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 ADMINSTRATIVE CONTROL BOARD OF THE DAVIS CENTER FOR THE PERFORMING ARTS WILL HOLD A COMBINED PUBLIC MEETING AT 5:30 P.M. ON TUESDAY, SEPTEMBER 3, 2013 AT THE CENTERVILLE CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Tentative
Time:

5:30 **A. ROLL CALL**

B. NEW BUSINESS

1. **Minutes Review and Acceptance** – August 6, 2013 RDA meeting
2. Review of Independent Auditors' Report for CenterPoint Legacy Theatre for 2012
3. Deposits into the CPT Operations Reserve Fund and Maintenance Reserve Fund
4. Review of 6-month Financial Report for 2013
5. CenterPoint's Remaining Construction Obligation
6. Review of Lease Maintenance Provisions
7. CPT Progress Report/Update

C. ADJOURNMENT

Steve H. Thacker
Executive Director

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 1.

Short Title: Minutes Review and Acceptance - August 6, 2013 RDA meeting

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- RDA meeting minutes of August 6, 2013

PRELIMINARY DRAFT

Minutes of the **Redevelopment Agency of Centerville** meeting held Tuesday, August 6, 2013 at 9:30 p.m. in the Centerville City Hall Council Chambers, 250 North Main Street, Centerville, Utah.

DIRECTORS PRESENT	Ronald G. Russell, Chair Justin Y. Allen Ken S. Averett Sherri Lyn Lindstrom Lawrence Wright
DIRECTOR ABSENT	John T. Higginson, Vice Chair
STAFF PRESENT	Steve Thacker, RDA Executive Director Blaine Lutz, Finance Director Lisa Romney, City Attorney Jacob Smith, Management Assistant Katie Rust, Recording Secretary

MINUTES REVIEW AND ACCEPTANCE

The minutes of the July 16, 2013 RDA meeting were reviewed. Director Wright made a **motion** to approve the minutes, which was seconded by Director Lindstrom. The motion passed by unanimous vote (5-0).

BARNARD CREEK COMMUNITY DEVELOPMENT AREA – CONSIDERATION OF RESOLUTION NO. 2013-05

Blaine Lutz, Finance Director, explained that Davis County requires agreements to be approved by whatever entity they are dealing with prior to County consideration. Staff has incorporated changes suggested by County staff to the Interlocal Cooperative Agreement for the Barnard Creek Community Development Area.

Director Allen made a **motion** to approve Resolution No. 2013-05, approving an Interlocal Cooperative Agreement between the Redevelopment Agency of Centerville City and Davis County for the collection and remittance of incremental property taxes collected from property within the Barnard Creek Community Development Area. Director Lindstrom seconded the motion, which passed by unanimous vote (4-0). Director Wright abstained from voting because he had not reviewed the documents.

CENTERVILLE CITY RIVIERA CDBG PROJECT

Centerville City has received two grants through the Small City CDBG program totaling $100,000 for the Riviera Townhomes project. The FY 2014 RDA Budget includes $30,000 to assist with the project. Other funding for the project will come from the Riviera Townhomes Homeowners Association.

Director Wright made a **motion** to approve a grant to the Centerville City Riviera CDBG Project in the amount of $30,000. Director Lindstrom seconded the motion, which passed by unanimous vote (5-0).

ADJOURNMENT

At 9:36 p.m. Director Lindstrom made a **motion** to adjourn the RDA meeting. Director Wright seconded the motion, which passed by unanimous vote (5-0).

______________________________ ____________________

Steve Thacker, RDA Executive Director Date Approved

____

Katie Rust, Recording Secretary

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 2.

Short Title: Review of Independent Auditor's Report for the Centerpoint Legacy Theater for 2012

Initiated By: Jansen Davis

Scheduled Time:

SUBJECT

RECOMMENDATION

Review the Audit Report for 2012. No action is necessary on this item.

BACKGROUND

The Audit Report for 2012 is attached that has been prepared by Hansen, Bradshaw, Malmrose & Erickson. Blaine Lutz will assist with the discussion of the Report.
Staff met with Jan Davis, Executive Director, and David Peterson, CFO, of CenterPoint Legacy Theatre (CPT) on August 27 to review the Auditors' Report for the year ended December 31, 2012. Note that the Report includes a comparison of 2011 and 2012, so be sure you are reviewing the correct page and/or column as you review 2012 financial data. The bottom line is good, due in part to accelerated donations from the Haven Barlow family. This enabled CPT to make sizeable contributions into the Operations Reserve Fund and the Maintenance Reserve Fund, as well as pay off most of their remaining construction obligation—explained further in another item during this meeting.

ATTACHMENTS:

Description

- 2012 CPT Audit Report
- Auditor's Letter to Management

DAVIS PERFORMING ARTS ASSOCIATION
dba, CENTERPOINT LEGACY THEATRE

Financial Statements and
Supplementary Information

As of December 31, 2012 and 2011 and For the Years Then Ended

Together with Independent Auditors' Report

CENTERPOINT LEGACY THEATRE

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Hansen, Bradshaw, Malmrose & Erickson

A Professional Corporation
CERTIFIED PUBLIC ACCOUNTANTS

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INDEPENDENT AUDITORS' REPORT

To the Board of Trustees
Davis Performing Arts Association
dba, CenterPoint Legacy Theatre

Report on the Financial Statements

We have audited the accompanying statements of financial position of Davis Performing Arts Association, dba, CenterPoint Legacy Theatre (a non-profit Organization) ("the Theatre") as of December 31, 2012 and 2011 and the related statements of activities and changes in net assets and cash flows for the years then ended.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Theatre as of December 31, 2012 and 2011, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The 2012 supplemental schedule of functional expenses is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the 2012 financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the 2012 financial statements or to the 2012 financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Hansen, Bradshaw, Malmrose & Erickson, P.C.

May 20, 2013

CENTERPOINT LEGACY THEATRE
Statements of Financial Position
December 31, 2012 and 2011

	2012	2011
ASSETS		
Current assets:		
Cash, unrestricted	$ 739,805	$ 591,737
Cash, restricted	162,061	37,823
Prepaid expenses	59,714	75,061
Total current assets	961,580	704,621
Deferred construction expense	233,457	252,730
Deposit	-	300
Property and equipment, net	71,456	86,657
Total assets	$ 1,266,493	$ 1,044,308
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	$ 30,204	$ 54,585
Accrued liabilities	13,550	6,529
Deferred ticket revenue	678,151	533,126
Total current liabilities	721,905	594,240
Long-term liabilities		
Note payable - construction obligation	233,457	252,730
Lease deposit	-	1,500
Total liabilities	233,457	254,230
Total liabilities	955,362	848,470
Net assets:		
Unrestricted	306,704	158,015
Temporarily restricted	4,427	37,823
Total net assets	311,131	195,838
Total liabilities and net assets	$ 1,266,493	$ 1,044,308

The accompanying notes are an integral part of these financial statements.

CENTERPOINT LEGACY THEATRE
Statement of Activities and Changes in Net Assets
For the Year Ended December 31, 2012

	Unrestricted	Temporarily Restricted	Total
REVENUES			
Public support:			
Ticket sales:			
Season sales	$ 538,308	$ -	$ 538,308
Individual sales	404,146	-	404,146
Concessions revenue	43,569	-	43,569
Donations and sponsors:			
Seat and paver donations	-	5,877	5,877
Other donations	206,711	-	206,711
Total public support	1,192,734	5,877	1,198,611
Other revenue:			
Academy tuition, fees and tickets	94,943	-	94,943
Facility and other rentals	54,907	-	54,907
Miscellaneous revenue	43,284	-	43,284
Interest income	316	-	316
In-kind revenue	1,401	-	1,401
Net assets released from restrictions	39,273	(39,273)	-
Total other revenue	234,124	(39,273)	194,851
Total public support and other revenues	1,426,858	(33,396)	1,393,462
EXPENSES			
Program services:			
Production expenses:			
Main stage	582,461	-	582,461
Performance hall	68,863	-	68,863
Indirect	170,587	-	170,587
Other expenses:			
Academy	85,765	-	85,765
Concessions	32,079	-	32,079
Facility and other rentals	8,701	-	8,701
Box office	85,312	-	85,312
Total program services	1,033,768	-	1,033,768
Supporting services:			
General and administrative:			
Accounting	87,975	-	87,975
Other administrative	26,806	-	26,806
Marketing and development	129,620	-	129,620
Total supporting services	244,401	-	244,401
Total expenses	1,278,169	-	1,278,169
Changes in net assets	148,689	(33,396)	115,293
Net assets at beginning of year	158,015	37,823	195,838
Net assets at end of year	$ 306,704	$ 4,427	$ 311,131

The accompanying notes are an integral part of these financial statements.

