet to a point of curvature of a 341.89 foot radius curve to the left; thence Northwesterly 188.88 feet along the arc of said curve to a point of compound curvature of a 315.00 foot radius curve to the left; thence Northwesterly 184.64 feet along the arc of said curve; thence North 65°20'49" West 111.51 feet to a point of curvature of a 235.00 foot radius curve to the right; thence Northwesterly 172.99 feet along the arc of said curve to a point of reverse curvature of a 858.51 foot radius curve to the left; thence Northwesterly 142.35 feet along the arc of said curve; thence North 32°40'12" West 41.81 feet; thence North 89°46'44" East 1045.40 feet to a point on the West line of 400 West Street; thence South 411.35 feet along the West line of said 400 West Street to the Point of Beginning; Contains 10.578 acres

SURVEYOR'S CERTIFICATE

I, KIRK PETER MORGAN, A REGISTERED LAND SURVEYOR, HOLDING CERTIFICATE NO. 171201, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH, DO HEREBY CERTIFY THAT BY THE AUTHORITY OF THE OWNERS I HAVE MADE AN ACCURATE SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HEREWITH AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS HEREAFTER TO BE KNOWN AS "CENTERVILLE CORPORATE PARK", AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

SIGNED THIS 16th DAY OF May A.D. 2000.

Kirk Peter Morgan
KIRK PETER MORGAN
REGISTERED LAND SURVEYOR

KIRK P. MORGAN #171201 LICENSED PROFESSIONAL LAND SURVEYOR STATE OF UTAH

OWNERS DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS TO BE HEREAFTER KNOWN AS "CENTERVILLE CORPORATE PARK", DO HEREBY DEDICATE FOR THE PERPETUAL USE OF THE PUBLIC, ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE, AND DO WARRANT, DEFEND AND SAVE THE CITY HARMLESS AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCES ON THE DEDICATED STREETS WHICH INTERFERE WITH THE CITY'S USE, OPERATION, AND MAINTENANCE OF THE STREETS.

IN WITNESS THEREOF WE HAVE HEREUNTO SET OUR HAND THIS 16th DAY OF May A.D. 2000.

REDEVELOPMENT AGENCY OF CENTERVILLE

Frank W. Hirschi
FRANK W. HIRSCHI
CHAIRMAN

Steve H. Thacker
STEVE H. THACKER
EXECUTIVE DIRECTOR

REDEVELOPMENT AGENCY CORPORATE SEAL OF CENTERVILLE CITY

ACKNOWLEDGEMENT

STATE OF UTAH] S.S.
COUNTY OF DAVIS]

ON THIS 16th DAY OF May A.D. 2000, THERE PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, IN AND FOR SAID STATE AND COUNTY, FRANK W. HIRSCHI, CHAIRMAN, AND STEVE H. THACKER, EXECUTIVE DIRECTOR, WHO AFTER BEING DULY SWORN, ACKNOWLEDGED BEFORE ME THAT THE REDEVELOPMENT AGENCY OF CENTERVILLE CITY, A REDEVELOPMENT AGENCY ORGANIZED UNDER THE LAWS OF THE STATE OF UTAH, AUTHORIZED THE CHAIRMAN AND EXECUTIVE DIRECTOR TO SIGN THIS OWNERS DEDICATION PLAT, AND THAT THEY SIGNED THE OWNERS DEDICATION PLAT FREELY AND VOLUNTARILY FOR AND IN BEHALF OF SAID AGENCY FOR PURPOSES HEREIN MENTIONED AND THAT SAID AGENCY EXECUTED THE SAME.

