

FORGIVABLE LOAN AGREEMENT

by and between

THE CITY OF SAN LEANDRO

and

SAN LEANDRO CURTAIN CALL PERFORMING ARTS

14808 E. 14th Street

APN: 077E-1593-008-00

Exhibits

- A Property - Legal Description
- B Project – Scope of Work
- C Insurance Requirements
- D Promissory Note

OPERATOR PARTICIPATION AND LOAN AGREEMENT

(Commercial Rehabilitation Loan Program)

This Loan Agreement (this "**Agreement**") is entered into effective as of _____, 2017 (the "**Effective Date**") by and between **San Leandro Curtain Call Performing Arts**, a California corporation (the "**Operator**") and the City of San Leandro, a California charter city (the "**City**"). City and Operator are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. San Leandro Curtain Call Performing Arts is the tenant and operator of the property located at 14808 E. 14th Street in the City of San Leandro, known as Alameda County Assessor's Parcel No. 077E-1593-008-00 and more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference.

B. Dan Dillman, President of the San Leandro Curtain Call Performing Arts, and Gina Dillman are the owners of the Property.

C. Operator has requested, and City has agreed to provide a loan in the amount of **one hundred thousand dollars (\$100,000)** (the "**Loan**") pursuant to the terms and conditions set forth herein for the purpose of constructing theater improvements (the "**Improvements**") by Operator located on the Property, all in accordance with Exhibit B attached hereto (the "**Project**").

D. The City has determined that (i) provision of a loan for the Project is in the interests of the health, safety and welfare of the residents of the City of San Leandro ("**City**"), and (ii) the Loan is necessary to make the Project economically feasible.

E. Concurrently herewith Operator shall execute a promissory note (the "**Note**") in the amount of the Loan. This Agreement and the Note are collectively hereinafter referred to as the "**Loan Documents**."

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

ARTICLE I

LOAN TERMS

1.1 LOAN AND NOTE. City agrees to loan to Operator, and Operator agrees to borrow from and, subject to the provisions of Section 1.2.1, repay to City, the loan, in an amount not to exceed **one hundred thousand dollars (\$100,000)**, upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note which shall be dated as of the Effective Date and executed by Operator substantially in the form attached hereto as Exhibit D. Provided that Operator has complied with all conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed in

accordance with Section 2.2 hereof. The Parties agree that the City shall disburse Loan Proceeds only for and to the extent necessary for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; REPAYMENT; LOAN FORGIVENESS. The outstanding principal balance of the Note shall bear interest at the rate of three percent (3%) simple interest per annum. Provided that Operator is not in default under the Loan Documents, no payments shall be due on the Loan. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents shall be payable in full upon the occurrence of an Event of Default or upon Transfer (defined in Section 1.4) of the Property or part thereof without City's written consent.

1.2.1 LOAN FORGIVENESS. On the third (3rd) anniversary of the final disbursement of Loan Proceeds, the entire outstanding balance of the Loan, together with accrued interest, shall be forgiven, provided that no Event of Default has arisen under the Loan Documents.

1.3 Reserved

1.4 PREPAYMENT; ACCELERATION.

(a) Prepayment. The Note or any portion of the outstanding principal balance due under the Note may be prepaid at any time and from time to time, without penalty or premium. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. In no event shall any amount due under the Note become subject to any rights of offset, deduction or counterclaim on the part of Operator.

(b) Due On Sale. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer absent the prior written consent of City, of all or any part of or interest in the Property or the Improvements. "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, encumbrance or conveyance of the Property or the Improvements, exclusive of any loan from the City of San Leandro.

ARTICLE II

USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Operator shall use the proceeds of the Loan ("**Loan Proceeds**") solely and exclusively to pay for costs billed to Operator by third-parties in connection with the design and construction of some or all of the Project and such other costs related to the Project as City may approve in writing.

2.2 DISBURSEMENT OF PROCEEDS. Upon satisfaction of the conditions set forth in Section 2.3, provided that Operator has provided City with a written requisition specifying the amount and use of the requested Loan Proceeds, accompanied by copies of bills and invoices from third parties and such other documentation as City may reasonably require, City shall disburse Loan Proceeds to Operator no more than once per calendar month and no more than five times in total.