CENTERPOINT LEGACY THEATRE
Statement of Activities and Changes in Net Assets
For the Year Ended December 31, 2011

	Unrestricted	Temporarily Restricted	Total
REVENUES			
Public support:			
Ticket sales:			
Season sales	$ 511,519	$ -	$ 511,519
Individual sales	428,364	-	428,364
Concessions revenue	42,090	-	42,090
Donations and sponsors:			
Seat and paver donations	-	44,073	44,073
Other donations	153,656	14,000	167,656
Total public support	1,135,629	58,073	1,193,702
Other revenue:			
Academy tuition, fees and tickets	76,560	-	76,560
Facility and other rentals	33,814	-	33,814
Miscellaneous revenue	9,115	-	9,115
Interest income	101	-	101
In-kind revenue	1,250	-	1,250
Net assets released from restrictions	88,200	(88,200)	-
Total other revenue	209,040	(88,200)	120,840
Total public support and other revenues	1,344,669	(30,127)	1,314,542
EXPENSES			
Program services:			
Production expenses:			
Main stage	630,696	-	630,696
Performance hall	26,518	-	26,518
Indirect	109,334	-	109,334
Other expenses:			
Academy	70,790	-	70,790
Concessions	32,320	-	32,320
Facility and other rentals	4,962	-	4,962
Box office	75,843	-	75,843
Total program services	950,463	-	950,463
Supporting services:			
General and administrative:			
Accounting	49,229	-	49,229
Other administrative	8,868	-	8,868
Marketing and development	127,868	-	127,868
Total supporting services	185,965	-	185,965
Total expenses	1,136,428	-	1,136,428
Changes in net assets	208,241	(30,127)	178,114
Net assets at beginning of year	(50,226)	67,950	17,724
Net assets at end of year	$ 158,015	$ 37,823	$ 195,838

The accompanying notes are an integral part of these financial statements.

CENTERPOINT LEGACY THEATRE
Statements of Cash Flows
For the Years Ended December 31, 2012 and 2011

		2012		2011
Cash flows from operating activities:				
Change in net assets	$	115,293	$	178,114
Adjustments to reconcile change in net assets to net cash from operating activities:				
Depreciation		15,201		17,143
Deferred construction expense amortization		19,273		43,270
Changes in assets and liabilities:				
Prepaid expenses		15,347		(27,417)
Accounts payable		(24,381)		30,033
Accrued liabilities		7,021		4,735
Deposits		(1,200)		1,200
Deferred ticket revenue		145,025		107,546
Net cash provided by operating activities		291,579		354,624
Cash flows from investing activities:				
Purchase of equipment		-		(47,807)
Cash flows from financing activities:				
Payments on long-term debt		(19,273)		(247,270)
Net increase in cash and cash equivalents		272,306		59,547
Cash at beginning of year		629,560		570,013
Cash at end of year	$	901,866	$	629,560

The accompanying notes are an integral part of these financial statements.

CENTERPOINT LEGACY THEATRE
Notes to the Financial Statements
December 31, 2012 and 2011

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations The Davis Performing Arts Association, dba CenterPoint Legacy Theatre ("the Theatre"), is a Utah not-for-profit organization whose mission is elevating, educating and entertaining citizens of the surrounding communities of Davis County, Utah through participation in and enjoyment of the performing arts.

Basis of Presentation Not-for-profit organizations are required to provide a statement of financial position, a statement of activities, and a statement of cash flows which are prepared to focus on the organization as a whole and to present balances and transactions according to the existence or absence of donor-imposed restrictions. Not-for-profit organizations are required to report total assets, liabilities, and net assets in a statement of financial position; change in net assets in a statement of activities; and changes in cash and cash equivalents in a statement of cash flows. Not-for-profit organizations are also required to report expenses by their functional classification, such as major programs and supporting activities. The Theatre presents expenses by functional classification in a statement of functional expenses.

The Theatre maintains its accounts on the accrual basis of accounting. Net assets, revenues, gains and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets and changes therein are classified as follows:

Permanently restricted net assets
Permanently restricted net assets are subject to donor-imposed stipulations that must be maintained indefinitely by the Theatre.

Temporarily restricted net assets
Temporarily restricted net assets are subject to donor-imposed stipulations that may be met by actions of the Theatre or will be met through the passage of time.

Unrestricted net assets
Unrestricted net assets are not subject to donor-imposed stipulations.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulations or by law.

Expirations of temporary restrictions on net assets, i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed, are reported as reclassifications between the applicable classes of net assets. Occasionally, permanent restrictions will be released when a donor communicates to the Theatre that a previously permanently restricted endowment contribution can be used for unrestricted purposes. These modifications are reported as reclassifications between the applicable classes of net assets.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Use of Estimates The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents For the purposes of reporting cash flows, cash and cash equivalents are defined as cash on hand, checking accounts, certificates of deposit and money market accounts with original maturities of ninety days or less.

Pledges Receivable Pledges receivable, when applicable, are recorded at their estimated fair value less an appropriate allowance for uncollectible accounts. The allowance, if any, is based on historical experience and management's analysis of specific balances.

Fair Values of Financial Instruments Various methods and assumptions were used to estimate the fair value of each class of financial instruments. Cash and cash equivalents are valued at their carrying amount which approximates fair value due to their short maturities.

Depreciation and Amortization The Theatre's policy is to capitalize all fixed asset purchases over $1,000 and an estimated useful life of 3 or more years. Depreciation and amortization are computed on the straight-line method over the following estimated useful lives:

Sound/light/sewing equipment	5 - 7
Furniture and fixtures	7 - 20
Office equipment	5 - 7
Leasehold improvements (lease term)	12

Contributions and In-Kind Contributions Contributions, which include unconditional promises to give (pledges), are recognized as revenues in the period received or promised. Contributions are recorded as unrestricted, temporarily restricted, or permanently restricted support depending on the existence of any donor restrictions. All contributions are considered to be available for unrestricted use in the appropriate time period (time restriction), unless specifically restricted by the donor. Amounts that are restricted for future periods or restricted for specific purposes (purpose restriction) are reported as temporarily restricted or permanently restricted support and increase these net asset classes. When a donor-stipulated time restriction ends or a purpose restriction is accomplished, the restricted net assets are reclassified to unrestricted net assets and reported as satisfactions of restrictions and net assets released from restrictions on the statement of activities. As of December 31, 2012 and 2011, the Theatre did not have any permanently restricted net assets.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Occasionally, the Theatre receives supplies and other expendable items for use in its programs. Donated items are reported at their fair value as contributed in-kind revenue and the appropriate expenses. In-kind contributions of $1,401 and $1,250 were made during 2012 and 2011, respectively.

The Theatre also receives donated professional services for legal, management and accounting services. Management believes these services to be critical to the success of Theatre and its operations; however, the amounts are not recorded in the financial statements. During 2012 and 2011, professional services of approximately $XXX,XXX and $210,000, respectively, were donated.

Deferred Ticket Revenue Proceeds for tickets purchased related to productions occurring during the year are recognized as revenue in the period received. Proceeds for tickets purchased related to productions occurring in the subsequent year, are recorded as deferred ticket revenue. Deferred ticket revenue is recognized as revenue as the productions occur.

Advertising Costs Advertising costs are charged to operations when incurred. Advertising expense was $42,622 (including $1,401 for in-kind donations) and $32,370 (including $1,250 for in-kind donations) for the years ended December 31, 2012 and 2011, respectively.

Income Taxes The Theatre qualifies as a tax-exempt Organization under Section 501(c)(3) of the Internal Revenue Code, and accordingly, no provision has been made for Federal income tax. In general, the Theatre is required to separate its income and deductions into related and unrelated business income.

For federal tax purposes, the Theatre is taxed on all net income from un-related business activities, reduced only by expenses related to un-related activities for which a profit motive exists. The Theatre files Form 990. The Theatre was not subject to un-related business income for the years ended December 31, 2012 and 2011.

The Theatre's tax years subject to U.S. federal, state and local income tax examinations by tax authorities are 2009, 2010, 2011, and 2012.

2. RESTRICTED CASH

Restricted cash represents the amounts held in reserves, as required by the lease agreement with the Redevelopment Agency of Centerville City ("the RDA"), as discussed in Note 7, as well as temporarily restricted donations. As of December 31, 2012 and 2011, respectively, the restricted cash balance consisted of the following at December 31:

	2012	2011
Maintenance reserve	$ 78,817	$ -
Operating reserve	78,817	-
Temporarily restricted donations	4,427	37,823
Total restricted cash	$ 162,061	$ 37,823

CENTERPOINT LEGACY THEATRE
Notes to the Financial Statements (Continued)
December 31, 2012 and 2011

3. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of December 31:

	2012	2011
Sound/light/sewing equipment	$ 113,363	$ 113,363
Furniture and fixtures	43,035	43,035
Office equipment	20,542	20,542
Leasehold improvements	7,000	7,000
Total depreciable assets	183,940	183,940
Less: accumulated depreciation	(112,484)	(97,283)
Total property and equipment	$ 71,456	$ 86,657

The cost of maintenance and repairs is charged to expense as incurred; significant renewals and betterments are capitalized.

4. TEMPORARILY RESTRICTED NET ASSETS

Temporarily restricted net assets consist of cash received from local corporations and residents for the seat and paver campaign of $5,877 and $44,073 to assist in the building and relocating to new facilities during 2012 and 2011, respectively. $39,273 and $88,200 were released from restrictions during 2012 and 2011, respectively, for a total remaining balance of $4,427 and $37,823 as of December 31, 2012 and 2011.