4-11-2004
MY COMMISSION EXPIRES:
250 North Main, Centerville, Utah

Marsha L Morrow
NOTARY PUBLIC
Marsha L. Morrow
"A notary public Commissioned in Utah"

RECOMMENDED FOR APPROVAL

ON THIS 16th DAY OF May A.D. 2000
CITY ATTORNEY

RECOMMENDED FOR APPROVAL

ON THIS 16th DAY OF MAY A.D. 2000
Fredric T Campbell
CITY ENGINEER

RECOMMENDED FOR APPROVAL

ON THIS 16th DAY OF May A.D. 2000
BY THE CENTERVILLE CITY PLANNING COMMISSION.
CHAIRMAN PLANNING COMMISSION

CITY COUNCIL'S APPROVAL

PRESENTED TO THE CITY COUNCIL OF CENTERVILLE, UTAH THIS 16th DAY OF MAY A.D. 2000, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

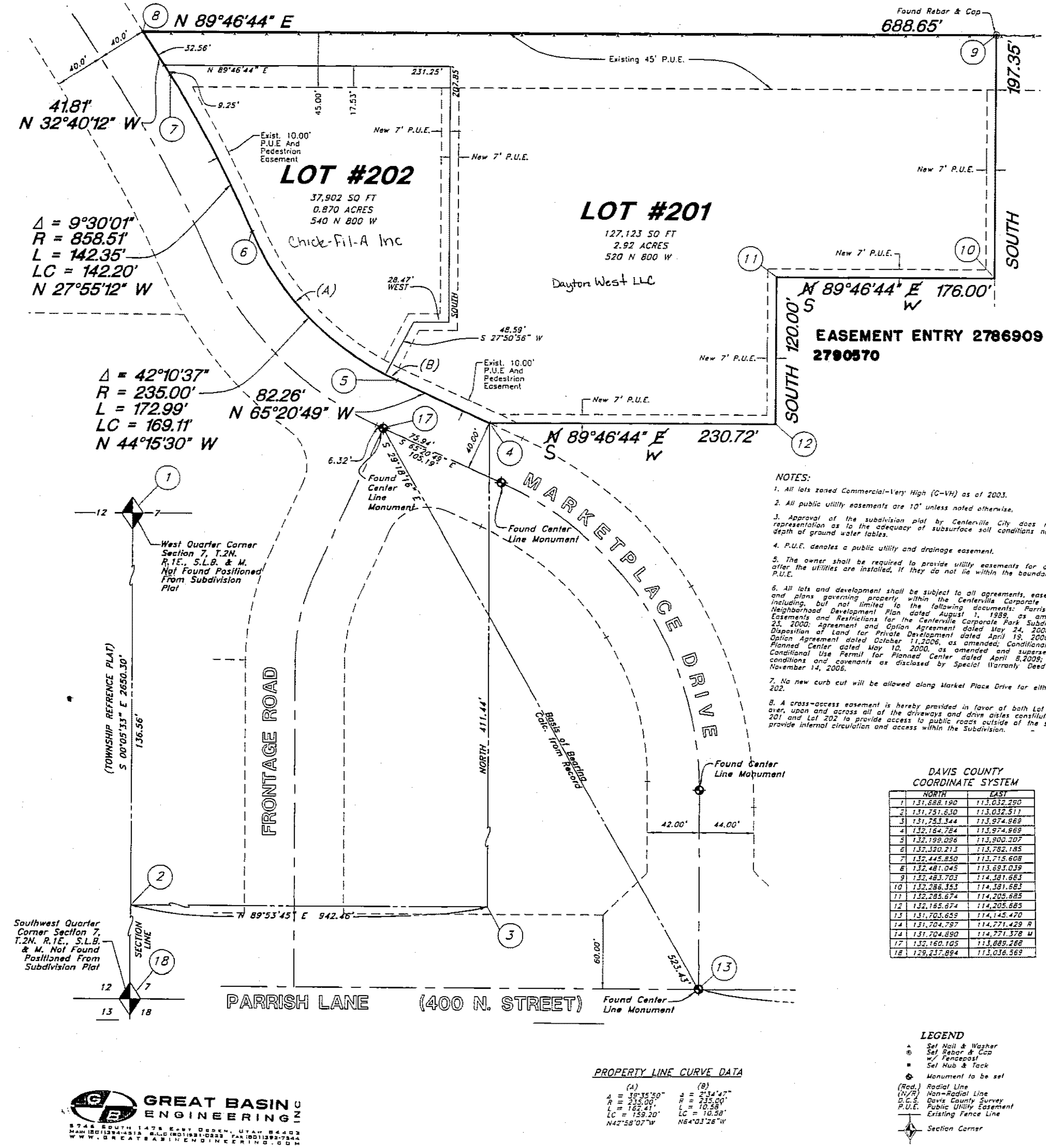
MAYOR: Frank Hirschi
Deputy CITY RECORDER ATTEST: Marsha L Morrow