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

City's obligation to disburse the Loan Proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Operator's delivery to City of each of the following documents, fully-executed and acknowledged as applicable: (i) the Note and (ii) this Agreement;

(b) Reserved.

(c) Operator's delivery to City of evidence reasonably satisfactory to City that Operator has obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to undertake the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve;

(d) Reserved;

(e) Operator's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in Exhibit C attached hereto;

(f) Operator's delivery to City of such documentation as City shall reasonably require regarding Operator's organizational status and authority to execute and perform Operator's obligations under the Loan Documents;

(g) Operator's delivery to City of all of the following: (a) Project budget; (b) construction contract and/or quotes for purchases of goods, services or equipment; (c) other documentation, reasonably acceptable to City, that a component of the Project has been completed and paid for; and (d) copies of such other documents related to the development and financing of the Project as City may reasonably request;

(h) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Improvements or in the financial or other condition of Operator since the date of this Agreement.

2.4 DISBURSEMENT OF FUNDS IN ADVANCE OF PROJECT COMPLETION.

At its sole discretion, City may elect to advance a portion of the Loan Proceeds in advance of Project completion or initiation. Such a disbursement will require satisfaction of all of the conditions of Section 2.3 with the exception of Section 2.3 (g)(c). Operator may be required by City to provide copies of signed contracts or purchase orders prior to advancing funds. In no event will funds disbursed under this section exceed thirty percent (30%) of the total loan amount.

2.5 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT.

Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse the Loan Proceeds upon the occurrence of an Event of Default under the Loan Documents or if the conditions to disbursement of the Loan set forth in Section 2.3 have not been satisfied within 180 days following the Effective Date, unless an extension of such date is approved by City in writing.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 OPERATOR'S REPRESENTATIONS. Operator represents and warrants to City as follows, and Operator covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.1 not to be true, Operator shall immediately give written notice of such fact or condition to City. Operator acknowledges that City shall rely upon Operator's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) LEGAL STATUS; AUTHORITY. Operator has the full right, power and authority to undertake the Project and to execute, deliver and perform all obligations of Operator under the Loan Documents. Operator's execution, performance and delivery of the Loan Documents has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Operator have been duly authorized to do so. This Agreement and the other Loan Documents constitute valid and binding obligations of Operator, enforceable in accordance with their respective terms.

Operator is the operator of the Property and the Improvements, subject only to liens, encumbrances, restrictions, conditions, and other matters of record or disclosed in writing to City.

(b) NO CONFLICT. The execution of the Loan Documents and Operator's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, contract, order, indenture or other instrument to which Operator is a party or by which Operator may be bound.

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Operator, and when executed and delivered will each constitute a valid and binding obligation of Operator, enforceable in accordance with the respective terms thereof. The persons executing the Loan Documents on behalf of Operator have been duly authorized to do so.

(d) NO LITIGATION OR OTHER PROCEEDING. There are no pending or to Operator's knowledge, threatened actions or proceedings before any court or administrative body which may adversely affect the financial condition or operation of Operator or Operator's development of the Project and operatorship of the Property and the Improvements.

(e) NO BANKRUPTCY. Operator is not the subject of a bankruptcy or insolvency proceeding.

(f) COMPLIANCE WITH LAWS. Operator is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to the Property or to Operator in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety and employment laws. Operator has received no notice from any governmental authority regarding any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not been corrected, and no condition on the Property violates any Applicable Law.

ARTICLE IV

AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS; CONSTRUCTION SCHEDULE. Operator covenants that it shall use the Loan Proceeds solely for purposes of financing some or all of the Project in accordance with Section 2.1. Operator shall commence improvements consistent with the Project within 120 days following the Effective Date, and shall complete construction of the Project Improvements and obtain certification from the City's Building Department in accordance with Section 4.2 no later than 730 days after the Effective Date.