5. CONCENTRATIONS OF CREDIT RISK

The Theatre maintains its cash and cash equivalent balances with two banks located in Salt Lake City, Utah. Balances on deposits may, at times, exceed FDIC insured limits of $250,000. The Theatre has not experienced any losses related to these accounts and believes it is not exposed to significant credit risk related to these accounts. At times during the year, cash balances may have exceeded insurable limits.

6. DONATIONS IN-KIND

The Theatre donates gift certificates to some of its shows to various other organizations for use in auctions and marketing purposes. The gift certificates have no cash value, and are considered non-cash transactions. During 2012 and 2011, respectively, the Theatre donated gift certificates valued at $3,008 and $7,000.

CENTERPOINT LEGACY THEATRE
Notes to the Financial Statements (Continued)
December 31, 2012 and 2011

7. BUILDING LEASE AGREEMENT

The Theatre entered into a lease agreement ("the Agreement") with the Redevelopment Agency of Centerville City ("the RDA") to occupy premises, owned by the RDA. The initial lease is for a period of twelve (12) years, effective December 2010, and is renewable for an additional ten (10) years. Rent payments consist of fixed and variable rent. The fixed rental payment is $6,000 per month, and will not be adjusted until January 2014, using a twelve (12) month average of the Consumer Price Index; however, the monthly rent will not decrease from the prior year's amount. The variable rent is a percentage of the previous year's annual profit, as defined by the Agreement.

The Agreement also requires an operating reserve and a maintenance reserve to be established and funded by the Theatre, not to exceed totals of $200,000 and $300,000, respectively. The Theatre is required to fund each reserve in the amount of at least one percent of the previous year's annual revenue, as defined by the Agreement, paid quarterly, beginning in 2012. During 2012, $157,634 was restricted to fund the reserve accounts ($78,817 for each reserve account).

The building and most of the sound, stage, and lighting equipment for the main stage area are the property of the RDA. The Theatre purchased and owns the sound and lighting assets for the alternate stage ("performance hall"). Funding for the building is largely from a recreation tax from Centerville City, Bountiful City, and a one-time contribution from Davis County, Utah. The Theatre is not liable for any of the debt on the land or building.

8. CONSTRUCTION OBLIGATION NOTE PAYABLE AND DEFERRED CONSTRUCTION EXPENSE

The Agreement described in Note 7 established a Construction Obligation Note Payable of $500,000, payable to the RDA by the Theatre. Certain donations received by the Theatre must be set aside as payments on this obligation. The Agreement does not bear interest, and has a maturity date of March 2014. The Agreement states that payments are to be made on an incremental basis as the funds and/or donations are available, provided the obligation is paid in full by the maturity date. As of December 31, 2012 and 2011, the note payable had an outstanding balance of $233,457 and $252,730, respectively.

In connection with the note payable to the RDA, the Theatre recorded an asset in the amount of $500,000. This asset is reported as Deferred Construction Expense on the statements of financial position. As payments are made on the note payable, an equal amount of the Deferred Construction Expense is amortized to expense. During 2012 and 2011, $5,877 and $44,073, respectively, in restricted donations were received and remitted to the RDA, with a corresponding amount recorded as expense.

9. SUBSEQUENT EVENTS

Management has evaluated subsequent events through May 20, 2013, the date on which the financial statements were available to be issued.

CENTERPOINT LEGACY THEATRE
Supplementary Statement of Functional Expenses
For the Year Ended December 31, 2012

	Program Services								Supporting Services				
	Productions			Other					General and administrative				
	Main Stage	Performance Hall	Indirect	Academy	Concessions	Facility and Other Rentals	Box Office	Total	Accounting	Other	Marketing and Development	Total	Total Expenses
Labor and related costs	$ 136,972	$ 21,592	$ 121,629	$ 40,796	$ 10,434	$ 8,481	$ 72,304	$ 412,208	$ 54,876	$ -	$ 54,189	$ 109,065	$ 521,273
Royalties, professional fees, and other	116,284	519	1,358	2,971	-	-	9,087	130,219	31,307	9,285	-	40,592	170,811
Facilities overhead allocation	210,043	26,936	1,795	32,803	3,356	-	2,317	277,250	749	5,267	2,028	8,044	285,294
Equipment, materials, and supplies	108,706	11,992	30,528	6,604	18,289	-	-	176,119	-	9,511	-	9,511	185,630
Advertising, materials and printing	1,839	7,824	-	644	-	117	-	10,424	1,043	-	68,351	69,394	79,818
Miscellaneous expenses	8,617	-	1,634	389	-	103	1,604	12,347	-	2,743	5,052	7,795	20,142
Total before depreciation expense	582,461	68,863	156,944	84,207	32,079	8,701	85,312	1,018,567	87,975	26,806	129,620	244,401	1,262,968
Depreciation expense	-	-	13,643	1,558	-	-	-	15,201	-	-	-	-	15,201
Total expenses	$ 582,461	$ 68,863	$ 170,587	$ 85,765	$ 32,079	$ 8,701	$ 85,312	$ 1,033,768	$ 87,975	$ 26,806	$ 129,620	$ 244,401	$ 1,278,169

The Independent Auditors' Report should be read with this information.

Hansen, Bradshaw, Malmrose & Erickson
A Professional Corporation
CERTIFIED PUBLIC ACCOUNTANTS

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Members of the American Institute of Certified Public Accountants

Members of the Private Company Practice Section

May 20, 2013

To Board of Directors
and Management of CenterPoint Legacy Theatre

In planning and performing our audit of the financial statements of CenterPoint Legacy Theatre ("the Theatre") as of and for the year ended December 31, 2012, in accordance with auditing standards generally accepted in the United States of America, we considered the Theatre's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Theatre's internal control. Accordingly, we do not express an opinion on the effectiveness of the Theatre's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all such deficiencies have been identified.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Theatre's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses. We have included other comments and observations for management's consideration in Attachment A.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the Theatre, and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Hansen, Bradshaw, Malmrose & Erickson, P.C.

CENTERPOINT LEGACY THEATRE
Attachment A
December 31, 2012

OTHER COMMENTS AND OBSERVATIONS

Concession Sales

Finding: We observed the sales of concessions during a performance. We noted that the Theatre does not use a cash register; a metal box is used. Further, we observed that the concessions are placed on the front counter, whereby patrons will, at times, choose the items they want and then stand in line to purchase them. Per inquiry of employees, we noted that no process is in place to count the products before and after each performance, in order to ensure the accuracy of products sold. These weaknesses in the internal control environment over concession sales could result in the loss of sales or theft. This finding was also reported in the prior year.

Recommendation: We recommend that management formally put into place internal controls over concession sales, to ensure the inventory of products is properly maintained and that all revenues are properly collected and deposited into the bank. Consideration should be given to acquiring a cash register to aid in tracking and reconciling sales.

Segregation of Duties

Finding: During our testing of internal controls, we noted that the Theatre Accountant's responsibilities are not adequately segregated.

- Over cash receipts, the accountant records the journal entry and prepares and makes the bank deposit. We also noted that the cash is counted with no other personnel present.
- Over cash disbursements, the accountant has the ability to create vendors, prepares invoices for payment, and is often charged with mailing the invoices.

These weaknesses in the segregation of duties over cash receipts and disbursements could result in a misappropriation of the Theatre's assets.

Recommendation: We recommend that management address these weaknesses in segregation of duties. For cash receipts, the same person should not prepare and record the journal entry and also make the deposit into the bank. Two people should be present when cash is counted. For cash disbursements, the same person should not be able to create vendors and prepare invoices for payment. In addition, the signed checks should not be returned to the preparer for mailing; a separate person should mail the payments.

CENTERPOINT LEGACY THEATRE
Attachment A
December 31, 2012

OTHER COMMENTS AND OBSERVATIONS (CONTINUED)

Fixed Assets

Finding:	We observed that all of the fixed assets purchased and owned by the Theatre are not properly inventoried and tagged. As the Centerville City RDA owns the building and many of the fixed assets, it is important to segregate and identify the Theatre's assets. Oftentimes, the Theatre will lend fixed assets to other community organizations for use. Without a system to inventory and track tagged fixed assets, the Theatre could lend property not owned by the Theatre, and the potential for loss of assets is greater.
Recommendation:	We recommend that all the Theatre's fixed assets be properly inventoried and tagged.

Hansen, Bradshaw, Malmrose & Erickson

A Professional Corporation
CERTIFIED PUBLIC ACCOUNTANTS

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May 20, 2013

To the Board of Directors
CenterPoint Legacy Theatre
Centerville, Utah

We have audited the financial statements of CenterPoint Legacy Theatre ("the Theatre") as of and for the years ended December 31, 2012 and 2011, and have issued our report thereon dated May 20, 2013. Professional standards require that we advise you of the following matters relating to our audits.