COUNTY RECORDER

ENTRY NO. 1595245 FEE PAID 33.00
FILED FOR RECORD AND RECORDED THIS 1st DAY OF June A.D. 2000 AT 1:36 PM
IN BOOK 2654 OF O.R. PG 308
Sheryl L. White
COUNTY RECORDER
BY : DEPUTY

Centerville Corporate Park (Amended)

AMENDING LOT 2 CENTERVILLE CORPORATE PARK
PART OF THE N.W. 1/4 SEC 7 T.2N., R.1E., S.L.B. & M.
CENTERVILLE CITY, DAVIS COUNTY, UTAH



NOTES:

1. All lots zoned Commercial-Very High (C-VH) as of 2003.
2. All public utility easements are 10' unless noted otherwise.
3. Approval of the subdivision plat by Centerville City does not constitute any representation as to the adequacy of subsurface soil conditions nor the location or depth of ground water tables.
4. P.U.E. denotes a public utility and drainage easement.
5. The owner shall be required to provide utility easements for all as-built utilities after the utilities are installed, if they do not lie within the boundaries of an existing P.U.E.
6. All lots and development shall be subject to all agreements, easements, restrictions, and plans governing property within the Centerville Corporate Park Subdivision, including, but not limited to the following documents: Parrish Lane Gateway Neighborhood Development Plan dated August 1, 1989, as amended; Grant of Easements and Restrictions for the Centerville Corporate Park Subdivision dated June 23, 2000; Agreement and Option Agreement dated May 24, 2000; Agreement for Disposition of Land for Private Development dated April 19, 2000; Agreement and Option Agreement dated October 11,2006, as amended; Conditional Use Permit for Planned Center dated May 10, 2000, as amended and superseded by Amended Conditional Use Permit for Planned Center dated April 8,2009; deed restrictions, conditions and covenants as disclosed by Special Warranty Deed as recorded on November 14, 2006.
7. No new curb cut will be allowed along Market Place Drive for either Lot 201 or Lot 202.
8. A cross-access easement is hereby provided in favor of both Lot 201 and Lot 202 over, upon and across all of the driveways and drive aisles constituting a part of Lot 201 and Lot 202 to provide access to public roads outside of the subdivision and to provide internal circulation and access within the Subdivision.

DAVIS COUNTY
COORDINATE SYSTEM

	NORTH	EAST
1	131,688.190	113,032.290
2	131,751.630	113,032.511
3	131,753.344	113,974.969
4	132,164.784	113,974.969
5	132,199.096	113,900.307
6	132,320.213	113,782.185
7	132,445.850	113,715.608
8	132,481.045	113,693.039
9	132,483.703	114,381.683
10	132,286.353	114,381.683
11	132,285.674	114,205.685
12	132,165.674	114,205.685
13	131,703.659	114,145.470
14	131,704.797	114,771.429 R
14	131,704.890	114,771.378 M
17	132,160.105	113,689.268
18	129,237.894	113,036.569

PROPERTY LINE CURVE DATA

(A)	(B)
Δ = 39°35'50"	Δ = 2°34'47"
R = 235.00'	R = 235.00'
L = 162.41'	L = 10.58'
LC = 159.20'	LC = 10.58'
N42°58'07"W	N64°03'26"W

LEGEND
- Set Nail & Washer
- Set Rebar & Cap w/ Fencepost
- Set Hub & Tack
- Monument to be set
- (Rad.) Radial Line
- (N/R) Non-Radial Line
- D.C.S. Davis County Survey
- P.U.E. Public Utility Easement
- Existing Fence Line
- Section Corner

GREAT BASIN ENGINEERING INC
5746 SOUTH 1475 EAST OGDEN, UTAH 84403
WWW.GREATBASINENGINEERING.COM

PREFIX
02-236
LAST #
0202

N

SCALE:
1" = 60'