4.2 CONSTRUCTION PURSUANT TO PLANS; CERTIFICATION. All construction related to the Project shall be undertaken pursuant to plans and specifications approved by City. Operator agrees to place a sign (with design to be provided by City) on the Property during construction acknowledging the City's participation. Promptly after completion of the Project, Operator shall obtain certification from the City's Building Department certifying that the Improvements have been completed in accordance with this Agreement.

4.3 USE AND MAINTENANCE OF THE PROPERTY. Operator shall use the Property pursuant to the approved conditional use permit (CUP No. PLN2008-00048, and Operator covenants for itself and its successors and assigns that throughout the term of the Loan, the Property shall be used only for such purposes.

Operator shall keep the Property and the Improvements in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property and Improvements shall be preserved and maintained. Operator agrees to keep the Property free from litter, graffiti, peeling paint, unkempt landscaping and other unsightly features as reasonably determined by the City or by City's Community Development Department, Economic Development Division, Building Division or other City of San Leandro department.

4.4 USE OF PROPERTY FOR CITY AND COMMUNITY EVENTS. Operator agrees to make the Property available to the City for City or community events at least four times per year until such time as the loan is forgiven or paid in full. Use of the Property will be subject to availability and City agrees to pay a fee to the Operator to cover operating costs associated with such events.

4.5 ACCOUNTING RECORDS; PROPERTY INSPECTION. Operator shall maintain accurate books and records with respect to the completion of the Project and the use of the Loan Proceeds and shall permit the City, during business hours and upon reasonable notice to inspect, audit and examine such books and records and to inspect the Property during normal business hours upon reasonable notice.

4.6 COMPLIANCE WITH LAWS. Operator shall comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation, all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

4.7 INSURANCE. Operator shall maintain and keep in force at Operator's expense, insurance coverage with respect to the Project and the Property in accordance with the requirements set forth in Exhibit C attached hereto and incorporated herein. Operator shall require all third-party contractors engaged in work on the Project to maintain a commercial liability policy in accordance with the requirements set forth in Exhibit C.

4.8 INDEMNIFICATION. Operator shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City and its respective elected and appointed officials, officers, agents, and employees (collectively the **Indemnitees**"), from and against any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) (collectively "**Liabilities**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Operator's covenants under the Loan Documents, (b) any failure of Operator's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Operator or any other person or by negligent, faulty, inadequate or defective design, building construction, or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the Project, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Operator to comply with all applicable state, federal and local laws and regulations, including without limitation, applicable provisions of the California Building Standards Code, the Prevailing Wage Laws, and the Americans with Disabilities Act in connection with the construction or operation of the Project, provided that no Indemnitee shall be entitled to indemnification under this Section 4.8 for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Operator under this Section shall survive the expiration or termination of this Agreement, the making and repayment of the Loan, foreclosure sale, or delivery of a deed in lieu of foreclosure.

4.9 Reserved.

4.10 TAXES AND OTHER LIABILITIES. Operator shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Operator in relation to the Project, the Property, or the Improvements except those that Operator may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of City for eventual payment thereof in the event that it is found that the same is an obligation of Operator.

4.11 Reserved.

4.13 HAZARDOUS MATERIALS.

4.13.1 Covenants. Operator shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Operator, or the agents, employees, contractors or invitees of Operator except for materials commonly used in construction activities similar to those related to the Project, or in the operation and maintenance of the Property and the Improvements, in each case in

compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Operator shall promptly take all actions at Operator's sole expense as are necessary to comply with all Environmental Laws (as defined below).

“Hazardous Materials” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

“Environmental Law” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42

U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

4.14 OBLIGATION TO REFRAIN FROM DISCRIMINATION. Operator shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Operator covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivisions (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Operator or any person claiming under or through Operator establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Operator shall include such provision in all deeds, leases, contracts and other instruments executed by Operator, and shall enforce the same diligently and in good faith.