Our Responsibility in Relation to the Financial Statement Audit

As communicated in our engagement letter dated March 13, 2013, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audits of the financial statements do not relieve you or management of its respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audits to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Theatre solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audits that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

We have provided our comments regarding other matters noted during our audit in a separate letter to you dated May 20, 2013.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

Compliance with All Ethics Requirements Regarding Independence

The engagement team and others in our firm, as appropriate, have complied with all relevant ethical requirements regarding independence.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Theatre is included in Note 1 to the financial statements. There have been no initial selections of accounting policies and no changes in significant accounting policies or their application during 2012. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting Theatre's financial statements relate to: Deferred construction expense, as discussed in note 8 of the financial statements.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. Management has corrected all identified misstatements.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to Theatre's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Representations Requested from Management

We have requested certain written representations from management, which are included in the attached letter dated May 20, 2013.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings or Issues

In the normal course of our professional association with the Theatre, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, business conditions affecting the entity, and business plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Theatre's auditors.

This report is intended solely for the information and use of the board of directors, and management of the Theatre and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Hansen, Bradshaw, Malmrose & Erickson, P.C.

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 3.

Short Title: Reserve Fund Requirements

Initiated By: Jansen Davis

Scheduled Time:

SUBJECT

RECOMMENDATION

Approve the amounts calculated to be deposited into the Operations Reserve Fund and the Maintenance Reserve Fund, according to the lease provisions.

BACKGROUND

Page 4 of the audit report—"Statement of Activities and Changes in Net Assets" (2012)—shows "Changes in net assets" of $115,293. CPT and City staff recommend these funds be transferred into the Operations Reserve Fund (ORF) and the Maintenance Reserve Fund (MRF). Per the Operating Lease, the deposit into the MRF must be equal to or more than the amount deposited into the ORF (Section 23), and must equal at least one percent(1%) of the "previous year's annual revenues" as defined in the Lease (Section33). The 1% minimum deposit into the MRF would be $13,935 (or less, depending on how the Section 33 definition of "previous year's annual revenues" is interpreted and applied). Half of the $115,293 would clearly exceed the minimum requirement, however. Jan Davis of CPT will propose to the RDA/ACB how the $115,293 should be split between the two reserve funds. **The Lease (Section 23) requires the RDA and ACB Board to review and approve the amounts allocated to the ORF and MRF.** The 12/31/12balances in both the ORF and MRF are $78,817 per the audit report (page9).

City Staff also recommend the Lease (Section 33) beamended again to push back the due date for the annual deposit into the MRFfrom May 1 to June 30, to allow the annual audit to be completed, which will providethe data needed to calculate the minimum 1% contribution into the MRF. Ifthe RDA/ACB agree with this change, a formal amendment will be brought back toa future RDA/ACB meeting for formal approval.

ATTACHMENTS:

Description

D Page 4 - CPT Audit report

CENTERPOINT LEGACY THEATRE
Statement of Activities and Changes in Net Assets
For the Year Ended December 31, 2012

	Unrestricted	Temporarily Restricted	Total
REVENUES			
Public support:			
Ticket sales:			
Season sales	$ 538,308	$ -	$ 538,308
Individual sales	404,146	-	404,146
Concessions revenue	43,569	-	43,569
Donations and sponsors:			
Seat and paver donations	-	5,877	5,877
Other donations	206,711	-	206,711
Total public support	1,192,734	5,877	1,198,611
Other revenue:			
Academy tuition, fees and tickets	94,943	-	94,943
Facility and other rentals	54,907	-	54,907
Miscellaneous revenue	43,284	-	43,284
Interest income	316	-	316
In-kind revenue	1,401	-	1,401
Net assets released from restrictions	39,273	(39,273)	-
Total other revenue	234,124	(39,273)	194,851
Total public support and other revenues	1,426,858	(33,396)	1,393,462
EXPENSES			
Program services:			
Production expenses:			
Main stage	582,461	-	582,461
Performance hall	68,863	-	68,863
Indirect	170,587	-	170,587
Other expenses:			
Academy	85,765	-	85,765
Concessions	32,079	-	32,079
Facility and other rentals	8,701	-	8,701
Box office	85,312	-	85,312
Total program services	1,033,768	-	1,033,768
Supporting services:			
General and administrative:			
Accounting	87,975	-	87,975
Other administrative	26,806	-	26,806
Marketing and development	129,620	-	129,620
Total supporting services	244,401	-	244,401
Total expenses	1,278,169	-	1,278,169
Changes in net assets	148,689	(33,396)	115,293
Net assets at beginning of year	158,015	37,823	195,838
Net assets at end of year	$ 306,704	$ 4,427	$ 311,131

The accompanying notes are an integral part of these financial statements.

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 4.

Short Title: Review of 6-month Financial Report for 2013

Initiated By: Jansen Davis

Scheduled Time:

SUBJECT

RECOMMENDATION

Review the 6-month financial report. No action is needed on this item.

BACKGROUND

Per the Operating Lease, CPT is required to submit quarterly financial reports to the RDA/ACB. The latest quarterly report is attached, for the 6-month period ending June 30, 2013. The bottom line is good—revenues were substantially ahead of budget at that point, and expenses were approximately equal to the budget for the 6-month period.

ATTACHMENTS:

Description

D 6-month Financial Report

CenterPoint Legacy Theatre
Income Statement
Compared with Budget
For the One Month Ending June 30, 2013

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Revenues						
Season Ticket Sales	$ 24,449.91	$ 24,205.71	244.20	$ 316,818.16	$ 314,119.29	2,698.87
Individual Ticket Sales	40,409.47	20,000.00	20,409.47	211,441.96	120,000.00	91,441.96
Corporate Memberships	0.00	3,000.00	(3,000.00)	9,000.00	25,000.00	(16,000.00)
Ticket Exchange Fees	35.00	0.00	35.00	560.00	0.00	560.00
Show Sponsorship	10,000.00	10,000.00	0.00	50,000.00	50,000.00	0.00
Leishman Hall Revenue	7,396.50	12,000.00	(4,603.50)	12,895.17	24,000.00	(11,104.83)
Academy Tuition	8,270.50	0.00	8,270.50	50,524.50	44,750.00	5,774.50
Academy Materials Fee	806.50	0.00	806.50	3,933.50	0.00	3,933.50
Academy Costume Fee	385.00	0.00	385.00	2,125.00	615.00	1,510.00
Academy Theater Ticket Sales	0.00	0.00	0.00	5,840.00	5,000.00	840.00
Facility Rental	3,827.00	10,680.00	(6,853.00)	11,077.00	20,080.00	(9,003.00)
Costume Rental	3,050.00	400.00	2,650.00	6,936.72	2,400.00	4,536.72
Prop Rental	0.00	400.00	(400.00)	1,590.00	2,400.00	(810.00)
Concessions	2,578.25	4,000.00	(1,421.75)	23,141.94	24,000.00	(858.06)
Events	5,669.00	0.00	5,669.00	6,259.00	0.00	6,259.00
Miscellaneous Income	991.27	500.00	491.27	6,973.88	4,300.00	2,673.88
Total Revenues	107,868.40	85,185.71	22,682.69	719,116.83	636,664.29	82,452.54
Expenses						
Barlow Theatre Expenses						
Production Manager	500.00	500.00	0.00	2,000.00	2,000.00	0.00
Stage Manager	1,000.00	800.00	200.00	3,400.00	3,200.00	200.00
Director/Co-Choreographer	1,600.00	1,500.00	100.00	8,200.00	6,100.00	2,100.00
Co-Choreographer	1,200.00	1,000.00	200.00	2,200.00	3,000.00	(800.00)
Music Director	1,000.00	1,000.00	0.00	2,000.00	3,000.00	(1,000.00)
Costumer	1,300.00	1,300.00	0.00	4,600.00	4,900.00	(300.00)
Stitchers	0.00	600.00	(600.00)	2,710.00	2,350.00	360.00
Set Designer	500.00	600.00	(100.00)	2,700.00	2,850.00	(150.00)
Set Painter	1,000.00	1,000.00	0.00	4,400.00	4,200.00	200.00
Painters	50.00	400.00	(350.00)	450.00	1,600.00	(1,150.00)
Light Designer	700.00	750.00	(50.00)	2,700.00	2,650.00	50.00
Assistant Light Designer	560.00	200.00	360.00	1,155.00	700.00	455.00
Sound Designer	400.00	400.00	0.00	1,300.00	1,400.00	(100.00)
Music Designer	2,500.00	2,500.00	0.00	6,157.50	7,500.00	(1,342.50)
Prop Coordinator	200.00	200.00	0.00	850.00	900.00	(50.00)
SDC Fees	0.00	0.00	0.00	780.00	800.00	(20.00)
Show Stage Managers	0.00	0.00	0.00	3,555.00	3,780.00	(225.00)
Assistant Stage Managers	0.00	0.00	0.00	225.00	0.00	225.00
Sound Techs	0.00	0.00	0.00	3,780.00	3,410.00	370.00
Lighting Techs	0.00	0.00	0.00	4,370.00	3,420.00	950.00
Spotlight Techs	0.00	0.00	0.00	2,150.00	1,360.00	790.00
Stage Crew	0.00	0.00	0.00	6,450.00	3,200.00	3,250.00
Rigging Crew	0.00	0.00	0.00	0.00	2,450.00	(2,450.00)
Tear Down	0.00	0.00	0.00	0.00	400.00	(400.00)
Builders	1,150.00	300.00	850.00	2,750.00	1,700.00	1,050.00
Wig Mistress	0.00	500.00	(500.00)	170.00	1,800.00	(1,630.00)
Accompaniest - Audition	300.00	175.00	125.00	766.75	525.00	241.75
Accompaniest - Call Backs	0.00	150.00	(150.00)	0.00	450.00	(450.00)
Accompaniest - Rehearsals	0.00	100.00	(100.00)	0.00	300.00	(300.00)
Costume Material	617.49	0.00	617.49	13,154.88	11,000.00	2,154.88
Costume Rental	0.00	0.00	0.00	920.00	1,740.00	(820.00)
Costume Accessories	46.92	0.00	46.92	400.26	1,900.00	(1,499.74)
Make Up	45.00	0.00	45.00	45.00	700.00	(655.00)
Wigs	0.00	0.00	0.00	205.12	850.00	(644.88)
Paint & Supplies	6.19	0.00	6.19	1,222.60	1,200.00	22.60
Lighting Supplies	1,088.35	0.00	1,088.35	2,051.82	1,100.00	951.82
Gobos/Specials	0.00	0.00	0.00	0.00	200.00	(200.00)
Sound Supplies	0.00	0.00	0.00	136.55	800.00	(663.45)
Batteries/Tape/etc.	0.00	0.00	0.00	0.00	550.00	(550.00)
Music Track Adjustments	0.00	0.00	0.00	75.00	900.00	(825.00)
Furniture/Set Dressing	0.00	0.00	0.00	677.79	1,100.00	(422.21)
Furniture/Set Rentals	0.00	0.00	0.00	0.00	200.00	(200.00)
Props	432.58	0.00	432.58	3,784.72	2,200.00	1,584.72
Special Effects	1,171.54	0.00	1,171.54	2,285.25	2,300.00	(14.75)
Construction Materials	1,229.80	0.00	1,229.80	16,284.89	14,300.00	1,984.89
Sale of set	0.00	0.00	0.00	(100.00)	0.00	(100.00)
Royalties	18,720.00	19,160.00	(440.00)	61,526.44	61,883.50	(357.06)
Additional Shows	0.00	0.00	0.00	4,626.50	1,800.00	2,826.50
Printing - Copies	72.83	200.00	(127.17)	4,026.92	900.00	3,126.92