DEVELOPMENT: CENTERVILLE CORPORATE PARK (AMENDED)
CITY: CENTERVILLE
LOTS: 201 THRU 202

NW 1/4 SEC. 7, T 2N R 1E
S.L.M. DAVIS COUNTY, UTAH
ALL OF LOT 2, CENTERVILLE CORPORATE PARK
LOT 2, BLK 1 CENTERVILLE BC

FILE #5259
R-03-06-13

02 236

Proposed Changes from Discussion on March 5, 2019

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

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

* * *

23. Maintenance Reserve Fund Total Target and Minimum Contribution. In order to ensure that maintenance spending is addressed on a continuous basis, rather than waiting until a problem occurs, the Association shall be required to maintain a minimum amount of funds in the Maintenance Reserve Fund and shall be required to make a minimum annual contribution to the Maintenance Reserve Fund as more particularly set forth herein. For purposes of this Section, Annual Revenues is defined in Section 21 and Replacement Value of the facility is more particularly defined in Section 18. The total target funding balance ("**Total Target Balance**") for the Maintenance Reserve Fund is an amount equal to 2.5% of the Replacement Value of the facility, although it is acknowledged that this amount will fluctuate with various expenditures throughout the Term of this Lease. At a minimum, the Association shall retain an amount equal to 1% of the Replacement Value in the Maintenance Reserve Fund ("**Minimum Target Balance**"). If the Minimum Target Balance is not met, the Association shall be required to present a funding plan to the RDA addressing how the Minimum Target Balance will be met within a reasonable time. The Association shall be required to contribute to the Maintenance Reserve Fund on an annual basis an amount equal to 2% ~~1%~~ of the prior year's Annual Revenues ("**Minimum Annual Contribution**"). In order to keep pace with the recommended industry standard maintenance allocation, the total target annual contribution for the Maintenance Reserve Fund is an amount equal to 0.5% of the Replacement Value of the facility ("**Total Target**

Annual Contribution"). Except as otherwise expressly authorized by the RDA for extenuating circumstances, the Association must contribute the Total Target Annual Contribution to the Maintenance Reserve Fund before the Association can contribute funds to the Operations Reserve Fund, the Capital Reserve Fund, or funds expended for any other purpose. There is no maximum amount that can be contributed to the Maintenance Reserve Fund. The Minimum Annual Contribution to the Maintenance Reserve Fund shall be addressed in the budget and shall be paid annually on or by June 30th. The Association shall be responsible for determining and calculating its Annual Revenues in order to make timely payment of the Minimum Annual Contribution to the Maintenance Reserve Fund.

* * *

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

CENTERVILLE

Staff Backup Report
3/19/2019

Item No. 3.

Short Title: Approve tax increment participation agreement with developer of Legacy Trails Apartments Project

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Approve the attached Participation Agreement with the developer of the Legacy Trails Apartments PDO.

BACKGROUND

In an earlier meeting, the RDA Board agreed to reimburse the developer of this project a total of $148,879 from tax increment generated by the project--for specific infrastructure improvements. Per the Agreement, the developer will receive 25% of the tax increment annually until the total is reached or the Project Area expires, whichever occurs first. The Agreement also allows for an accelerated tax increment payment relating to development of the two commercial lots currently vacant.

ATTACHMENTS:

Description

- Participation Agreement - Legacy Trails Apartments PDO

PARTICIPATION AGREEMENT

Between
Redevelopment Agency of Centerville City
and
Legacy Trails Apartments, LLC

This Participation Agreement (the "Agreement") is entered into as of this _____ day of March, 2019, by and between **LEGACY TRAILS APARTMENTS, LLC** (the "Company"), as the developer of certain real property located in Centerville City, Davis County, Utah, and the **REDEVELOPMENT AGENCY OF CENTERVILLE CITY**, a redevelopment agency created under Utah law (the "Agency") in contemplation of the following facts and circumstances:

A. **WHEREAS,** the Company developed approximately 12 acres of real property located at 1250 West Parrish Lane, Centerville City, Davis County, Utah ("Site"), as represented in the final subdivision plat for the Legacy Trails Apartments Subdivision, as amended, as more particularly set forth in **Exhibit A**; and

B. **WHEREAS,** the Company developed the Site under a Planned Development Overlay approval as a mixed use development with multi-family residential and commercial uses known as the Legacy Trails Apartments PDO, as approved by the City Council on March 19, 2014, pursuant to Ordinance No. 2014-06, as amended ("Project"); and