4.15 PREVAILING WAGES. Operator shall pay and shall cause Operator's contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall comply or shall cause the contractor and subcontractors to comply with all other applicable provisions of the Prevailing Wage Laws. Operator shall maintain or shall cause the contractor and subcontractors to maintain such records as are necessary to determine if prevailing wages have been paid as required pursuant to the Prevailing Wage Laws during the construction of the Project. Operator shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Operator shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Liabilities which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with all applicable state and federal labor laws, regulations and standards in connection with the construction of the Project, including but not limited to the Prevailing Wage Laws, or any act or omission of Operator or Operator's contractors and subcontractors with respect to the payment or

requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not, and shall not, waive any rights against Operator which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City, of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement, the making and repayment of the Loan, and any foreclosure proceeding, foreclosure sale, or delivery of a deed in lieu of foreclosure.

ARTICLE V

EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) Operator removes the Improvements from the Property.
- (b) Operator fails to maintain the Improvements and the Property in good condition and repair in violation of Section 4.3 and Operator fails to cure such default within thirty (30) days following written notice from City.
- (c) Operator fails to maintain insurance as required pursuant to the Loan Documents, and Operator fails to cure such default within fifteen (15) days.
- (d) A transfer occurs in violation of Section 1.4(b).
- (e) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the Loan or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.
- (f) Operator defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for fifteen (15) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Operator (or such longer time as City may agree upon in writing), provided that in each case Operator commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.
- (g) If an Event of Default shall have been declared under any other Loan Document, subject to the expiration of any applicable cure period set forth in such documents.

ARTICLE VI

REMEDIES

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default and the expiration of any applicable cure period, City shall have all remedies available to it under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Operator, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- b) Seek specific performance to enforce the terms of the Loan Documents;
- c) Pursue any and all other remedies available under law to enforce the terms of the Loan Documents and City's rights thereunder.

6.2 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. The City may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VII

MISCELLANEOUS

7.1 NOTICES. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier:

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City: City of San Leandro
835 East 14th Street
San Leandro CA 94577
Attn: City Manager

Operator: San Leandro Curtain Call Performing Arts
14808 E. 14th Street
San Leandro, CA 94578
Attn. Dan Dillman, President

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

7.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Operator agrees that any controversy arising under or in relation to this Agreement or any other Loan Document shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Operator irrevocably consents to service, jurisdiction, and venue of

such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

7.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Operator therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Operator in any case shall entitle the Operator to any other or further notice or demand in similar or other circumstances. No amendment to this Agreement shall be effective unless and until such amendment is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, City's obligation to make the Loan is personal to Operator, and shall not be assignable by Operator by operation of law or otherwise absent the express written consent of City, and any such assignment by operation of law or otherwise shall be void.

7.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through F attached hereto are incorporated herein by reference as though fully set forth herein.

7.13 SURVIVAL. All representations made by Operator herein and the provisions of Sections 4.3, 4.8, 4.14, and 4.15 hereof shall survive the expiration or termination of this Agreement, the making and repayment of the Loan, and any foreclosure proceeding, foreclosure sale, or delivery of a deed in lieu of foreclosure. The representations of Operator made herein have been or will be relied upon by the City, notwithstanding any investigation made by the City or on its behalf.

7.14 CITY STATUS. Operator recognizes and agrees that City is not a commercial lending institution, but a public agency exercising its authority to protect the public health, safety and welfare. Any duties or obligations which a commercial lending institution may have to Operator shall not apply to this transaction except as set forth herein and in the Loan Documents.

7.15 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

7.16 NON-LIABILITY OF CITY AND CITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the City shall be personally liable to Operator or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to Operator or Operator's successor in interest or for any obligation of City under this Agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.