CenterPoint Legacy Theatre
Income Statement
Compared with Budget
For the One Month Ending June 30, 2013

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Advertising/Promo/Pulicity	0.00	0.00	0.00	4,615.75	8,000.00	(3,384.25)
Mailing Charges	0.00	0.00	0.00	311.17	0.00	311.17
Dry Cleaning	1,644.78	1,800.00	(155.22)	7,978.50	4,800.00	3,178.50
Wig/Costume Maintenance	0.00	0.00	0.00	590.00	1,300.00	(710.00)
Audition Lunch	0.00	100.00	(100.00)	110.95	360.00	(249.05)
Food - Cast Party	0.00	0.00	0.00	249.83	0.00	249.83
Food - Cue to Cue	299.82	300.00	(0.18)	962.22	1,100.00	(137.78)
Sales Tax Refund	0.00	0.00	0.00	(4,313.01)	0.00	(4,313.01)
Facilities Allocation	29,980.44	24,079.49	5,900.95	109,214.36	115,869.11	(6,654.75)
Total Barlow Theatre Expenses	69,315.74	59,614.49	9,701.25	300,862.76	306,997.61	(6,134.85)
Leishman Hall Expenses						
Production Manager	0.00	100.00	(100.00)	0.00	200.00	(200.00)
Stage Manager	500.00	800.00	(300.00)	1,200.00	1,600.00	(400.00)
Director	900.00	1,200.00	(300.00)	1,800.00	2,400.00	(600.00)
Costumer	800.00	1,000.00	(200.00)	1,600.00	2,000.00	(400.00)
Stitchers	0.00	200.00	(200.00)	400.00	400.00	0.00
Set Designer	0.00	300.00	(300.00)	0.00	600.00	(600.00)
Set Painters	50.00	400.00	(350.00)	500.00	800.00	(300.00)
Light Designer	0.00	200.00	(200.00)	0.00	400.00	(400.00)
Sound Designer	0.00	200.00	(200.00)	400.00	400.00	0.00
Prop Coordinator	50.00	100.00	(50.00)	150.00	200.00	(50.00)
Show Stage Managers	0.00	0.00	0.00	0.00	800.00	(800.00)
Sound Techs	0.00	0.00	0.00	0.00	500.00	(500.00)
Lighting Techs	0.00	0.00	0.00	2,170.00	500.00	1,670.00
Stage Crew	0.00	0.00	0.00	0.00	500.00	(500.00)
Builders	0.00	0.00	0.00	110.00	0.00	110.00
Wig Mistress	0.00	0.00	0.00	0.00	150.00	(150.00)
Costume Material	6.00	750.00	(744.00)	1,137.91	1,500.00	(362.09)
Make Up	0.00	0.00	0.00	77.69	0.00	77.69
Wigs	0.00	0.00	0.00	150.19	0.00	150.19
Paint and Supplies	11.97	50.00	(38.03)	135.84	100.00	35.84
Lighting Supplies	0.00	0.00	0.00	13.56	0.00	13.56
Sound Supplies	0.00	0.00	0.00	75.42	0.00	75.42
Props	434.84	500.00	(65.16)	434.84	1,000.00	(565.16)
Special Effects	0.00	0.00	0.00	287.87	0.00	287.87
Construction Materials	125.05	750.00	(624.95)	964.37	1,500.00	(535.63)
Royalties	1,800.00	2,000.00	(200.00)	4,200.00	4,000.00	200.00
Program Printing	0.00	0.00	0.00	0.00	750.00	(750.00)
Printing-Copies	(2.89)	100.00	(102.89)	76.03	200.00	(123.97)
Dry Cleaning	0.00	0.00	0.00	65.96	0.00	65.96
Food-Cue to Cue	129.83	150.00	(20.17)	215.60	300.00	(84.40)
Facilities Allocation	3,748.24	3,010.48	737.76	13,654.28	14,486.26	(831.98)
Total Leishman Hall Expenses	8,553.04	11,810.48	(3,257.44)	29,819.56	35,286.26	(5,466.70)
Academy Expenses						
Academy Overhead Wage & Salary	2,000.00	0.00	2,000.00	25,010.00	22,050.00	2,960.00
Production Staff Wages	0.00	0.00	0.00	1,770.00	1,695.00	75.00
Technical Staff Wages	0.00	0.00	0.00	740.00	2,475.00	(1,735.00)
Employee Benefits - Insurance	233.36	0.00	233.36	2,159.68	2,005.84	153.84
Office Supplies-Instructional	17.98	0.00	17.98	76.30	337.00	(260.70)
Royalties	0.00	0.00	0.00	(110.00)	1,250.00	(1,360.00)
Equipment	210.00	0.00	210.00	210.00	0.00	210.00
Costumes	47.55	0.00	47.55	5,233.96	6,635.00	(1,401.04)
Props	0.00	0.00	0.00	195.39	475.00	(279.61)
Sets	0.00	0.00	0.00	32.89	495.00	(462.11)
Sound-Music, Effects	0.00	0.00	0.00	15.75	215.00	(199.25)
Marketing	0.00	0.00	0.00	28.60	130.00	(101.40)
Miscellaneous Expense	267.28	20.00	247.28	330.45	472.00	(141.55)
Printing Programs & Scripts	0.00	0.00	0.00	160.46	213.00	(52.54)
Online Registration Fees	297.05	103.50	193.55	1,640.39	621.00	1,019.39
Depreciation - Fixed Assets	0.00	100.00	(100.00)	519.44	600.00	(80.56)
Facilities Allocation	4,564.77	3,666.30	898.47	16,628.76	17,642.01	(1,013.25)
Total Academy Expenses	7,637.99	3,889.80	3,748.19	54,642.07	57,310.85	(2,668.78)
Facility Rental Expenses						
Contract Labor	970.00	100.00	870.00	970.00	800.00	170.00
Event Supplies	0.00	0.00	0.00	89.01	0.00	89.01
Equipment Rental	0.00	30.00	(30.00)	0.00	180.00	(180.00)
Total Facility Rental Expenses	970.00	130.00	840.00	1,059.01	980.00	79.01