C. **WHEREAS,** the Company has requested tax increment reimbursement for certain costs incurred by the Company for infrastructure improvements installed or constructed by the Company for the development of the Site and Project, including tax increment reimbursement for roads, drainage facilities, water main infrastructure, and the Legacy Trail connection; and

D. **WHEREAS,** the Agency has heretofore created the Centerville Parrish – Legacy Crossing Community Development Project Area ("Project Area") as approved by the Agency in 2010, which Project Area authorizes the Agency to use tax increment for purposes allowed by State law as more particularly set forth in Utah Code §§ 17C-1-101, et seq., the Limited Purpose Local Governmental Entities-Community Reinvestment Agency Act (the "Act"); and

E. **WHEREAS,** the Agency has heretofore adopted and authorized the Centerville Parrish – Legacy Crossing Community Development Project Area Plan and Budget that provides the Agency the ability to negotiate participation and tax increment agreements with developers and property owners; and

F. **WHEREAS,** the Legacy Trails Apartments Project is located within the Project Area and will generate incremental property tax revenues to the Agency and the Project will generate additional incremental property tax and sales tax revenues to Centerville City; and

G. **WHEREAS,** the Agency and its representatives have analyzed the Company's request for tax increment reimbursement and determined the items eligible for tax increment funding under terms and conditions of the Centerville Parrish - Legacy Crossing Community Development Project Area plan documents and as authorized by the Act, as more particularly described herein.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree to the Participation Agreement as follows:

1. **Designated Properties and Base Values**. For purposes of this Agreement, the following are the eligible designated properties within the Project along with the associated base values for such properties ("Designated Properties"):

Lot #	Tax Parcel #	Acreage	Base Value
Lot 1-A	06-385-0001	1.18 acres	$ 133,852
Lot 2	06-380-0002	0.81 acres	$ 97,111
Lot 3	06-380-0003	1.07 acres	$ 139,828
Lot 4	06-380-0010	8.44 acres	$ 1,060,977

2. **Tax Increment Incentive**. The Agency agrees to contribute to the Company an economic incentive on a reimbursement basis for the eligible improvements within the Project as follows: Subject to the performance requirements set forth in Section 4, the Company shall be eligible to receive 25% of the tax increment received by the Agency for the Designated Properties within the Project up to a maximum amount of $148,879 ("Tax Increment Incentive"). The Tax Increment Incentive shall be limited to tax increment generated solely from the Designated Properties within the Project, and to tax increment actually received by the Agency. The Tax Increment Incentive is limited to tax increment actually received by the Agency. The Tax Increment Incentive shall only be applicable prospectively to tax increment funds received by the Agency from and after the effective date of this Agreement, including tax increment funds received by the Agency for the tax year 2018. The Tax Increment Incentive shall be paid out annually over a ten year period or until the expiration of the Project Area, whichever occurs first. The Tax Increment Incentive shall not be provided or eligible to the Company for any additional years if the term of the Project Area is extended for any reason as authorized by law. The Tax Increment Incentive is limited to and based on actual tax increment generated by the Designated Properties within the Project and it is expressly acknowledged that the Company may or may not be paid out the maximum incentive amount of $148,879.

3. **Accelerated Tax Increment Incentive**. In order to incentivize the development of the two vacant commercial lots within the Project consisting of Lot 2 and Lot 3 of the Designated Properties, the Agency agrees to accelerate the payout of the Tax Increment Incentive if and when construction occurs as follows: Subject to the performance requirements set forth in Section 4, the Company shall be eligible to receive 50% of the tax increment received by the Agency for Lot 2 after the construction and occupancy of a commercial building on Lot 2, and 50% of the tax increment received by the Agency for Lot 3 after the construction and occupancy of a commercial building on Lot 3 ("Accelerated Tax Increment"). The Company shall not be eligible for the Accelerated Tax Increment until and unless a commercial building is constructed and occupied as required herein on Lot 2 and/or Lot 3, including the required issuance of a certificate of occupancy for the building. The Company shall only be eligible for Accelerated Tax Increment generated from the developed lot. For instance, if a commercial building has been constructed on Lot 2, but not on Lot 3, the Company is only eligible for Accelerated Tax Increment for Lot 2 and not Lot 3 (although the Company would still be eligible for the Tax Increment Incentive for Lot 3). The Accelerated Tax Increment Incentive is only a mechanism to accelerate the payout of eligible tax increment for the Project and shall in no way alter or increase the maximum incentive amount of the Tax Increment Incentive as set forth in Section 2.