OPERATOR:

SAN LEANDRO CURTAIN CALL PERFORMING ARTS

By: _____
Dan Dillman, President
Title: President

CITY:

CITY OF SAN LEANDRO

Chris Zapata, City Manager

Attest:

Tamika Greenwood, City Clerk

Approved as to budget authority:

Approved as to form:

David Baum, Finance Director

Richard D. Pio Roda, City Attorney

Account:

Exhibit A

PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PORTION OF LOTS 6, 7 AND 8, BLOCK 15, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF "TRACT 704", EDEN TOWNSHIP, FILED MAY 11, 1945, MAP [BOOK 11, PAGES 16, 17 AND 18](#), ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEASTERN LINE OF EAST 14TH STREET, AS SHOWN ON SAID MAP, AT THE MOST SOUTHERN CORNER OF SAID LOT 8; AND RUNNING THENCE ALONG SAID LINE OF EAST 14TH STREET, NORTH 49° WEST 66.10 FEET; THENCE NORTH 41° EAST, 135.50 FEET; THENCE NORTH 49° WEST, 33.90 FEET TO THE SOUTHEASTERN LINE OF 148TH AVENUE, AS SHOWN ON SAID MAP; THENCE ALONG THE LAST NAMED LINE, NORTH 41° EAST, 6.50 FEET; THENCE SOUTH 49° EAST, 33.90 FEET; THENCE NORTH 41° EAST, 33 FEET TO THE NORTHEASTERN LINE OF SAID LOT 6; THENCE ALONG THE LAST NAMED LINE, SOUTH 49° EAST, 66.10 FEET TO THE SOUTHEASTERN LINE OF SAID BLOCK 15; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 49° WEST, 175 FEET TO THE POINT OF BEGINNING.

APN: 077E-1593-008-00

Exhibit B

Scope of Work

Re-treat the Curtains, Movie Screen cleaning or brand new screen installed, new projector	\$90,000
New carpets	\$70,000
Additional Surveillance Cameras	\$15,000
Outside Terrazo Repair	\$10,000
Reupholstered Seats	\$100,000

Improvements shall include Operator's delivery to City of evidence reasonably satisfactory to City that Operator has obtained all necessary permits (including without limitation, building permits), licenses, and approvals if necessary to undertake the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve.

Exhibit C

INSURANCE REQUIREMENTS

Unless City agrees otherwise in writing, Operator shall, at Operator's sole cost and expense, throughout the term of the Note dated as of the date hereof and executed by Operator for the benefit of City (the "**Note**") shall keep and maintain the following policies of insurance. Capitalized terms used without definition in this Exhibit C shall have the meaning ascribed to such terms in the Loan Agreement of which this Exhibit is a part.

A. Property Insurance. Insurance for the risks of direct physical loss, naming City as loss payee as its interests may appear, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all Improvements, all fixtures and equipment located on or in, or constituting a part of, the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Operator from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the City) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement," an "increased cost of construction endorsement," and an endorsement covering underground work, if applicable to the Project.

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in, or about the Property or the Improvements. Commencing upon the Effective Date of the Loan Agreement and at all times prior to repayment of all sums payable under the Note, the limits of liability under this Paragraph B shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by City. If an aggregate limit is used, either the general aggregate limit shall apply separately to the Property or the general aggregate limit shall be twice the required occurrence limit.

The insurance shall also include:

- (i) coverage against liability for bodily injury or property damage arising out of the use, by or on behalf of Operator, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;
- (ii) premises and completed operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;
- (iii) broad form property damage liability;

- (iv) additional insured and primary insured endorsements protecting City and City and their respective elected and appointed officials, officers, employees and agents; and
- (v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Operator's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project, the Improvements or the Property. Operator shall require that any general construction contract entered into by Operator with regard to the Project include a contractual undertaking by the general contractor to provide worker's compensation insurance for its employees engaged in construction of the Project in an amount in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance, naming City as loss payee in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A/VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the closing of the Loan, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit C, Operator shall deliver to City certificates evidencing the insurance required to be carried by Operator under this Exhibit C. If requested by City, Operator shall deliver within fifteen (15) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided herein shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against City, Operator or any subtenant for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Operator which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, City and its elected and appointed officials, officers, employees and agents shall be named as additional insured under the policies of liability insurance and as loss payee under the property damage and course of construction insurance required to be maintained by Operator hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be

cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to City.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with City prior to commencement of construction.

(f) Each policy shall contain an endorsement that proves that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that City may carry.

(h) Each policy shall expressly provide that shall not be required to give notice of accidents or claims and that City shall not have liability for premiums.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Operator shall procure a bond to guarantee payment of losses and related investigations, claim administration and defense expenses.