CenterPoint Legacy Theatre

Income Statement
Compared with Budget
For the One Month Ending June 30, 2013

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Costume Rental Expenses						
Costume Rental Overhead Wage	1,437.50	300.00	1,137.50	3,352.50	1,800.00	1,552.50
Dry Cleaning	(117.02)	0.00	(117.02)	11.61	0.00	11.61
Total Costume Rental Expenses	1,320.48	300.00	1,020.48	3,364.11	1,800.00	1,564.11
Prop Rental Expenses						
Prop Rental Overhead Wage	120.00	0.00	120.00	270.00	0.00	270.00
Contract Labor	0.00	200.00	(200.00)	375.00	1,200.00	(825.00)
Total Prop Rental Expenses	120.00	200.00	(80.00)	645.00	1,200.00	(555.00)
Concession Expenses						
Concessions Overhead Wage	260.00	900.00	(640.00)	4,254.61	4,800.00	(545.39)
Employee Benefits - Insurance	19.88	68.85	(48.97)	317.49	367.20	(49.71)
Concessions Supplies	1,055.38	1,500.00	(444.62)	8,119.88	8,100.00	19.88
Facilities Allocation	466.90	375.00	91.90	1,700.85	1,804.49	(103.64)
Total Concession Expenses	1,802.16	2,843.85	(1,041.69)	14,392.83	15,071.69	(678.86)
Other Production Costs						
Production Overhead Wages	4,928.53	9,553.85	(4,625.32)	60,517.34	62,100.02	(1,582.68)
Contract Labor	0.00	730.87	(730.87)	0.00	4,750.65	(4,750.65)
Employee Benefits - Insurance	476.49	0.00	476.49	5,079.69	0.00	5,079.69
Postage & Express Mail	0.00	0.00	0.00	28.72	0.00	28.72
Small Tools	0.00	400.00	(400.00)	460.44	2,400.00	(1,939.56)
Tools - supplies	193.69	0.00	193.69	348.28	0.00	348.28
Repair and Maintenance	425.27	100.00	325.27	1,905.06	600.00	1,305.06
Equipment Purchases	2,388.66	0.00	2,388.66	5,856.98	0.00	5,856.98
Costumes	153.16	200.00	(46.84)	2,584.53	3,200.00	(615.47)
Sound-Music, etc	446.44	445.00	1.44	2,676.43	2,770.00	(93.57)
Lights-gel, etc	102.87	600.00	(497.13)	1,214.48	2,800.00	(1,585.52)
General electrical expense	0.00	200.00	(200.00)	464.97	3,000.00	(2,535.03)
Miscellaneous Expense	0.00	0.00	0.00	69.89	0.00	69.89
Depreciation - Fixed Assets	0.00	1,150.00	(1,150.00)	5,973.68	6,900.00	(926.32)
Facilities Allocation	249.74	200.58	49.16	909.77	965.19	(55.42)
Total Other Production Expenses	9,364.85	13,580.30	(4,215.45)	88,090.26	89,485.86	(1,395.60)
Marketing/Business Development Expenses						
Marketing Overhead Wages	8,000.00	3,846.15	4,153.85	26,269.26	25,000.00	1,269.26
Contract Labor	148.24	600.00	(451.76)	1,619.15	4,000.00	(2,380.85)
Employee Benefits	612.00	294.23	317.77	2,009.55	1,912.50	97.05
Postage - Shipping	0.00	50.00	(50.00)	0.00	200.00	(200.00)
Printing	2,753.37	1,450.00	1,303.37	7,978.26	6,300.00	1,678.26
Advertising	2,538.67	500.00	2,038.67	19,589.67	16,750.00	2,839.67
Market Research	0.00	1,000.00	(1,000.00)	0.00	2,000.00	(2,000.00)
Promotions	0.00	0.00	0.00	0.00	250.00	(250.00)
Press Events	0.00	0.00	0.00	183.53	300.00	(116.47)
Community Events	51.00	1,500.00	(1,449.00)	544.95	1,500.00	(955.05)
Corporate Membership Expense	0.00	0.00	0.00	1,257.29	0.00	1,257.29
Hospitality	0.00	50.00	(50.00)	0.00	300.00	(300.00)
Miscellaneous Expense	103.00	0.00	103.00	1,267.11	1,500.00	(232.89)
Website	0.00	0.00	0.00	248.79	550.00	(301.21)
Leishman Hall - Printing	0.00	0.00	0.00	1,929.80	1,000.00	929.80
Leishman Hall - Advertising	1,720.00	0.00	1,720.00	3,530.00	3,000.00	530.00
Facilities Allocation	282.31	226.75	55.56	1,028.42	1,091.09	(62.67)
Total Marketing/Business Expense	16,208.59	9,517.13	6,691.46	67,455.78	65,653.59	1,802.19
Box Office Expenses						
Box Office Overhead Wages	3,716.78	5,153.85	(1,437.07)	31,912.26	33,500.00	(1,587.74)
Employee Benefits	284.34	394.27	(109.93)	2,449.43	2,562.75	(113.32)
Computer Equipment & Software	0.00	400.00	(400.00)	1,244.06	3,600.00	(2,355.94)
Miscellaneous Expense	0.00	0.00	0.00	59.80	0.00	59.80
Ticket Sales - Tix	47.70	150.00	(102.30)	3,411.76	900.00	2,511.76
Facilities Allocation	322.49	259.01	63.48	1,174.79	1,246.35	(71.56)
Total Box Office Expenses	4,371.31	6,357.13	(1,985.82)	40,252.10	41,809.10	(1,557.00)
Administrative Expense						
Administrative Overhead Wages	3,750.00	4,615.38	(865.38)	31,250.00	30,000.00	1,250.00
Employee Benefits - Insurance	0.00	384.62	(384.62)	0.00	2,500.00	(2,500.00)
Payroll Taxes	286.88	382.50	(95.62)	2,390.63	2,486.25	(95.62)
Dues & Subscriptions	0.00	0.00	0.00	540.00	0.00	540.00

CenterPoint Legacy Theatre

Income Statement
Compared with Budget
For the One Month Ending June 30, 2013

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Business Meals/Entertainment	0.00	0.00	0.00	20.00	0.00	20.00
Consulting-Professional	633.25	0.00	633.25	5,112.62	6,500.00	(1,387.38)
Miscellaneous Expense	0.00	0.00	0.00	129.17	0.00	129.17
Training - Education	0.00	0.00	0.00	299.00	0.00	299.00
Facilities Allocation	732.93	588.67	144.26	2,669.94	2,832.54	(162.60)
Total Adminstrative Expenses	5,403.06	5,971.17	(568.11)	42,411.36	44,318.79	(1,907.43)
Accounting Expense						
Accounting Overhead Wages	761.54	1,015.38	(253.84)	6,346.13	6,600.00	(253.87)
Employee Benefits - Insurance	58.26	77.68	(19.42)	485.50	504.90	(19.40)
Printing Expense	0.00	0.00	0.00	0.00	400.00	(400.00)
Banking Service Fees	1,410.40	1,200.00	210.40	13,311.15	10,000.00	3,311.15
Miscellaneous Expense	210.00	0.00	210.00	210.00	0.00	210.00
Facilities Allocation	104.24	83.72	20.52	379.74	402.86	(23.12)
Total Accounting Expenses	2,544.44	2,376.78	167.66	20,732.52	17,907.76	2,824.76
Facilities Expense						
Employee Benefits	0.00	0.00	0.00	961.54	0.00	961.54
Workers Comp Insurance	0.00	0.00	0.00	2,315.43	7,600.00	(5,284.57)
Office Supplies	75.81	250.00	(174.19)	1,124.30	1,500.00	(375.70)
Computer & Software Equipment	170.94	0.00	170.94	247.31	0.00	247.31
Postage - Express Mail	46.86	0.00	46.86	237.86	100.00	137.86
Telephone Expense	533.37	500.00	33.37	3,064.19	3,000.00	64.19
Property Tax	0.00	0.00	0.00	151.76	0.00	151.76
Contract Repairs & Maintenance	840.00	840.00	0.00	4,340.00	11,040.00	(6,700.00)
Repairs & Maintenance	1,184.43	1,000.00	184.43	4,687.78	6,000.00	(1,312.22)
Insurance Expense	5,638.00	7,500.00	(1,862.00)	6,482.00	7,500.00	(1,018.00)
Janitorial Expense	2,956.77	3,100.00	(143.23)	12,456.77	16,200.00	(3,743.23)
Janitorial Supplies	284.82	400.00	(115.18)	1,657.01	2,400.00	(742.99)
Gas	1,153.72	1,300.00	(146.28)	10,409.99	13,200.00	(2,790.01)
Electricity	6,731.05	6,000.00	731.05	27,161.87	22,800.00	4,361.87
HVAC	4,927.09	3,000.00	1,927.09	5,599.84	3,700.00	1,899.84
Lamps/Ballast/Fixtures	0.00	100.00	(100.00)	8,912.42	9,000.00	(87.58)
Seat & Paver Expenses	0.00	0.00	0.00	102.60	0.00	102.60
Facility Lease Expense	6,000.00	6,000.00	0.00	36,000.00	36,000.00	0.00
Miscellaneous	106.16	0.00	106.16	114.68	0.00	114.68
Grounds/Snow Removal/MTC	9,803.04	2,500.00	7,303.04	21,333.56	16,300.00	5,033.56
Department Allocations	(40,452.06)	(32,490.00)	(7,962.06)	(147,360.91)	(156,340.00)	8,979.09
Total Facilities Expenses	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenses	127,611.66	116,591.13	11,020.53	663,727.36	677,821.51	(14,094.15)
Net Operating Income	($ 19,743.26)	($ 31,405.42)	11,662.16 $	55,389.47	($ 41,157.22)	96,546.69
Other Income (Expense)						
Interest Income	$ 31.90 $	0.00	31.90 $	194.43 $	0.00	194.43
Total Other Income (Expense)	31.90	0.00	31.90	194.43	0.00	194.43
Donations						
Seat Donations	2,000.00	0.00	2,000.00	3,000.00	0.00	3,000.00
Paver Donations	150.00	0.00	150.00	450.00	0.00	450.00
Donations	117.00	250.00	(133.00)	24,268.10	31,000.00	(6,731.90)
Grants	30,000.00	10,000.00	20,000.00	30,000.00	40,000.00	(10,000.00)
Total Donations	32,267.00	10,250.00	22,017.00	57,718.10	71,000.00	(13,281.90)
Net Income	$ 12,555.64	($ 21,155.42) $	33,711.06 $	113,302.00 $	29,842.78 $	83,459.22

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 5.