4. **Performance Requirements.** As a condition of the Agency distributing any Tax Increment Incentive or Accelerated Tax Increment to the Company, the Company shall be required to be in compliance with all land use approvals for the Project and current with the payment of all government property taxes for the Designated Properties within the Project. In the event of delinquency in the payment of property taxes for any of the Designated Properties within the Project, the Company shall not be eligible to receive the annual Tax Increment Incentive or Accelerated Tax Increment generated by the property for which taxes have not been paid until such taxes have been paid. As a condition of the Agency distributing any Accelerated Tax Increment to the Company, the Company shall be required to construct and obtain a certificate of occupancy for a commercial building on Lot 2 or Lot 3, as more particularly provided in Section 3.

5. **Timing of Tax Increment.** The Tax Increment Incentive shall be distributed to the Company annually after the Agency receives applicable tax increment funds from Davis County and the Agency confirms that the Company has met and continues to meet the performance requirements set forth in Section 4. The Accelerated Tax Increment shall be distributed to the Company annually after the Agency receives applicable tax increment funds from Davis County and the Agency confirms that the Company has met the performance requirements set forth in Section 4, including the certificate of occupancy requirements set forth in Section 3. It is specifically acknowledged and agreed that any payment of Tax Increment Incentive and/or Accelerated Tax Increment is subject to receipt of said monies from Davis County.

6. **Improvements Eligible for Tax Increment Incentive.** The primary purpose of the Centerville Parrish – Legacy Crossing Community Development Project is to ensure that land within the Project Area develops in a quality and harmonious fashion and to facilitate the installation of public improvements that will promote economic development substantially beyond what would otherwise be generated within the Project Area. Tax increment reimbursement may be provided to project developers for projects within the Project Area that meet the goals and objectives of the plan documents and provide a public benefit. The Agency has determined the following costs incurred and improvements installed by the Company are eligible for tax increment reimbursement under the Project Area plan documents as provided in this Agreement: Legacy Trail Connection Improvements in the amount of $89,173 and Road and Drainage Improvements in the amount of $59,706.

7. **Agency Authority.** The drawings and preliminary and final construction documents for the commercial buildings on Lot 2 and Lot 3 shall be subject to general architectural review and guidance by the Agency. Centerville City's approval is directed to such matters as planning, zoning, engineering, structural matters, compliance with City buildings codes and regulations, conditional use permits, and applicable State, federal or local laws relating to construction standards. The Company understands that the Agency's approval is in addition to the City's approval. The Agency's determinations respecting the Company's compliance with the Redevelopment Plan, the preliminary and final construction documents and this Agreement shall be final and conclusive. The approval of the Agency shall not be unreasonably withheld or denied.

8. **Successors and Assigns.** This Agreement may not be assigned by the Company without the expressed prior written consent of the Agency, said consent not to be unreasonably withheld. Any assignment shall be in writing by form approved by the Agency.

9. **Amendments.** Except as otherwise provided herein, this Agreement may only be modified or amended by written instrument duly authorized and executed by the Company and the Agency.

10. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Davis County, Utah.

THIS PARTICIPATION AGREEMENT IS EXECUTED to be effective as of the day and year first above written.

COMPANY: Legacy Trails Apartments, LLC
a Utah limited liability company

By: ______________________________
Owner/Member

AGENCY: CENTERVILLE CITY REDEVELOPMENT AGENCY,
a municipal agency of the state of Utah

Attest:

By: ______________________________
Clark A. Wilkinson, Agency Board Chair

____
Agency Secretary

EXHIBIT A

Legacy Trails Subdivision Final Plat and
Legacy Trails Subdivision (First Amendment and Extension) Final Plat

CENTERVILLE

Staff Backup Report
3/19/2019

Item No. 4.