G. Blanket Policies. Any insurance required pursuant to this Exhibit C may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Improvements shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Exhibit.

H. Compliance with Policy Requirements. Operator shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Operator shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

I. Additional Insurance. Operator shall have the right to carry such additional insurance as Operator may desire from time to time or as may be required by any mortgagee with a security interest in the Property.

J. Modification to Requirements. The risk manager of the City may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

Exhibit D

FORM OF PROMISSORY NOTE

(Attach form of Note.)

SECURED PROMISSORY NOTE

\$100,000

San Leandro, California
_____, 2017

FOR VALUE RECEIVED San Leandro Curtain Call Performing Arts (“**Operator**”) promises to pay to the City of San Leandro, a California charter city (“**City**”), in lawful money of the United States of America, the principal sum of **one hundred thousand dollars (\$100,000)**, or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, in accordance with the terms and conditions described herein.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to an Operator Participation and Loan Agreement dated as of the date hereof by and between Operator and City (the “**Loan Agreement**”), and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. The Note and the Loan Agreement are collectively referred to as the “**Loan Documents**.” Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

1. **INTEREST RATE; REPAYMENT; LOAN FORGIVENESS.** The outstanding principal balance of this Note shall accrue interest at the rate of three percent (3%) simple interest per annum. Provided that Operator is not in default under the Loan Documents, no payments shall be due on this Note.

1.1 **LOAN FORGIVENESS.** On the third (3rd) anniversary of the date of this Note, the entire outstanding balance of this Note, together with accrued interest, shall be forgiven, provided that no Event of Default has arisen under the Loan Documents.

1.2 **DUE ON SALE OR DEFAULT.** The entire unpaid principal balance and all sums accrued hereunder shall be immediately due and payable upon the Transfer (as defined in Section 1.4 of the Loan Agreement) absent City consent, of all or any part of the Property or the Improvements, or any interest therein or upon the occurrence of an Event of Default under the Loan Documents, subject to the expiration of any applicable cure period.

1.3 **PREPAYMENT.** Operator may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, if any, and then to principal. In no event shall any amount due under this Note become subject to any rights of offset, deduction or counterclaim on the part of Operator.

1.4 **MANNER OF PAYMENT.** All payments on this Note shall be made to City at 835 East 14th Street, San Leandro, CA 94577, or such other place as City shall designate to Operator in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) Operator removes the Improvements from the Property.
- (b) Operator fails to maintain the Improvements and the Property in good condition and repair in violation of Section 4.3 of the Loan Agreement and Operator fails to cure such default within 30 days following written notice from City.
- (c) Operator fails to maintain insurance as required pursuant to the Loan Documents, and Operator fails to cure such default within 10 days.
- (d) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the Loan or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.
- (e) Operator defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 2 contained in this Note) in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Operator (or such longer time as City may agree upon in writing), provided that in each case Operator commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.
- (f) If an Event of Default shall have been declared under any other Loan Document, subject to the expiration of any applicable cure period set forth in such documents.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Operator, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the Loan Documents. Operator shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder.

2.3 Reserved.

3. MISCELLANEOUS

3.1. WAIVER. The rights and remedies of City under this Note shall be cumulative and not alternative. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising

any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of City arising out of this Note can be discharged by City, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by City; (b) no waiver that may be given by City will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Operator will be deemed to be a waiver of any obligation of Operator or of the right of City to take further action without notice or demand as provided in this Note. Operator hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2. NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 7.1 of the Loan Agreement.

3.3. SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Operator agrees that any controversy arising under or in relation to the Note or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note and any other Loan Document. Operator irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

3.5. PARTIES IN INTEREST. This Note shall bind Operator and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6. SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7. RELATIONSHIP OF THE PARTIES. The relationship of Operator and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make City the partner or joint venturer of Operator.

3.8. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, Operator has executed and delivered this Note as of the date first written above.

OPERATOR

SAN LEANDRO CURTAIN CALL PERFORMING ARTS

By: _____
Dan Dillman, President

Title: Property Operator_____