Short Title: Discussion - Centerpoint's Remaining Construction Obligation

Initiated By: Steve Thacker - City Manager

Scheduled Time:

SUBJECT

RECOMMENDATION

The RDA Board give direction to staff on the recent payment of $177,457, and revision of the payment of the balance of the obligation.

BACKGROUND

CPT recently sent a check in the amount of $177,457 to the RDA to pay most of the remaining balance of CPT's construction cost obligation. Of the original obligation of $500,000, the balance was$233,457 as of December 31, 2012. With the recent payment, the outstanding balance is now only $56,000. This sizeable contribution was made possible in part due to the accelerated payment of donations from the Haven Barlow family, which originally were intended to be spread over a number of years. At their August 27 meeting, CPT and City staff discussed what would be a reasonable period to expect the payment of the remaining amount. Considering the Barlow donations have already been paid for the next few years, it was agreed to **recommend a new target date of June 30, 2015 for the payment of this $56,000.** This will allow annual "profits" for 2013and 2014 to be transferred into the ORF and MRF to bring those two reserve funds closer to the limits of $200,000 and $300,000, respectfully, as identified in the Operating Lease. **The RDA needs to make two decisions under this business item:**

<!--[endif]-->**Do they agree to amend the Lease to establisha new target date of June 30, 2015 for payment of the remaining $56,000?** If so, staff will prepare a formal amendment for a future RDA/ACB meeting.

Are they supportive of a recommendation to put the $177,457 into the Theatre Reserve Fund (TRF) instead of remaining as unrestricted funds in the RDA Fund? This would increase the TRF balance to a more desirable level, based on what staff have learned about the anticipated long-term major maintenance needs of a facility like this. Staff will explain further at the meeting why they are making this recommendation.

ATTACHMENTS:

Description

Centerville RDA Financial snapshot

Parrish Lane Gateway Project Area
Snapshot

Cash Available (June 30, 2013 est.)	$402,298
Due from other areas	$169,007
Total	$571,305
FY 2014 Projected Revenue	$975,000
FY 2014 Projected Obligations	
Debt Service	$650,000
Administrative Cost	$120,000
Loan	$125,000
	$895,000
revenue over obligations	$80,000

MTC project committment is from additional future revenue generated

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 6.

Short Title: Review of Lease Maintenance Provisions

Initiated By: Lisa Romney

Scheduled Time:

SUBJECT

RECOMMENDATION

Review Lisa Romney's recommendations and give direction to staff.

BACKGROUND

City Attorney Lisa Romney has conducted a comprehensive review of the Operating Lease's provisions relating to maintenance of the facility. These are explained in her attached memo. Lisa will summarize her conclusions at the meeting. She believes the Lease is sufficiently clear on the respective maintenance obligations of both CPT and the RDA. Also attached are pertinent sections from the Lease which she refers to in her memo.

ATTACHMENTS:

Description

- Memo - Lease Maintenance Obligations
- Exhibit - Lease Maintenance Obligation

CENTERVILLE CITY ATTORNEY'S OFFICE

250 North Main Street
Centerville, Utah 84014
801.335.8842

MEMORANDUM

Privileged and Confidential under Attorney/Client Privilege

TO: Steve Thacker, City Manager

FROM: Lisa G. Romney, City Attorney

DATE: August 20, 2013

RE: Repair and Maintenance Obligations under Performing Arts Center Lease

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As requested, the following is a summary of the repair and maintenance obligation under the terms and conditions of the Lease and Operating Agreement for the Performing Arts Center ("Lease"). Many of the Lease provisions address repair and maintenance obligations. It is clear from the terms of the Lease that long-term maintenance of the Performing Arts Center ("Theatre") is a priority and fundamental to the substance of the Lease. A copy of the relevant Sections of the Lease regarding repair and maintenance obligations is attached hereto with specific provisions highlighted.

1. Intent and Rent.

Section 18 of the Lease specifically provides it is 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" and "to allocate funds in a manner that provides for an aggressive preventative maintenance program for the Theatre." The rental payment for use and operation of the Theatre is set at an intentionally below-market rate in order to allow for the funding of such long-term maintenance obligations by the Association. Thus, while there are substantial repair and maintenance obligations placed on the Association in the Lease, such obligations are intended to be paid for by the Association and are in essence partially "funded" through lower rental payments. The Lease further provides that any profits made by, through, or in connection with the use and operation of the Theatre by the Association are to be funneled back into the Theatre as more particularly provided in the rent provisions of the Lease. The

RDA is further obligated to funnel all rent proceeds into the Theatre and the site as more particularly provided in the Lease. As indicated in further provisions of the Lease, the Theatre is to be operated and funded as a nonprofit enterprise with all profits to be used to fund the successful operation of the Theatre as an on-going enterprise and to equally provide for the long-term sustained and preventative maintenance and repairs to the building.

2. Association's Maintenance Obligations.

Except for the RDA's obligation to replace and repair the boiler and chiller associated with the HVAC Systems for the Theatre, Section 52 of the Lease provides the Association is required, at its own cost and expense, to 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, HVAC, 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 the Lease. The Association is also required to maintain and repair the HVAC systems, including the heating, ventilation and air conditioning systems for the Theatre. The Association is required to obtain and enter into an annual service contract with a reputable provider for the on-going maintenance of the HVAC System. The Association is further required, at its own cost and expense, to 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 the Lease. The Association is required to immediately act to effect repairs when malfunctions or defects arise and 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. In addition, the Association is required to provide, or cause to be provided, and pay the cost of all recurring janitorial, custodial, and repair services. Section 40 requires the Association to maintain all landscaping and improvements on the site that is not maintained by the subdivision owners' association. Section 41 requires the Association to provide custodial and maintenance personnel. Section 54 requires the Association to provide snow and ice removal that is not otherwise provided by the subdivision owners' association. Section 53 provides that all repairs by the Association 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. Based on these extensive repair and maintenance provisions in the Lease, it is clear that almost all repairs and maintenance obligations for the Theatre lie with the Association. This would include replacing the carpet, painting walls, replacing damaged seats, fixing plumbing problems, etc.

3. RDA's Maintenance Obligations.

The RDA's repair and maintenance obligations under the Lease are fairly limited. Pursuant to Section 53 of the Lease, the RDA is responsible for replacing the boiler and chiller associated with the Theatre's HVAC Systems. The RDA is also 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. All other maintenance or repairs to the Theatre and its equipment and fixtures are the responsibility of the Association. Section 78 further provides that, other than structural integrity and boiler and chiller obligations, the RDA is not assuming any risks or liabilities for the maintenance or operation of the Theatre or site and all such risks and liability are solely and separately borne by the Association.

4. Preventative Maintenance Obligations.

Section 30 of the Lease provides that the Association's maintenance obligations under the terms of the Lease are a priority and should be accomplished with due diligence and on a pro-active and preventative maintenance basis. All repairs and maintenance are to be conducted in accordance with an approved maintenance plan to be prepared by the Association. All maintenance and repairs are required to 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 are subject to the review and approval of the RDA. Based upon these provisions, the Association should prepare a long-range comprehensive maintenance plan in accordance with applicable provisions of the Lease, which plan will address many of the current questions and budgeting issues that have been raised regarding maintenance and repair obligations and funding.

5. Maintenance Plan.

The Association is required to prepare a long-range comprehensive maintenance plan pursuant to Section 31 of the Lease. The maintenance plan shall include at least a 5 year projection and plan for dealing with and paying for all current, future and on-going maintenance and repair obligations for the Theatre and site. The maintenance plan is to address the Association's maintenance and repair obligations regarding parking facilities, drive aisles, landscaping, plumbing, electrical, mechanical, HVAC systems, carpeting, painting, stage facilities, lighting, telecommunications, seating, etc. The maintenance plan shall also include scheduled maintenance and inspection programs and documentation of maintenance work performed. In addition to other requirements set forth in Section 31, the maintenance plan is to 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 maintenance plan is to be reviewed and updated annually as part of the budget process.

6. Association's Maintenance Reserve Fund.

The Lease also addresses funding for the Association's repair and maintenance obligations. In order to fund future maintenance and repair obligations of the Association, the Association is required under the terms of Section 23 of the Lease to create a Maintenance Reserve Fund ("MRF"). The Association is required to use its best efforts to allocate funds to the MRF in an amount that is reasonably adequate and necessary for purposes of fulfilling its maintenance and repair obligations under the Lease. The MRF is only to be used to fund maintenance and repair obligations for the Theatre, including, but not limited to, the maintenance, repair or replacement of any buildings, grounds, landscaping, facilities and improvements associated with the Theatre and the property. The primary purpose of the MRF 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." Routine and preventative maintenance and recurring repair and replacement projects are intended and shall be budgeted for and funded out of the Annual Operating Budget, as defined in the Lease. The RDA can require the Association to utilize funds from the MRF to pay for current or future maintenance and repair obligations as part of the budget process and the Association is required to give the RDA at least 30 days' notice of any proposed withdrawal of funds from the MRF.