Short Title: Consider possibility of extending period for receiving "additional tax increment" to offset improvement cost of Freedom Hills Park

Initiated By: RDA Executive Director

Scheduled Time:

SUBJECT

RECOMMENDATION

Allow RDA Executive Director to explain the possibility of extending the period for receiving "additional tax increment" from the Parrish Gateway Project Area, relating to the construction of Freedom Hills Park.

BACKGROUND

This matter will be explained in the meeting.

CENTERVILLE

Staff Backup Report
3/19/2019

Item No. 5.

Short Title: Report re hotel developer's request for tax increment incentive

Initiated By: RDA Executive Director

Scheduled Time:

SUBJECT

RECOMMENDATION

Allow the Executive Director to report on a recent meeting with a hotel developer regarding the possibility of tax increment incentive for a proposed hotel on property near the northwest corner of Parrish Lane and 1250 West.

BACKGROUND

This matter will be explained further in the meeting.

CENTERVILLE

Staff Backup Report
3/19/2019

Item No. 6.

Short Title: Continue discussion of uses of future tax increment revenue from Project Areas

Initiated By: RDA Executive Director

Scheduled Time:

SUBJECT

RECOMMENDATION

If time permits, continue the discussion of uses of future tax increment revenues from the three RDA Project Areas.

BACKGROUND

Documents from an earlier discussion of this topic are attached again. The page containing a 4-year projection of revenues and expenses for the three Project Areas is being revised and will be available in the meeting.

ATTACHMENTS:

Description

- RDA Revenue and Expenses Analysis

	Owed to Parrish As of 7/1/2013	2014	2015	2016	2017	2018	Total	
Barnard Rev.					$ 100,897.00	$ 90,244.00	$ 191,141.00	
Barnard Exp.	$ 13,125.00	$ 25,321.25	$ 21,743.41	$ 20,786.96	$ 17,937.92	$ 12,912.00	$ 111,826.54	
Admin Charges and other Expenses Assigned*		$ -	$ -	$ -	$ 13,580.59	$ 11,581.00	$ 25,161.59	$ 54,152.87

As of FY18, Barnard Creek has paid its obligation to Parrish Gateway. This amount represents the area's balance.

Legacy X Rev.		$ 104,352.00	$ 129,011.00	$ 185,058.00	$ 192,947.00	$ 215,933.00	$ 827,301.00	
Legacy X Exp.	$ 156,828.00	$ 100,505.90	$ 123,963.00	$ 206,749.57	$ 148,808.68	$ 188,372.00	$ 925,227.15	
Admin Charges and other Expenses Assigned*		$ 13,262.67	$ 19,765.65	$ 22,121.12	$ 25,970.39	$ 27,710.00	$ 108,829.84	$ (206,755.99)

Legacy X CDA owes this amount to Parrish Gateway

Centerville Redevelopment Agency
FY 2019

Revenue - FY 2019		Adopted	
Tax Increment - Parrish Lane Gateway (PLG)		$ 902,569	PLG
Additional Tax Increment (PLG)		$ 208,373	PLG
Tax Increment - Legacy Crossing (LC)		$ 253,313	LC
Tax Increment - Barnard Creek (BC)		$ 95,546	BC
CPT Lease Payments		$ 79,700	PLG
Unanticipated Tax Increment		$ -	
	Total	$ 1,539,501	

Expenditures - FY 2019		Adopted	
Public Notices		$ 100	
Professional and Technical - Misc.		$ 10,000	
Engineering		$ 7,500	
Transfer-Dept Payment (DCPA)		$ 592,838	PLG
Payment of Increment			
Parrish Lane Gateway			
Dayton-West		$ 80,000	PLG
Land Rover		$ 33,000	PLG
Legacy Crossing			
Legacy Crossing Theatre, LLC		$ 172,000	LC
Tueller/Wright		$ -	LC
Barnard Creek			
Salmon		$ 30,000	BC
Supplies and Materials		$ 5,000	
Deposit into TRF		$ 79,700	PLG
Insurance - Property & Liability (DCPA)		$ 14,140	PLG
Board Compensation			
Admin. Services/Project Mgmt./Property Mgmt.		$ 124,531	
Additional Tax Increment - Transfer to UTOPIA (Fund 49)		$ 208,373	PLG
Affordable Housing Transfer		$ 28,114	BC
Other Obligations - TBD during FY18		$ 154,205	PLG/QQ
	Total	$ 1,539,501	

Comparison of revenue and expenditures related to each project area:

Unassigned Expense=	$ 147,131				
PLG:	$ 147,131	x	77.3%	=	$ 113,790
LC:	$ 147,131	x	16.5%	=	$ 24,209
BC:	$ 147,131	x	6.5%	=	$ 9,131

PLG Revenue:	$ 1,190,642	
PLG Expenditures:	$ 1,162,256	$ 113,790
LC Revenue:	$ 253,313	
LC Expenditures:	$ 172,000	$ 24,209
BC Revenue:	$ 95,546	
BC Expenditures:	$ 58,114	$ 9,131

Updated
11/9/18

RDA Project Areas Financial Projection

	FY 2019	FY 2020	FY 2021	FY 2022
Parrish Gateway RDA				
Revenue				
Regular Tax Increment only	$ 900,000	$ 900,000	$ 900,000	$ 900,000
Expenses				
DS-DCPA	$ (592,838)	$ (592,963)	$ (593,163)	$ -
Tax Increment Payments				
Dayton-West	$ (80,000)	$ (80,000)	$ (80,000)	$ (80,000)
Land Rover	$ (33,000)	$ (33,000)	$ (33,000)	$ (33,000)
Admin, etc	$ (114,000)	$ (114,000)	$ (114,000)	$ (114,000)
% of Admin, etc.	77.6%	76.5%	74.5%	72.2%
(Haircut increment & lease revenue included when calculating Admin %)				
Revenue over Exp	$ 80,162	$ 80,037	$ 79,837	$ 673,000
Legacy Crossing CDA				
Revenue				
Tax Increment only	$ 253,000	$ 253,000	$ 270,000	$ 300,000
Expenses				
Tax Increment payment	$ (172,000)	$ (172,000)	$ (185,000)	$ (200,000)
Admin, etc	$ (24,000)	$ (24,000)	$ (26,000)	$ (28,000)
% of Admin, etc.	16.3%	16.1%	17.0%	17.7%
Revenue over Expenses	$ 57,000	$ 57,000	$ 59,000	$ 72,000
Barnard Creek CDA				
Revenue				
Tax Increment only	$ 96,000	$ 110,000	$ 130,000	$ 150,000
Expenses				
Tax Increment Payments				
Salmon/Pastures	$ (30,000)	$ (30,000)	$ (30,000)	$ (30,000)
Housing Revitalization (10%)	$ (28,114)	$ (11,000)	$ (13,000)	$ (15,000)
Admin, etc	$ (9,000)	$ (11,000)	$ (13,000)	$ (16,000)
% of Admin, etc.	6.1%	7.4%	8.5%	10.1%
Revenue over Expenses	$ 28,886	$ 58,000	$ 74,000	$ 89,000

Other Potential Uses of RDA Tax Increment Revenue

- Repay General Fund for fencing upgrade on Parrish Lane—$116,929 (PG, BC, LC)
- LC repay loan of $206,756 from PG (LC only)
- Replace sales tax deduction in General Fund for homeless shelters assessment--$28,114 in FY 19 (BC, others?)
- Reimbursement to Legacy Trail Subdivision developer—amount TBD (LC only)
- Welcome to Centerville sign at SE corner of Parrish/1250 West--$13,000 in addition to Hogan donation (PG, BC, LC)
- CPT Gala--$3000 (PG only)
- Quick Quack reimbursement--$8300 (PG only)
- Add to performing arts center TRF (PG only)
- Create revolving loan fund for commercial bldg rehabs (PG only)
- Potential reimbursement to developers for infrastructure north of Parrish (road widening, drainage, etc.?) (LC only)
- Multi-use pathway along 1250 West north of Parrish to connection with LP Trail (LC, BC)
- I-15 interchange beautification enhancements (PG, LC, BC)
- City's 6.77% match for federally-funded intersection projects at Parrish/400 West and Parrish/Marketplace (instead of using City's Transportation Fund revenues) (PG only)