7. Minimum MRF Contribution.

In order to ensure that maintenance spending is addressed on a continuous basis, rather than waiting until a problem occurs, Section 33 of the Lease requires the Association to contribute a minimum amount of funds to the MRF on an annual basis. Until and unless the MRF reaches its maximum fund balance of $300,000, the Association is required to contribute to the MRF an amount equal to 1% of the Association's previous year's annual revenues, as more particularly defined in the Lease. The minimum MRF contribution is to be paid annually.

8. RDA's Theatre Reserve Fund.

Similar to the Association's Maintenance Reserve Fund, the RDA is required under the terms of Section 25 of the Lease to create a Theatre Reserve Fund ("TRF"). The RDA is to fund the TRF with remaining Base Rent or Variable Rent proceeds, as more particularly defined in the Lease. The RDA is not required to separately fund the TRF other than from rent proceeds. It is the stated intent of the Lease to properly fund the Association's Operations Reserve Fund and Maintenance Reserve Fund, as well as the TRF 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 site. The TRF is only to 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 site. It is not intended that the TRF be used for routine maintenance until and unless a sufficient TRF is established and/or use of such funds for routine maintenance is deemed necessary and appropriate under the circumstances. Use of any portion of the TRF must be approved by the Administrative Control Board. The Lease also suggests the parties adopt policies for prioritizing projects, repairs, replacements, betterments and capital improvements, with respect to the use of the TRF.

9. Budgeting.

Pursuant to Section 28 of the Lease, the Association is required to prepare for each budget period, an annual overall operating budget for the Operations Reserve Fund and the Maintenance Reserve Fund. Budget provisions for such funds relating to or dealing with current, future and on-going maintenance, repair or replacement of any portion of the Theatre or site, is subject to approval by the RDA prior to final adoption by the Association. Thus, it is during the budgeting process that the RDA has oversight and input into how and where funds are allocated and input to ensure the budgets provide for timely, appropriate and sufficient maintenance and repair of the Theatre and its facilities. Section 32 of the Lease also addresses budgeting requirements and requires the Association to provide for "current" maintenance and repair obligations in its Annual Operating Budget. Known and unknown "future and on-going" maintenance and repair obligations are to be addressed in the Association's annual budget for the MRF. The Association is required to transfer funds to the MRF on an annual basis on or by May 1st.

CONCLUSION

Based on the foregoing provisions of the Lease, it is clear that the Association is responsible for all repair and maintenance obligations for the Theatre, other than RDA responsibility for the chiller and boiler for the HVAC Systems and structural integrity matters relating to the building. The Lease also provides funding mechanisms to ensure such repair and maintenance obligations are fulfilled by the Association through lower rental payments, the MRF and TRF, and minimum contributions. It is intended that the Association's maintenance obligations are to be performed proactively on a preventative basis and pursued in accordance with a formally prepared annual and long-term maintenance plan. It is my opinion that the Lease does not need any amendments to clarify the parties' maintenance and repair obligations. Rather, the long-term budgeting and funding mechanisms need to be implemented and the long-term maintenance plan should be researched, analyzed and prepared to guide future repair and maintenance policy and obligations.

RELEVANT SECTIONS OF THE PERFORMING ARTS CENTER LEASE REGARDING MAINTENANCE AND REPAIR OBLIGATIONS

(Including Amendment Nos. 1-6)

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 or 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 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, 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, in accordance with the provisions of this 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.

19. Rent. For purposes of this 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, operation and maintenance of the Theatre. For the reasons set forth in Section 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 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 Agreement. All Rent and other payments due under this 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.

21. Annual Variable Rent. 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 and Maintenance Reserve Fund as more particularly defined in Section 22 and Section 23. 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 January 31st 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. The parties acknowledge that the expenses and operating and maintenance costs will be difficult to estimate or predict for the first year of operation of the Theatre and until some experience and history of operations and financial data is available. It is further intended by the parties that the first year of any available revenue should be used to build up the Operations Reserve Fund and Maintenance Reserve Fund as more particularly defined in Section 22 and Section 23. For these reasons, the RDA agrees that the Variable Rent shall not be due and owing until January 31, 2013, accruing for the calendar year 2012 as more particularly provided herein. In consideration of the waiver of Variable Rent until 2013, the Association hereby agrees to use any excess revenues during the first year or partial years of operation to build up the fund balances in the Operations Reserve Fund and the Maintenance Reserve Fund in accordance with Sections 22 and 23 regarding reserve funds.

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 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). 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 28. 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.

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). 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. Routine and preventative maintenance and recurring repair and replacement projects should be budgeted for and funded out of the Annual Operating Budget. 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 28. 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.

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 25. Use of funds within the Theatre Reserve Fund shall be subject to the specific conditions and limitations set forth in this Lease and Operating Agreement regarding the Theatre Reserve Fund as set forth in Section 25.

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 ("Theatre Reserve Fund"). The RDA shall retain the Theatre Reserve Fund in a specially created fund to be maintained by the RDA and used solely for the purposes set forth herein. The Theatre Reserve Fund shall be funded with remaining Base Rent or Variable Rent proceeds as set forth in Section 24. Nothing herein is intended to or shall obligate the RDA to separately fund the Theatre Reserve Fund. The parties expressly acknowledge that the funding of the 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 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 18 regarding the use of public funds for the project. The 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. Use of any portion of the 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 Theatre Reserve Fund. For purposes of prioritizing the use of the Theatre Reserve Fund it is the parties' intent to create a substantial and sufficient 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 is not the parties' intent that the Theatre Reserve Fund be used for routine maintenance until and unless a sufficient Theatre Reserve Fund is established and/or the use of such funds for routine maintenance is deemed necessary and appropriate under the circumstances. It is not the intent, and the RDA shall not use any Rent proceeds or the Theatre Reserve Fund for debt retirement or service with respect to the tax-exempt bonds.

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; and (2) the Maintenance 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 ~~tentative~~ budgets for the coming year and submit the same to the RDA and the ACB by November 25th. Prior to November 25th, the Association's staff will meet with RDA staff to review those portions of the Annual Budgets relating to faciliites maintenance~~September 30th of the current year~~. The RDA and the ACB shall have until December 10th ~~October 31st~~ to review the ~~tentative~~ budgets and to submit any recommended changes to the Association. ~~Final budgets shall be prepared by the Association and provided to the RDA and the ACB for review by November 30th. The RDA and ACB shall have until December 10th to review the final 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 ~~December 15th~~ of each year. Notwithstanding the foregoing, 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, 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. [As amended by Amendment No. 5]

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 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 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.

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, HVAC 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 28. Any amendments to the Maintenance Plan shall be subject to the review and approval of the RDA.

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 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 28. The Association shall be required to actually transfer funds to the Maintenance Reserve Fund, including required minimum contributions set forth in Section 33, in accordance with the approved budget, on a quarterly basis. The purpose of the quarterly 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 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 ~~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 May 1st ~~quarterly in accordance with Section 33~~. The Association shall be responsible for determining and calculating its Annual Revenues in order to make timely payment of the annual ~~quarterly~~ Minimum MRF Contributions to the Maintenance Reserve Fund. ~~Quarterly accounting reports shall be provided to the RDA evidencing compliance with the requirements of this Section.~~ [As amended by Amendment No. 2 and Amendment No. 6]

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 31.

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.

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 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.

52. Maintenance. Except as otherwise provided in Section 53 regarding the RDA's obligation to replace the boiler and chiller associated with the HVAC 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, HVAC, 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 HVAC systems, including the heating, ventilation and air conditioning systems for the Theatre ("HVAC Systems"). The Association shall obtain and enter into an annual service contract with a reputable provider for the on-going maintenance of the HVAC System. Such contract shall be subject to approval by the RDA to ensure sufficient maintenance scheduling and upkeep of the HVAC System and compliance with the Maintenance Plan. Except as otherwise provided in Section 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 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 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 23 and Section 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 25 regarding the RDA's Theatre Reserve Fund, the Association may request assistance from the RDA through the use of funds in the Theatre Reserve Fund for maintenance and upkeep to the Theatre.

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 HVAC 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 23 and Section 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 25, it is the parties' intention that the primary use of the 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 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 HVAC Systems. The RDA may use the Theatre Reserve Fund for such capital repairs and replacements for the Theatre or the replacement of the boiler and chiller associated with the HVAC Systems.

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.

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 HVAC Systems as more particularly provided in Section 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 Agreement and the lease of the Theatre and Site to the Association.

CENTERVILLE CITY COUNCIL

Staff Backup Report

Item No. 7.

Short Title: CPT Progress Report/Update

Initiated By: Jansen Davis

Scheduled Time:

SUBJECT

RECOMMENDATION

Discussion only.

BACKGROUND

Mayor Russell would like Jan Davis to give the RDA/ACB an update regarding CPT's operations, staffing, events, etc.